

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:

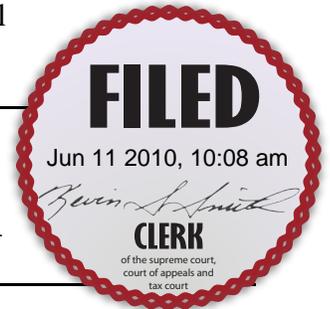
K.T.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

STEPHANIE L. ROTHENBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



K.T.,)
)
Appellant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT,)
)
Appellee.)

No. 93A02-0912-EX-1266

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE
DEVELOPMENT
Cause No. 09-R-6145

June 11, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

K.T. appeals the decision of the Indiana Department of Workforce Development Unemployment Insurance Review Board (“the Review Board”) affirming the decision of the administrative law judge (“ALJ”) to dismiss her appeal as untimely. We affirm.

Issue

K.T. raises three issues, which we consolidate and restate as whether the Review Board properly affirmed the ALJ’s decision dismissing her appeal.

Facts

On October 26, 2009, the Indiana Department of Workforce Development (“DWD”) mailed K.T. two determination of eligibility letters. One letter informed K.T. of the DWD’s determination that her unemployment benefits were suspended because she had been discharged for just cause. The other addressed the calculation of vacation pay. Both letters also informed K.T. that an appeal of the determination must be filed within thirteen days of the date the letter was mailed.

On November 13, 2009, K.T. appealed, claiming that she was upset with her work schedule and fell asleep on the job because she was “wore out [and] sick all the time for months” Exhibits p. 3. On November 30, 2009, an ALJ dismissed K.T.’s appeal because it was untimely filed. On December 9, 2009, K.T. sought review of the ALJ’s decision by the Review Board. In her notice of appeal to the Review Board, K.T. stated, “I am appealing the decision that was made for the reason I did not receive the determination letter due to the address being incorrect.” App. p. 8. On December 11,

2009, the Review Board affirmed the ALJ's decision without a hearing. K.T. now appeals.

Analysis

Initially, we note that although K.T. proceeds pro se, a litigant who chooses to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his or her action. Shepherd v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). K.T. argues that the Review Board improperly affirmed the ALJ's dismissal of her appeal. "On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings." KLR Inc. v. Indiana Unemployment Ins. Review Bd., 858 N.E.2d 115, 117 (Ind. Ct. App. 2006). We are bound by the Review Board's resolution of all factual matters, and we neither reweigh evidence nor reassess witness credibility. Id. When 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 Board incorrectly interprets a statute. Id.

K.T. argues that her appeal should not have been dismissed by the ALJ because the determination of eligibility letters were sent to her address at "Marabou Mills" and only contained a handwritten "pl," which was crossed out and replaced with a handwritten "LN." App. p. 2. K.T. asserts her correct address is Marabou Mills Lane. She claims that when she left for her vacation in Florida on October 31, 2009, she had not received the determination of eligibility letters and that she did not return from her vacation until November 10, 2009. She asserts that she did not receive the determination

of eligibility letters before she left because of the incorrect designation of place and lane, which designation she had previously tried to correct. K.T. argues that not receiving her determination of eligibility letters before she left for vacation made her appeal untimely. K.T. also claims that she only received a determination of eligibility letter relating to the amount of vacation pay and that she never received the determination of eligibility letter relating to whether she was discharged for just cause.

The Review Board first responds that K.T. “barely disputed” the untimely notice of appeal. Appellee’s Br. p. 9. The Review Board compares the facts of this case with Amico v. Review Board of the Indiana Department of Workforce Development, No. 93A02-0907-EX-607, slip op. at 6-7 (Ind. Ct. App. Nov. 19, 2009),¹ in which we affirmed the Review Board’s decision to adopt the ALJ’s dismissal of Amico’s appeal as untimely. In that case, Amico’s submission to the Review Board requesting an appeal of the ALJ’s dismissal made no mention of the timeliness of her original notice of appeal. In K.T.’s notice of appeal to the Review Board, however, she stated, “I am appealing the decision that was made for the reason I did not receive the determination letter due to the address being incorrect.” App. p. 8. Amico, slip op. at 6. Because K.T. raised the issue of the incorrect address to the Review Board, the Review Board’s reliance on Amico is unavailing.

