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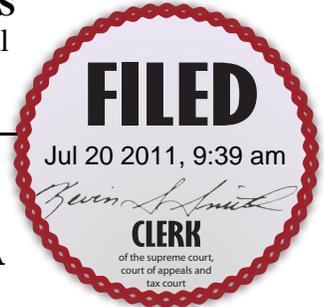
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**IN THE  
COURT OF APPEALS OF INDIANA**

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R.W., )  
)  
Appellant, )  
)  
vs. )  
)  
REVIEW BOARD OF THE DEPARTMENT )  
OF WORKFORCE DEVELOPMENT AND )  
CAPITOL IMPROVEMENT BOARD OF THE )  
INDIANAPOLIS CONVENTION CENTER )  
AND RCA DOME, )  
)  
Appellees. )  
)

No. 93A02-1012-EX-1399

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APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF  
WORKFORCE DEVELOPMENT  
Cause No. 10-R-06198

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July 20, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

R.W. appeals the Review Board of the Indiana Department of Workforce Development's (Review Board) determination that her employer terminated her for just cause because she filled out her time sheet for periods of time when she did not work. She also asks us to reverse the Review Board based on a settlement agreement that the parties reached in a civil rights case after the Review Board reached its decision. Concluding that the Review Board properly determined that R.W. was terminated for just cause and that the settlement agreement does not require us to reverse the Review Board, we affirm.

## **Facts and Procedural History**

R.W. worked at Indiana Convention Center/Lucas Oil Stadium from July 9, 2007, to July 2, 2010. At the time of her termination, she was a set-up supervisor. On June 7, 2010, R.W. left work two hours early. On June 21, she left work three-and-a-half hours early. And on June 22, she did not show up for work at all. Nevertheless, R.W. filled out her time sheet indicating that she worked her full shift on all three days. R.W. was discharged for falsifying her time sheet.

R.W. applied for unemployment benefits. The claims deputy denied her claim. R.W. appealed, and a telephonic hearing was held before an administrative law judge. Human resources manager Chris Stanfill appeared on behalf of the employer. Stanfill testified that Anthony Cherry, R.W.'s supervisor, told her that R.W. "was leaving the building and not letting any one [sic] know that and not coming back for her entire shift." Appellant's App. p. 9. Cherry provided Stanfill with three specific dates. Accordingly,

Stanfill obtained surveillance video of the employee entrance for those dates, which showed that R.W. either left work early or did not come into work. Stanfill then confronted R.W. When Stanfill asked R.W. if there was a problem and why she left work without telling anyone, R.W. simply responded that she had other things to do. Stanfill continued to press R.W. if there were things that they needed to work out such as the Family Medical Leave Act, but she never got “full information” from R.W. *Id.* at 10. Stanfill then showed R.W. a copy of her time sheet, which R.W. had filled out indicating that she had worked from 7:00 a.m. to 3:30 p.m. on all three days.

During her testimony, R.W. admitted to leaving at the times indicated on the surveillance video but explained that it was a “common practice in [her] department.” *Id.* at 13. She curtly explained, “We leave early.” *Id.* When asked by the ALJ if she was supposed to fill out the times she actually worked, R.W. responded, “We fill out the time that we are *scheduled* to work.” *Id.* (emphasis added). R.W. claimed this was a practice she learned from Cherry.

When I took over at Lucas Oil, Anthony Cherry personally walked me up a stairway and said this is the way you ditch the crew. And he headed out to his car . . . . Then a month later, I’m getting fired for what he showed me how to do. And I don’t have any evidence of that sir, I’m sorry I don’t.

*Id.* at 14. Stanfill explained that employees are allowed to leave in emergency situations, but they must inform their supervisor, which R.W. did not do. The ALJ affirmed the deputy’s decision, concluding that Indiana Convention Center/Lucas Oil Stadium discharged R.W. for good cause in connection with work. *Id.* at 36a. The ALJ reasoned:

An individual who is discharged for just cause in connection with employment is ineligible to receive unemployment insurance benefits. Ind. Code § 22-4-15-1(a). Discharge for just cause includes discharge “for any

breach of duty in connection with work which is reasonably owed an employer by an employee.” Ind. Code § 22-4-15-1(d)(9). Discharge for just cause in connection with employment includes discharge for the employee’s willfully disregarding the employer’s interest or the employee’s willful disregard of the employee’s duties.

