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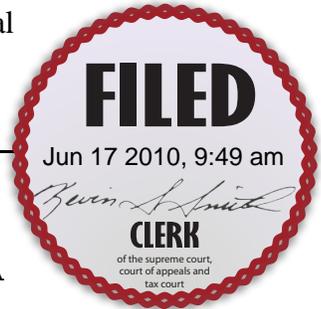
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**IN THE
COURT OF APPEALS OF INDIANA**

S.P.,)
)
Appellant-Defendant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT, et al.,)
)
Appellees-Plaintiffs.)

No. 93A02-0912-EX-1245

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE
DEVELOPMENT
The Honorable Wayne Warf, Judge
Cause No. 09-R-5507

JUNE 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant S.P. appeals a decision from the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (“the Review Board”)/Appellee, is not entitled to unemployment insurance benefits (“benefits”). We affirm.

ISSUES

S.P. raises five issues, which we consolidate and restate as:

I. Whether the Administrative Law Judge (“ALJ”) abused its discretion in the course of admitting and excluding evidence during a hearing on S.P.’s claim for benefits; and

II. Whether the Review Board erred by determining that S.P. voluntarily quit her employment without good cause.

FACTS AND PROCEDURAL HISTORY

S.P. worked for C.C.J.M. (“Employer”) as an inside sales manager from April 2001 until June 5, 2009. Employer provided janitorial services to commercial buildings and experienced a sharp decline in business. As a result of the decline in business, management held a meeting with staff to explain that changes were necessary. Subsequently, Employer cut S.P.’s pay and hours, took away her commissions, and ended paid vacations. Immediately before S.P. quit, management discovered discrepancies in

S.P.'s timecard. When a supervisor discussed the discrepancies with S.P., she became angry and quit.

S.P. filed a claim for benefits. A claims deputy determined that S.P. had voluntarily left her employment with good cause and was therefore entitled to benefits. Employer requested review of the deputy's decision. An ALJ held a telephonic hearing on September 28, 2009. On October 26, 2009, the ALJ issued a decision reversing the deputy's determination. The ALJ's decision provides, in relevant part:

FINDINGS OF FACT: The claimant worked for this employer from April 2001 until June 5, 2009 as an inside sales manager for a commercial cleaning company. The claimant quit her employment. The claimant testified that she quit her employment after her salary and hours were cut and her vacations and commissions were eliminated. However, the totality of the testimony among the witnesses showed that the claimant agreed to these change conditions. In actuality, the claimant was confronted with discrepancies on her timecard in which she was claiming more hours than actually worked. When the claimant was questioned about the discrepancies, she became angry and quit her employment. The [ALJ] can not find that reasonable inquiries and discipline from an employer concerning hours reported constitutes treatment or conditions so unfair as to impel a reasonably prudent person to quit their employment under the same or similar circumstances. The [ALJ] finds that the claimant's reaction to the employer's handling of the timecard discrepancies was unreasonable and not objective. The [ALJ] finds that the claimant voluntarily quit her employment without good cause in connection to the work.

CONCLUSIONS OF LAW: The [ALJ] concludes that the claimant voluntarily quit her employment without good cause in connections to the work. . . . The [ALJ] concludes that the claimant is voluntarily unemployed and is not entitled to benefits.

Appellee's App., pp. 29-30.¹

¹ We note that S.P. has not filed an Appellant's Appendix, which is required under the Appellate Rules. See Indiana Appellate Rule 49(A) (providing "[t]he appellant shall file its Appendix with its appellant's brief"). We have not ordered S.P. to file an Appellant's Appendix because the Review Board has filed an

S.P. asked the Review Board to review the ALJ's decision. On December 7, 2009, the Review Board adopted and incorporated the ALJ's findings of fact and conclusions of law and affirmed the ALJ's decision.

DISCUSSION AND DECISION

I. EVIDENTIARY RULINGS

In Review Board hearings, the admission and exclusion of evidence as a general rule is committed to the sound discretion of the administrative law judge. *See Cornell v. Review Bd. of Indiana Employment Sec. Div.*, 179 Ind.App. 17, 383 N.E.2d 1102, 1104 (Ind. Ct. App. 1979).

S.P. contends that the ALJ abused its discretion by excluding the testimony of her boyfriend. S.P. claims that his testimony was pertinent and would have corroborated her claim.

