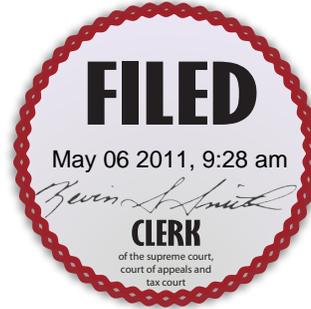


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

A.M.,)
)
Appellant,)
)
vs.) No. 93A02-1008-EX-887
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and)
EMPLOYER,)
)
Appellees.)

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT
OF WORKFORCE DEVELOPMENT
Cause No. 10-R-3384

May 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant A.M. appeals from the denial of her claim for unemployment compensation benefits by the Review Board of the Indiana Department of Workforce Development (“Review Board”). We affirm.

FACTS AND PROCEDURAL HISTORY

A.M. was employed by Employer as a cage coordinator beginning on August 29, 2002. Beginning as early as August 12, 2008, A.M. came into conflict with her direct supervisor, Philip Cicero. Since August 12, 2008, A.M. has repeatedly challenged Cicero’s authority, communicated with other employees regarding amendments to department policy without Cicero’s authorization, made unauthorized purchases, and refused to complete certain tasks as instructed.

Specifically, on May 22, 2009, A.M. notified Cicero that she refused to make “key log books”¹ for the department as instructed. On May 26, 2009, Cicero met with A.M. to discuss the key log books. Cicero requested that another employee sit in on this meeting as a witness. During this meeting, A.M. indicated that she maintained her position that she would not make the key log books. Cicero considered A.M.’s refusal to be insubordination, and, as a result of her refusal to make the key log books as instructed by Cicero, A.M.’s employment was suspended pending discharge. A.M. was subsequently notified that her employment was

¹ A key log book is a record keeping device that is required to be kept by Employer by the State of Indiana.

formally terminated on May 29, 2009.

On June 15, 2009, a claims deputy for the Department of Workforce Development determined that A.M. was not discharged for just cause, and as a result, was eligible to receive unemployment benefits. On June 18, 2009, Employer timely appealed the claims deputy's determination. Following a hearing that was conducted on October 19, 2009, an Administrative Law Judge ("ALJ") found that A.M. was discharged for just cause and reversed the claims deputy's determination. However, because the ALJ "failed to preserve a reviewable record of the proceeding[,]" the Review Board vacated the ALJ's decision and remanded the matter for a new hearing before a different ALJ. Appellee's App. p. 12. On May 27, 2010, a different ALJ reversed the claims deputy's determination after finding that A.M. was discharged for just cause. A.M. timely appealed the ALJ's determination to the Review Board. On July 16, 2010, the Review Board affirmed the ALJ's determination, and adopted and incorporated the ALJ's findings of fact and conclusions of law. This appeal follows.

DISCUSSION AND DECISION

On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. *Value World Inc. of Ind. v. Review Bd. of Ind. Unemp't Dept. of Workforce Dev.*, 927 N.E.2d 945, 947 (Ind. Ct. App. 2010). We are bound by the Review Board's resolution of all factual matters; thus, we neither reweigh evidence nor reassess witness credibility. *Id.* at 948. Rather, we consider only the evidence most favorable to the Review Board's decision and the reasonable

inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the Review Board's conclusion, it will not be set aside. *Id.* When, however, an appeal involves a question of law, we are not bound by the agency's interpretation of law, and we will reverse a decision if the Review Board incorrectly interprets a statute. *Id.*

In a discharge case, the employer bears the burden of proving that it discharged the claimant for just cause. *Stanrail Corp. v. Unemp't Ins. Review Bd.*, 734 N.E.2d 1102, 1104 (Ind. Ct. App. 2000). Indiana Code section 22-4-15-1(d) (2008) provides that the term "discharge for just cause" is defined to include "any breach of duty in connection with work which is reasonably owed an employer by an employee." In construing this provision of the statute, this court provided as follows:

Determination of just cause is a question of fact. It is conduct evidencing such willful or wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of his employee, or a carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional or substantial disregard of the employer's interest or of the employee's duties or obligation to his employer.

Yoldash v. Review Bd. of Ind. Emp't Sec. Div., 438 N.E.2d 310, 312 (Ind. Ct. App. 1982) (citation, emphasis, and quotation omitted). No hard-and-fast rule can be fixed defining in precise terms what constitutes such misconduct as to deny an employee unemployment compensation benefits. *Id.* Each case must be determined on its own particular facts. *Id.*

In *Barnett v. Review Board*, 419 N.E.2d 249 (Ind. Ct. App. 1981), the Court held that the Review Board must make certain specific findings in cases involving a discharge for violating an employer's rules. To find that a discharge was for just cause, there must first be a finding that: (1) there was a rule; (2) the rule was reasonable; (3) the rule was uniformly enforced; (4) the claimant knew of the rule; and (5) the claimant knowingly violated the rule.

Stanrail Corp., 734 N.E.2d at 1104-05. Again, upon review our task is to determine whether the ALJ's decision is reasonable in light of its findings. *See id.* at 1105.

Here, the ALJ found that the Employer "has written standards of conduct which are enforced with all employees on a uniform basis[,]” that “all employees are expected to perform their jobs following all department and company policies and procedures[,]” and that A.M. “was discharged for a violation of standard of conduct number 7 concerning insubordination which includes the refusal to follow the supervisor’s instruction.” Appellant’s App. pp. 15-16. The ALJ further found that A.M. acknowledged receiving a copy of the Employer’s policies and procedures, including standard of conduct number 7, and that A.M. understood that “she was required to read the handbook and familiarize herself with it.” Appellant’s App. p. 16. The ALJ concluded that A.M. was discharged for insubordination after she refused to follow Cicero’s instructions on more than one occasion, including her refusal to follow Cicero’s instruction regarding “comp pay” for holidays and her repeated refusal to make the key log books. Appellant’s App. p. 16.

In light of these findings and conclusions, the ALJ determined that A.M. “knowingly violated a reasonable and uniformly enforced standard of conduct concerning insubordination which is enforced by the employer. Appellant’s App. p. 16. Upon review, we conclude that the Review Board’s determination that A.M. was discharged for just cause was reasonable as it was supported by substantial evidence in the record, including the testimony of Employer’s representative. A.M.’s argument effectively amounts to a request that we reweigh the

evidence and reassess witness credibility, which we will not do. *See Value World*, 927 N.E.2d at 948.

The judgment of the Review Board is affirmed.

BAKER, J., and MAY, J., concur.