The claimant falsified her time sheet. She filled out that she was working during times when she was not there. The claimant filled out that she had worked on a day when she did not come into the office at all. This shows a willful and wanton disregard for the employer’s best interest.

*Id.* at 2-3 (citation omitted).

R.W. appealed to the Review Board. On November 30, 2010, the Review Board adopted and incorporated by reference the ALJ’s findings of fact and conclusions of law and affirmed the ALJ. *Id.* at 1.

On December 9, 2010, which was after the Review Board had ruled in the employer’s favor, R.W. and Indiana Convention Center/Lucas Oil Stadium entered into a Confidential Settlement Agreement and General Release (“Settlement Agreement”) in order “to resolve amicably any and all matters raised in [an] Indiana Civil Rights Commission Complaint” that R.W. had filed. *Id.* at 40 (confidential brief/appendix). Among other things, Indiana Convention Center/Lucas Oil Stadium “agrees that it will not contest [R.W.’s] Unemployment Benefits application or any subsequent appeal, if necessary.” *Id.*

R.W. now appeals. Only the Review Board participates.

### **Discussion and Decision**

R.W. raises two issues on appeal. First, she contends that the Review Board erred in determining that she was terminated for just cause, thus making her ineligible for unemployment benefits. Second, R.W. contends that this Court should reverse the

Review Board because of the parties' Settlement Agreement, which they entered into after the Review Board's decision.

### **I. Just Cause**

R.W. contends that the Review Board erred in determining that she was terminated for just cause.

The Indiana Unemployment Compensation Act ("the Act") provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). When the Review Board's decision is challenged as being contrary to law, a court on review is limited to a two-part inquiry into: (1) the sufficiency of the facts found to sustain the decision and (2) the sufficiency of the evidence to sustain the findings of facts. *Id.* § 22-4-17-12(f). Under this standard, courts are called upon to review (1) determinations of specific or "basic" underlying facts, (2) conclusions or inferences from those facts, sometimes called "ultimate facts," and (3) conclusions thereon. *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998), *reh'g denied*. The Review Board's findings of basic fact are subject to a "substantial evidence" standard of review. *Id.* In this analysis, the appellate court neither reweighs the evidence nor assesses the credibility of witnesses and considers only the evidence most favorable to the Review Board's findings. *Id.* The Review Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact. *Id.* Accordingly, they are typically reviewed to ensure that the Review Board's inference is "reasonable" or "reasonable in light of [the Review Board's] findings." *Id.* at 1318. Legal propositions are reviewed for their correctness. *Id.*

The Act was enacted to “provide for payment of benefits to persons unemployed through no fault of their own.” Ind. Code § 22-4-1-1; *P.K.E. v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 942 N.E.2d 125, 130 (Ind. Ct. App. 2011), *trans. denied*. An individual is disqualified for unemployment benefits if he or she is discharged for “just cause.” Ind. Code § 22-4-15-1; *P.K.E.*, 942 N.E.2d at 130. As set forth in Indiana Code section 22-4-15-1,

(d) “Discharge for just cause” as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance;
- (3) if an employer does not have a rule regarding attendance, an individual’s unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer’s property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer’s premises during working hours;
- (7) conduct endangering safety of self or coworkers;
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction; or
- (9) any breach of duty in connection with work which is reasonably owed an employer by an employee.

When an employee is alleged to have been discharged for just cause, the employer bears the burden of proof to make a prima facie showing of just cause. *P.K.E.*, 942 N.E.2d at

130. Once the employer meets its burden, the burden shifts to the employee to rebut the employer's evidence. *Id.*

Here, the ALJ found that R.W. was terminated for breaching a duty in connection with work which is reasonably owed an employer by an employee pursuant to Indiana Code section 22-4-15-1(d)(9). The Review Board adopted the ALJ's findings and conclusions.