During the hearing before the ALJ, the following discussion occurred:

[ALJ]: Okay, anything else?
[S.P.]: No, I do have my witness here that . . .
[ALJ]: And what's your witness going to testify to that you didn't testify to? What's your witness going to testify to?
[S.P.]: He'll testify to the things that I was saying about my salary, and taxes . . .
[ALJ]: And, and how does he know this?
[S.P.]: - it was just a hostile environment, and . . .
[ALJ]: How does he know this?
[S.P.]: Yes, actually he's on my bank account with me, so he . . .
[ALJ]: Okay, how, how does he know, how does he know about any of this?
[S.P.]: . . . how the taxes weren't being taken out, and things like that.

Appellee's Appendix. The Appellee's Appendix, along with the Transcript, is sufficient to allow us to address S.P.'s appeal on the merits.

[ALJ]: How does he know about any of this, I'll ask you again.
[S.P.]: Because I live with him. He's my boyfriend, and he's also on, and we have the same bank account.
[ALJ]: Okay.
[S.P.]: And we do, you know, our bills are all together.
[ALJ]: Okay, these are things that you just testified to, so I'm not sure how he's going to add anything.
[S.P.]: This is a . . .
[ALJ]: He's just going to say the same thing you're going to say right?
[S.P.]: . . . yeah, that is in fact true.
[ALJ]: well, I said he's just going to say the same thing you just said?
[S.P.]: Totally.
[ALJ]: Okay.

Tr. pp. 5-6.

S.P. conceded that her boyfriend would have discussed the same subjects that S.P. had already addressed in her testimony. Therefore, assuming that the testimony of S.P.'s boyfriend would have been relevant, any error in the ALJ's exclusion of the testimony was harmless because the testimony would have been cumulative of other evidence that had already been admitted. *See Meade v. Levett*, 671 N.E.2d 1172, 1178 (Ind. Ct. App. 1996) (determining that the exclusion of a portion of an affidavit was at best harmless error because the excluded information was merely cumulative of other evidence).

Next, S.P. claims that the ALJ erroneously allowed an unidentified, unsworn witness to testify for Employer. Hearings before an ALJ are informal proceedings designed to determine the substantial rights of the parties. *Highland Town Sch. Corp. v. Review Bd. of Indiana Dep't of Workforce Dev.*, 892 N.E.2d 652, 656 (Ind. Ct. App. 2008). Nevertheless, a party must object to evidence, and indicate the substantive basis for the objection, to preserve a challenge to that evidence on appeal. *See id.* (determining

that an appellee had not preserved a hearsay issue for review because the appellee had failed to object to evidence on that basis).

In this case, during the hearing before the ALJ, S.P. never objected to the evidence submitted by Employer and did not assert that an unsworn, unidentified witness was testifying. Therefore, S.P. waived this issue for appellate review. Waiver notwithstanding, we find that Employer's witness was properly identified and sworn. At the beginning of the hearing, T.A., who was Employer's president, identified himself and swore an oath to testify truthfully. After S.P. testified, the following discussion occurred:

[T.A.], having been duly sworn upon his oath, testifies as follows:

DIRECT-EXAMINATION OF [T.A.]

BY WAYNE WARF, ADMINISTRATIVE LAW JUDGE

[ALJ]: [T.A.], what's your testimony?

[T.A.]: I mean before my testimony also I probably would like to enter into this record that I have the (INAUDIBLE) manager of the office here with us. Do you need to take a name and testimony, I mean . . .

[ALJ]: Let's hear your testimony. Whose, who's giving the primary testimony here?

[T.A.]: That is Jan (INAUDIBLE). We restructured because we changed business, and we have to start all over again.

* * *

[ALJ]: Okay, anything else?

[T.A.]: Nothing.

[ALJ]: Okay. [S.P.], do you have any questions for [T.A.], and just questions not your own testimony, and not argument, just questions.

[S.P.]: No.

Tr. pp. 6-7, 8. Thus, the transcript clearly reflects that [T.A.] testified for Employer. The court reporter did not note that anyone else had testified for Employer. Thus, the ALJ did not admit testimony from an unidentified, unsworn witness.

We conclude that the ALJ did not abuse its discretion in the exclusion or admission of evidence during the hearing.

