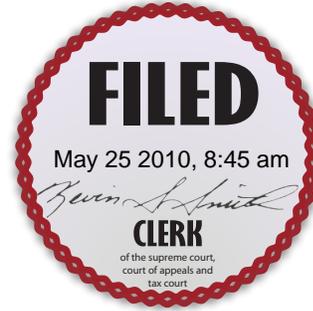


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



APPELLANT PRO SE:

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Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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B.G., )  
 )  
Appellant, )  
 )  
vs. ) No. 93A02-0910-EX-1030  
 )  
REVIEW BOARD OF THE INDIANA )  
DEPARTMENT OF WORKFORCE )  
DEVELOPMENT and CELADON TRUCKING )  
SERVICES, INC., )  
 )  
Appellees. )

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APPEAL FROM THE REVIEW BOARD  
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT  
Case No. 09-R-03802

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**May 25, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

B.G. appeals the decision of the Unemployment Insurance Review Board (“Board”) to affirm the dismissal of her appeal from the denial of unemployment benefits for failure to appear for a telephonic, evidentiary hearing. We affirm.

### **Issue**

B.G. raises three issues, which we consolidate and restate as whether there was substantial evidence to support the Board’s decision.

### **Facts and Procedural History**

Discharged from her employment, B.G. applied for unemployment insurance benefits. The Indiana Department of Workforce Development (“DWD”) determined that she had been discharged for just cause; B.G. appealed.

An administrative law judge (“ALJ”) with the DWD sent a notice of hearing to B.G. and her former employer to appear, by telephone, at 10:00 a.m. eastern daylight savings time on Wednesday, July 22, 2009. The notice stated, “If you are the appealing party and fail to participate in the hearing, the administrative law judge will dismiss your appeal.” Exhibits at 3. An instruction sheet indicated that a request for a continuance was required to be in writing and received by the ALJ at least three days prior to the hearing. By her own account, B.G. received the notice five days before the hearing and, at some point, acknowledged in writing that she would attend.

On Monday, July 20, 2009, two days before the hearing, B.G. faxed to the ALJ her request for a continuance of the hearing, citing her need to subpoena a Deputy Sheriff from

Maryland and to subpoena her former employer for a relevant police accident report and certain disciplinary records. The ALJ called B.G. at 10:05 a.m. and 10:15 a.m. on July 22, per the notice. When B.G. failed to answer either call, the ALJ dismissed her appeal.

In a document received by DWD the day after the hearing, B.G. stated:

I have been up all night worried about receiving the ALJ's voice message that she was disallowing my claim for appeal to unemployment because I failed to answer the calls from the court on July 22, 2009. I cannot tell you the disappointment I feel with myself for not being relentless in ensuring that my faxed document was received and that the case was actually going to be continued. I take full responsibility and ask the court[']s indulgence.

Ex. at 15. Five days later, the DWD received a letter from B.G. in which she acknowledged that the "ALJ called as per scheduled for hearing, but I was on a phone interview and did not click over." Ex. at 18.

The Chief ALJ denied B.G.'s request to reinstate the appeal. Later, the Board affirmed the dismissal, adopting the ALJ's findings and determining that B.G. did not show good cause why the appeal should be reinstated.

B.G. now appeals.

### **Discussion and Decision**

"Any decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a). We neither reweigh the evidence nor assess witness credibility. Quakenbush v. Review Bd. of Ind. Dep't of Workforce Dev., 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the Board's findings, reversing the decision only if there is no substantial evidence to support the Board's findings. Id.

B.G. explains her failure to attend the telephonic, evidentiary hearing as the result of her anticipation that her request for a continuance would be granted.<sup>1</sup> She adds that she knowingly failed to take the ALJ's call because she was on the telephone with a potential employer. These attempts to justify her failure to attend constitute a request for this Court to reweigh the evidence regarding good cause for reinstatement of the appeal. We decline her request.

There was substantial evidence to support the Board's decision.

Affirmed.

MAY, J., and BARNES, J., concur.

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<sup>1</sup> B.G. accurately notes that Ind. Admin. Code tit. 646, r. 3-12-4, regarding continuances of unemployment benefit hearings, expired on January 1, 2009, as a function of the Administrative Orders and Procedures Act, which requires occasional readoption of certain regulations. See Ind. Code Chapter 4-22-2.5. However, she makes no cogent argument that the ALJ abused her discretion in denying the request or that the denial of a request for continuance submitted two days before the evidentiary hearing deprived her of the process to which she was due, especially when her need for the continuance stemmed from her failure to gather documents that had existed for months. She has therefore waived the issue. See Jensen v. State, 905 N.E.2d 384, 395 (Ind. 2009).