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IN THE
COURT OF APPEALS OF INDIANA

ROBERT ENDRIS,	)	
	)	
Appellant-Claimant,	)	
	)	
vs.	)	No. 93A02-1101-EX-48
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and FELLON-MCCORD ASSOCIATES,	)	
	)	
Appellees-Respondents.	)	

APPEAL FROM THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Review Board
Cause No. 10-R-06508

September 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Robert Endris appeals from the Review Board's decision to deny him unemployment benefits. Endris alleges the Review Board should have reconsidered his claim after learning he did not receive notice of the hearing. Because the record demonstrates Endris had adequate notice of his hearing, we affirm.

FACTS AND PROCEDURAL HISTORY

Endris was the Director of Regulatory and Legislative Affairs at Fellon-McCord (Fellon) from May 3, 2010 until June 1, 2010. Endris resigned from his position for personal reasons. On August 24, 2010, a Claims Deputy of the Indiana Department of Workforce Development (DWD) deemed Endris eligible for unemployment compensation. Fellon appealed the deputy's determination.

On October 15, 2010, the DWD mailed notice of an October 27 Administrative Law Judge (ALJ) hearing to both Fellon and Endris. The notice was sent to Endris at his mother's address in Greensburg. Endris testified he provided the DWD with his mother's address because from July 2010 to November 2010, he intermittently resided at his mother's house and his own residence in Greenwood.[1] During that time, Endris would visit his mother every two to three weeks. If Endris was unable to visit, his mother would collect his mail and send it to his Greenwood address.

During the relevant timeframe, Endris' mother sent two mail packages to his Greenwood address – one on October 15, which did not include the notice from the DWD, and one on October 25, which did contain the notice. The package Endris' mother sent on

[1] Endris testified he received other mail related to his unemployment claim from DWD at his mother's address.

October 25 arrived October 27. Endris testified he was in the driveway on his way to the airport, and his wife mentioned an envelope from his mother was in the mail, but Endris did not look at it because there was "nothing important that [he was] expecting." (Tr. Good Cause at 8.)[2] Fellon participated in the October 27 hearing, but Endris did not. The ALJ found Endris ineligible for benefits because he voluntarily left his employment without good cause.

Endris appealed to the Review Board. He claimed he did not receive actual notice of the hearing until four days after the hearing was held due to intermittent changes in his address. On December 28, 2010, a hearing officer for the Review Board conducted a hearing to determine "whether [Endris] had good cause for failing to attend the Administrative Law Judge hearing." (*Id* at 2.) The Review Board issued findings of fact and conclusions of law, and affirmed the ALJ's ruling.

DISCUSSION AND DECISION

When reviewing unemployment compensation proceedings, we give the factual findings of the Review Board substantial deference, and we will not reweigh evidence or reassess witness credibility. *Scott v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 725 N.E.2d 993, 995 (Ind. Ct. App. 2000). The Board's factual findings will be upheld if "there is substantial evidence of probative value to support the Board's conclusion." *Browning-Ferris Indus. v. Review Bd. of the Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1351, 1353 (Ind.

[2] The record includes two transcripts – one from the unemployment hearing before the ALJ, referenced as "Tr. Unemployment," and one from the Review Board hearing regarding whether Endris had good cause for not attending the unemployment hearing, referenced as "Tr. Good Cause."

Ct. App. 1998). When an appeal involves a question of law, we are not bound by the Board's interpretation of the law. *Id.*

The parties to an unemployment benefits claim are entitled to "a reasonable opportunity for [a] fair hearing." Ind. Code § 22-4-17-3(a). We have held the statutory requirement of a "reasonable opportunity for a fair hearing" means "actual knowledge." *Forni v. Review Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 71, 73 n.1 (Ind. Ct. App. 2009), *trans. denied.* Where, as here, an administrative agency sends notice through the mail, a presumption arises that such notice is received. *Carter v. Review Bd. of the Ind. Dep't of Emp't and Training Servs*., 526 N.E.2d 717, 718-19 (Ind. Ct. App. 1988). However, that presumption is rebuttable. *Id*. at 719.

Endris asserts the Board's decision is unreasonable because, even though the notice was mailed to the address he provided, and then delivered to him at an address at which he was physically present prior to the hearing, he did not receive "actual notice" of the ALJ hearing. (Appellant's Br. at 9.) We cannot agree. *See Vanjani v. Federal Land Bank of Louisville*, 451 N.E.2d 667, 671 (Ind. Ct. App. 1983), *reh'g denied* (wife's failure to open foreclosure notices from bank did not constitute lack of notice).

It is undisputed the DWD mailed the notice to the address Endris provided and the notice arrived prior to the hearing. The only evidence the ALJ had on which to base her decision was Endris' testimony regarding why he failed to check his mail in a timely manner and open the notice. As a general rule, factfinders are not required to believe a witness' testimony even when it is uncontradicted. *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind.

2004). As we may not reweigh or judge the credibility of Endris' testimony, *Scott*, 725 N.E.2d at 995, we affirm the Review Board's decision that Endris lacked good cause for failing to attend the ALJ hearing regarding his unemployment.

Affirmed.

RILEY, J., and NAJAM, J., concur.