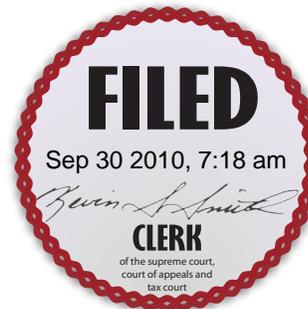


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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T. K., )  
 )  
Appellant-Claimant, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF WORKFORCE )  
DEVELOPMENT, UNEMPLOYMENT )  
INSURANCE REVIEW BOARD, and )  
TIPPECANOE COUNTY, )  
 )  
Appellees. )  
 )

No. 93A02-1003-EX-404

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APPEAL FROM THE INDIANA DEPARTMENT OF  
WORKFORCE DEVELOPMENT  
The Honorable Michael Botkin, Administrative Law Judge  
Case No. 09-R-06545

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September 30, 2010

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

**Case Summary**

T.K. appeals the decision of the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (“Review Board”) denying her unemployment benefits. Finding that the Review Board properly determined that T.K. was discharged for just cause, we affirm.

**Facts and Procedural History**

T.K. worked as a real estate deed clerk in the Tippecanoe County Auditor’s Office. She began work in the Auditor’s Office in 1991.

On October 16, 2009, the Auditor’s First Deputy, D.R., twice instructed T.K. to take a lunch hour, but T.K. refused each time. Although D.R. did not give great emphasis to her orders, T.K. did not have justification for her refusal to comply with D.R.’s orders and was aware that D.R. had supervisory authority over her.

At the end of the day, the Tippecanoe County Auditor, J.W., called T.K. into her office and presented her with a disciplinary action—titled “Documentation of 3-Day Suspension”—which referenced T.K.’s refusal to comply with D.R.’s orders to take a lunch hour. Ex. p. 15. The notice, which instructed T.K. to report back to work on October 22, 2009, provided that effective immediately, T.K. shall follow the instructions of her supervisors and perform her required duties without argument. The notice

contained a line for T.K.'s signature, below which stated that her signature "does not imply agreement with the content. It merely indicates an awareness of the reprimand. Employees may submit a written response if desired." *Id.* T.K. took the document from J.W. but said that she was not going to sign it and that J.W. might as well fire her. J.W. responded that it sounded like T.K. wanted to be fired; however, T.K. said that she loved her job. A human resources employee interjected that T.K. could be suspended instead of being discharged, but T.K. remained steadfast that she would not sign the document. J.W. then instructed T.K. to clean out her desk. T.K. cleaned out her desk and was presented with employment termination paperwork, which she signed.

Thereafter, T.K. made a claim for unemployment benefits. A claims deputy determined that T.K. was discharged for just cause and thus was ineligible for unemployment benefits. T.K. appealed that determination, and a telephonic hearing was held before an administrative law judge. During the hearing, the auditor, J.W., testified regarding the basis for T.K.'s termination:

A. . . . She was being told by her employer that this was the consequence for the action [not taking her lunch after being ordered to do so], and, and then was telling us no, I'm not doing that [signing the document] was a *second* act of insubordination.

Q. She just didn't say she wasn't doing it though, she also said that you'd have to fire her, right?

A. Yes.

Q. Is that kind of an act of insubordination also?

A. Yes.

Tr. p. 8 (emphasis added). Thus, J.W. terminated T.K. for two acts of insubordination:

(1) refusing to take a lunch when ordered to do so and (2) refusing to sign the

Documentation of 3-Day Suspension. Following the hearing, the ALJ entered a decision which contains the following conclusions of law:

*I.C. 22-4-15-1 provides that discharge for just cause includes a breach of duty in connection with the work which is reasonably owed an employer by an employee.*

The disciplinary action presented to the claimant on October 16, 2009, was not without justification. The claimant did not have justification or good cause for her repeated statements that she would not sign the disciplinary action. The claimant's comment that the employer might as well fire her was insubordinate and not justified, and the claimant's comment in effect requesting her termination was granted.

Therefore, it is concluded that the claimant was discharged for conduct that was in substantial disregard of her duties and obligations to the employer and the employer's interests. *Therefore, it is concluded that the claimant was discharged for a breach of duty in connection with the work which was reasonably owed the employer and that the claimant was discharged for just cause, as provided in I.C. 22-4-15-1.*<sup>[1]</sup>

Ex. p. 18 (emphases added).

T.K. then appealed to the Review Board, which adopted and incorporated by reference the ALJ's findings of fact and conclusions of law and affirmed the ALJ's decision. T.K. now appeals.

### **Discussion and Decision**

T.K. contends that she was not discharged for just cause. The Indiana Unemployment Compensation Act provides that any decision of the Review Board is conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a). Review

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<sup>1</sup> On appeal, T.K. argues that "it is unclear which subsections of the 'just cause' provision of the [Indiana Unemployment Compensation] Act" the ALJ relied on in reaching his decision. Appellant's Br. p. 8. T.K. asserts that we must analyze several subsections to determine whether just cause exists. Although the ALJ did not identify the specific subsection, the above-italicized language is from subsection (d)(9). Because the Review Board adopted the ALJ's findings and conclusions, we need only address T.K.'s arguments as they pertain to this subsection. In addition, we only address the cases that T.K. cites that relate to subsection (d)(9).

Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. *Coleman v. Review Bd. of Ind. Dep't of Workforce Dev.*, 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009). When reviewing a Review Board decision, we analyze whether the decision is reasonable in light of its findings. *Id.* We evaluate Review Board findings to determine whether they are supported by substantial evidence. *Id.* We neither reweigh the evidence nor reassess witness credibility, and we consider only the evidence most favorable to the Review Board's findings. *Id.*

A claimant is ineligible for unemployment benefits if he or she is discharged for just cause. *Id.* The employer bears the initial burden of establishing that an employee was terminated for just cause. *Doughty v. Review Bd. of Dep't of Workforce Dev.*, 784 N.E.2d 524, 526 (Ind. Ct. App. 2003). Once met, the burden then shifts to the employee to introduce competent evidence to rebut the employer's case. *Id.*

Discharge for just cause includes "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). 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.*

This Court has held that insubordination may be a proper basis for just discharge. *See Am. Cablevision v. Review Bd. of Ind. Employment Sec. Div.*, 526 N.E.2d 240, 242 (Ind. Ct. App. 1988) (addressing insubordination under subsection (d)(9) with this Court affirming Review Board’s conclusion that claimant was discharged without just cause for not allowing discipline to be given to her). T.K.’s act of not signing the Documentation of 3-Day Suspension was a refusal to acknowledge her employer’s authority to manage, control, and discipline its employees. Moreover, if T.K. had signed the document, it would not have constituted an admission to any violations; rather, it would have merely signaled an awareness of the reprimand. *See Ex. p. 15*. Plus, the document made clear that T.K. had an opportunity to submit a written response. *Id.* T.K.’s act of insubordination in refusing to sign the document came on the heels of T.K.’s earlier act of insubordination in refusing to take a lunch hour when twice asked to do so. Both acts of insubordination qualify as refusals by T.K. to recognize the reasonable authority of her employer to manage its employees. This qualifies as a breach of duty in connection with work which is reasonably owed an employer by an employee. That is, employees owe their employers the duty of respecting the employers’ authority to manage their business as they reasonably see fit. *See Am. Cablevision*, 526 N.E.2d at 243 (“Whether an employee has been discharged for just cause is a fact-sensitive inquiry, and the employer’s own policies with respect to discharge, even if only guidelines, are clearly relevant to the determination of whether or not the employee breached a duty reasonably owed the employer . . .”).

Although T.K. argues that *Perlman/Rocque v. Review Board of Indiana Department of Workforce Development*, 649 N.E.2d 701 (Ind. Ct. App. 1995), is “highly instructive if not completely dispositive” of this case, *see* Appellant’s Reply Br. p. 8, we find that case to be distinguishable. There, the claimant worked at Perlman/Rocque as a loader in a meat warehouse. *Id.* at 705. An incident occurred when the claimant was loading cases of meat into a freezer, and the freezer was damaged. *Id.* The Director of Operations issued a disciplinary letter to the claimant for making false and misleading statements regarding the cause of the damage and warning her that further false statements could lead to discharge. *Id.* The claimant protested the warning letter to the general manager using the company’s complaint procedure known as “Guaranteed Fair Treatment,” or GFT. *Id.* She told the general manager that she admitted to her supervisor that a case of frozen beef patties hit the door and that she had therefore never lied. *Id.* The general manager and the director of operations did not believe the claimant’s statement that she had admitted the accident from the beginning. *Id.* They concluded that she lied a second time when she protested to the general manager. *Id.* They resolved that the effect of her protest was to accuse her supervisor of lying, since her supervisor stated that the claimant denied hitting the door. *Id.* They concluded that, in making her protest to the general manager, the claimant made false and malicious statements about her supervisor. *Id.* The claimant was fired for lying to the general manager about her supervisor. *Id.* The claimant sought unemployment benefits. The ALJ found in favor of Perlman/Rocque, but the Review Board reversed the AJL’s decision. Perlman/Rocque appealed.

On appeal, this Court held that the claimant's statements to the general manager were not a new offense and therefore we affirmed the Review Board's conclusion that the claimant was not discharged for just cause. *Id.* at 707. We reasoned, "It is axiomatic that an employee does not commit a new and separate offense by refusing to admit to the offense for which he/she has been disciplined, and that a reasonably prudent employee would not anticipate being discharged for repeating the same version of an incident that was the basis for disciplinary action against them." *Id.* (quotation omitted).

Here, T.K. was not discharged for giving her version of the events to J.W. In addition, J.W. did not ask T.K. to admit to the allegations referenced in the document. J.W. only asked for T.K.'s signature, which would have merely indicated "an awareness of the reprimand." Ex. p. 15. In addition, T.K. could have submitted a written response in which she gave her version of the events. *Id.* Instead of doing this, T.K. refused to sign the document and invited J.W. to fire her, making J.W., the employer, largely powerless to manage her workforce in an orderly fashion. *Perlman/Rocque* is thus not controlling.

Likewise, *Cheatem v. Review Board of Indiana Department of Employment and Training Services*, 553 N.E.2d 888 (Ind. Ct. App. 1990), is not controlling. Although the facts in that case are very similar to the facts in this case, the Review Board found that the claimant voluntarily left her employment, and this Court reversed that determination on appeal. *Id.* at 892. We remanded the case for a determination of whether the claimant was discharged for just cause. *Id.* Accordingly, *Cheatem* has no precedential value regarding just cause, which is at issue in this case. Also, this case is unlike *American*

*Cablevision*, where the Review Board actually found in favor of the claimant. We affirm the Review Board's conclusion that T.K. was discharged for just cause.

Affirmed.

MAY, J., and ROBB, J., concur.