II. DENIAL OF BENEFITS

When a Review Board decision is challenged as contrary to law, we consider the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. *McClain v. Review Bd. of Indiana Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998), *reh'g denied*. We neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Review Board's findings. *Id.* We review conclusions of law to determine whether the Review Board correctly interpreted and applied the law. *Stanrail Corp. v. Review Bd. of Dep't of Workforce Dev.*, 735 N.E.2d 1197, 1202 (Ind. Ct. App. 2000), *transfer denied*.

The purpose of the unemployment compensation act is to provide benefits to those who are involuntarily out of work, through no fault of their own, for reasons beyond their control. *Wasylk v. Review Bd. of Indiana Employment Sec. Div.*, 454 N.E.2d 1243, 1245 (Ind. Ct. App. 1983). An employee is not entitled to benefits if the employee "voluntarily left the individual's most recent employment without good cause in connection with the work or [] was discharged from the individual's most recent employment for just cause" Ind. Code § 22-4-15-1(a). The determination of whether an employee quit for good cause is a question of fact for the Review Board. *Davis v. Review Bd. of Indiana*

Dep't of Workforce Dev., 900 N.E.2d 488, 492 (Ind. Ct. App. 2009). It is the employee's burden to establish that he or she quit for good cause. *Id.* The employee must show that: (1) the reasons for leaving employment were such as to impel a reasonably prudent person to terminate employment under the same or similar circumstances; and (2) the reasons are objectively related to the employment. *M & J Mgmt., Inc. v. Review Bd. of Dep't of Workforce Dev.*, 711 N.E.2d 58, 62 (Ind. Ct. App. 1999). This second component requires that the employee show that his or her reasons for terminating employment are job-related and objective in nature, excluding reasons which are personal and subjective. *Id.*

In this case, Employer's president, T.A., testified that the company's economic conditions were difficult and all employees were informed that cutbacks would be necessary, but S.P. quit when she was questioned about discrepancies in her timesheet and became angry. Questioning an employee about apparent timesheet discrepancies, regardless of whether the discrepancies actually exist, is a valid management activity and would not impel a reasonably prudent person to terminate his or her employment. *See Richey v. Review Bd. of Indiana Employment Sec. Div.*, 480 N.E.2d 968, 972 (Ind. Ct. App. 1985) (determining that an employee's resignation due to an exchange of words with a supervisor that made the employee uncomfortable did not constitute good cause). S.P. argues that the timesheet dispute was just one of many contributing factors that created a hostile environment and led to her decision to quit. Her argument amounts to a request to reweigh the evidence, which we may not do.

S.P. also claims that her employer's cutbacks in wages and benefits violated Indiana law and provided ample good cause for her to quit. S.P. did not argue to the Review Board that Employer had violated wage laws, so that claim is waived on appeal. *See Cunningham v. Review Bd. of Indiana Dep't of Workforce Dev.*, 913 N.E.2d 203, 205 (Ind. Ct. App. 2009) (stating that a party who fails to raise an issue before an administrative body waives the issue on appeal).

Finally, S.P. contends that the ALJ erred by failing to investigate whether Employer was in compliance with Indiana's wage laws and by failing to order Employer to produce employment records. S.P. cites to Ind. Code § 22-2-2-8(b) to support her contention. That statute provides, in relevant part:

(a) Every employer subject to the provisions of this chapter or to any rule or order issued under this chapter shall each pay period furnish to each employee a statement that includes at least the following information:

- (1) The hours worked by the employee.
- (2) The wages paid to the employee.
- (3) A listing of the deductions made.

(b) An employer shall furnish to the commissioner upon demand a sworn statement of the information furnished to an employee under subsection (a). Records relating to the information furnished shall be open to inspection by the commissioner, the commissioner's deputy, or any authorized agent of the department at any reasonable time.

I.C. 22-2-2-8. Although Ind. Code § 22-2-2-8 authorizes the Commissioner of the Department of Labor to review employment records, it does not require an ALJ to obtain and review records during an unemployment benefits appeal. As is noted above, S.P. bears the burden of proving that she voluntarily resigned for good cause, and she was obligated to provide all of the evidence necessary to support her case.

The Review Board's finding of fact that S.P. voluntarily terminated her employment without good cause was reasonable under the specific circumstances presented in this case.

CONCLUSION

For these reasons, we affirm the Review Board's determination that S.P. is not entitled to unemployment benefits.

Affirmed.

KIRSCH, J., and RILEY, J., concur.