It is well-established that an employee owes certain reasonably understood duties to his or her employer. *McHugh v. Review Bd. of Ind. Dep't of Workforce Dev.*, 842 N.E.2d 436, 441 (Ind. Ct. App. 2006). The nature of an understood duty owed to the employer must be such that a reasonable employee of that employer would understand that the conduct in question was a violation of a duty owed to the employer and that he or she would be subject to discharge for engaging in such activity or behavior. *Id.*

R.W. admits that she filled out her time sheet with the hours she was scheduled to work instead of the hours she actually worked. However, she claims this was a practice taught to her by her own supervisor, Cherry. Accordingly, she argues that “[i]t is highly unlikely that a newly appointed supervisor would question a practice she is being taught by her own supervisor—especially as her supervisor had been her immediate predecessor in her own position.” Appellant's Reply Br. p. 4.

R.W. owed her employer the basic duty of honesty. She breached this duty at least three times by indicating on her time sheet that she worked three complete shifts when she had not, resulting in her getting paid for time she did not work. Her employer gave her the opportunity to explain her actions, but she said she had other things to do. She

gave no other explanation, such as a clerical error or a misunderstanding of the time sheet in her new supervisory position. This is a breach of an employee's core duty to report actual hours worked to an employer, thereby satisfying the statutory definition of just cause pursuant to Indiana Code section 22-4-15-1(d)(9).

Although R.W. tries to shirk responsibility for her actions by saying that Cherry, her own supervisor, taught her how to "ditch" her crew, the very nature of this surreptitious activity suggests that it is not condoned by the employer. A reasonable employee would realize that reporting hours which she did not work breaches a duty owed to her employer and that the conduct could result in discharge. R.W. was required to fill out a time sheet, which is a claim for payment for services rendered. R.W. submitted a claim for services that she did not render. The Review Board properly found that R.W. falsified her time sheet and was therefore discharged for just cause.<sup>1</sup>

## **II. Settlement Agreement**

Next, R.W. contends that this Court should reverse the Review Board because of the parties' Settlement Agreement, which they entered into after the Review Board's November 30, 2010, decision. According to the December 9, 2010, Settlement Agreement, Indiana Convention Center/Lucas Oil Stadium "agrees that it will not contest [R.W.'s] Unemployment Benefits application or any subsequent appeal, if necessary." Appellant's App. p. 40 (confidential brief/appendix). R.W. argues that according to Indiana's public policy which favors settlement agreements, if this Court were to affirm

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<sup>1</sup> R.W. argues that a finding of "just cause" requires evidence that "the employer's policy is one that is uniformly enforced." Appellant's Reply Br. p. 4. R.W. provides no citation for this proposition. Moreover, R.W. was not terminated for violating a rule of the employer; rather, she was discharged for breaching a duty in connection with work which was reasonably owed to her employer. *Compare* I.C. § 22-4-15-1(d)(2) *with id.* at (d)(9).

the Review Board, she “will not receive the benefit of her bargain.” *Id.* at 2 (confidential brief/appendix). R.W. bargained for Indiana Convention Center/Lucas Oil Stadium not to contest her application or any subsequent appeal. At the point the agreement was reached, however, the Review Board had already made its decision on R.W.’s application. The bell could not be unrung at this point. *See P.K.E.*, 942 N.E.2d at 130 (“Under the Act, an individual who meets the requirements of Indiana Code chapter 22-4-14 and *is not disqualified* by the exceptions in chapter 22-4-15 is eligible for benefits. An individual is disqualified for unemployment benefits if he is discharged for ‘just cause.’” (emphasis added)). R.W. cites no authority for the proposition that we can reverse a Review Board’s determination that an individual is disqualified from receiving unemployment benefits because of the existence of an agreement entered into by the parties after the Review Board’s decision. As for this appeal, Indiana Convention Center/Lucas Oil Stadium did not participate and thus lived up to its end of the bargain.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.