The Review Board also argues:

¹ This opinion was originally handed down as a not for publication memorandum decision. On January 27, 2010, the Review Board’s motion to publish was granted, and the case was published.

If she had set forth in her appeal to the Review Board any of these claims regarding the significance of the one-word omission in her address, or mentioned that she had called several times to correct this omission, or submitted copies of the returned or corrected mail, or alleged that she was on vacation when the Determination arrived, then the Board would have had evidence before it that there was a problem with the Determination being received. However, none of this was presented to the Review Board, and the simple one-sentence statement that the address was incorrect was not enough on the face of the documentation to necessitate an evidentiary hearing.

Appellee's Br. pp. 9-10.

We disagree with the Review Board's broad assessment of K.T.'s ability to submit additional evidence to the Review Board. The evidence considered by the Review Board is quite limited. In fact:

Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge. An application for leave to introduce additional evidence made by either party shall set forth the names of the witnesses whose testimony will be offered and the facts to which they are expected to testify. If the new evidence is documentary, then a copy of the document proposed to be introduced shall accompany the application. Such application, if made by the appellant, must be presented at the time the request for hearing is filed. No additional evidence shall be taken except after notice is issued by the review board to all parties to such appeal giving each party an opportunity to rebut the additional evidence. The notice shall designate the time when and place at which additional evidence will be received and shall set forth the names of the witnesses whose testimony will be heard, together with a summary of the facts about

which they are expected to testify, and shall include a copy of any document offered as additional evidence. It is further provided, however, that if all parties to an appeal are present at a hearing at which the review board upon its own motion determines to take additional evidence and the parties voluntarily waive their right of notice of the taking of additional evidence, the review board in its own discretion may proceed in the taking of additional evidence.

646 Ind. Admin. Code 3-12-8(b).

In Ritcheson-Dick v. Unemployment Insurance Review Board, 881 N.E.2d 54, 57 (Ind. Ct. App. 2008), we addressed whether the Review Board improperly failed to hear additional evidence regarding whether a claimant's notice of appeal was timely filed. In that case we observed:

When appealing the ALJ's decision to the Review Board, Margaret included a typed letter explaining that she had originally faxed the Notice of Appeal to the IDWD on March 14, 2007, but re-faxed it on April 5, 2007, after speaking with three IDWD employees, all of whom she was able to name.^[2] Specifically, the employees told Margaret that they had not seen the Notice of Appeal, and one employee advised Margaret that she would make a note that Margaret was sending an appeal. In fact, the Notice of Appeal, faxed April 5, 2007, is dated March 14, 2007.

Ritcheson-Dick, 881 N.E.2d at 57. We concluded:

Margaret has established both good cause and good reason why the evidence concerning the allegedly lost fax was not presented before the ALJ. Having spoken with three employees from the IDWD, one of whom said that she would make a note, Margaret reasonably assumed that her appeal would be considered timely and therefore she did not need to make a case before the ALJ. Accordingly, the Review Board

² Referring to her address, K.T. admits that she "cannot prove all the times that [she] called the Review board to correct this." Appellant's Reply Br. p. 3.

abused its discretion in not hearing Margaret's additional evidence. We therefore reverse and remand for a determination of whether Margaret timely appealed the deputy's decision suspending her benefits.

Id.

Here, K.T. did not specifically request an opportunity to present additional evidence. In fact, unlike in Ritcheson-Dick, K.T. specifically argues, "Basically, no additional evidence was needed to see the address was incorrect" Appellant's Reply Br. p. 6. She asserts the Review Board should have compared the address in her notice of appeal, which included the designation of "lane," to the address on the various notices from the DWD, which included the same address but did not include the "lane" designation. K.T.'s mere inclusion of "lane" in the address line of the notice of appeal was insufficient to establish that the address was incorrect so as to prevent her from receiving both determination of eligibility letters or to prevent her from timely seeking administrative review of eligibility determinations. Based on K.T.'s argument on appeal, we cannot conclude that the Review Board improperly affirmed the ALJ's decision dismissing her appeal.

Conclusion

Given the arguments made, the Review Board's decision affirming the ALJ's dismissal of K.T.'s appeal was reasonable. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.