

Michael Plasky, pro se, appeals the decision of the Unemployment Insurance Review Board of the Indiana Department of Workforce Development (the Review Board) denying him unemployment benefits. Plasky presents six issues for our review, which we consolidate and restate as: Does the evidence support the Review Board's finding that Plasky was discharged for just cause and thus ineligible for unemployment compensation benefits?

We affirm.

Plasky was employed as a crew member by Zebra Landscaping and Tree Care from July 28 to September 24, 2008. On October 3, Zebra sent a letter to Plasky informing him that he was being terminated for abandoning his job. Plasky then sought unemployment compensation benefits.

On November 26, a claims deputy with the Indiana Department of Workforce Development determined that Plasky was discharged for a work-related breach of duty and therefore was not eligible for unemployment compensation benefits. On November 29, 2008, Plasky filed an appeal from the deputy's determination. A hearing before an administrative law judge (ALJ) was held on February 13, 2009. Plasky and his employer appeared telephonically for the hearing. On March 2, 2009, the ALJ issued its decision affirming the determination of the claims deputy. In its written decision, the ALJ issued the following findings of fact and conclusions of law, which were adopted by the Review Board on April 2, 2009:

FINDINGS OF FACT:

Claimant, Michael Plasky, worked for Employer, Zebra Landscaping & Tree Care, from July 28th, 2008 until September 24, 2008 as a crew member. Employer stated that while there was no Handbook because it was a small

company, all employees were aware as a general rule that they were supposed to call the supervisor and personally let him know if they were going to be absent. No other form of calling off was accepted.

Employer stated that on September 16th, 2008 Claimant sent a text message saying that he was not coming into work that day. When he returned the following day he was reminded that sending a text message was not an appropriate way to call off and it would not be accepted. On September 24th Claimant went home sick. On the 25th he sent a text message to Employer's witness saying that he was sick. Claimant did not come into work that day. On the 26th Claimant sent another text message saying that he was sick and again failed to come into work. On Monday the 29th Claimant did not call, text, leave any other form of message or come into work. On the 30th Claimant sent a text message that he was still feeling ill and that he knew he was supposed to talk to the supervisor. On October 1st Claimant agains sent a text message saying that he was still sick and hoped he was not fired. On the 2nd Claimant sent another text saying that he wouldn't be in again. On October 3rd, Employer's witness called Claimant on his cell phone and told Claimant to call him directly and actually talk to him by noon or he forfeited his job. He also sent a text message to Claimant saying the same thing. Claimant did not call Employer back, but instead, at 12:43 he sent a text message to Employer saying that he was not getting better and asked if he could have unemployment if he was let go. Overall Claimant missed eight of nineteen days of work from September 15th until October 3rd and none of them were excused because proper calling off procedures were never followed. Because of this Employer sent Claimant a letter telling him that he was discharged for not following employer's instructions about calling off, and abandoning his job.

Claimant stated that he was absent all the days employer spoke of due to illness or not having money for gas and he did send a text message every day except Thursday the 25th and Friday the 26th when he called in and talked to Employer's witness about being absent. He also testified that he was not aware that sending a text message was not allowed and was never talked to about it. In regards to October 3rd, Claimant said that he did not check his phone and that's why he didn't call Employer back about keeping his job. He also stated that if Employer wanted to talk to him he should have called his home phone number also.

As there is a conflict in testimony the ALJ must make a credibility determination whether Claimant was ever told not to text an absence. In this case the ALJ finds Employer's testimony to be credible as its witness said that

he had documentation that one text from Claimant said that he was aware that he was supposed to call and talk to the supervisor but yet he did not do that.

CONCLUSIONS OF LAW:

* * *

Here, Employer met their burden [of establishing that the discharge of Plasky was for just cause]. It has been established that the Claimant was aware that a text message was not an acceptable form of calling off yet he willfully and continually breached the reasonable duty owed to the Employer by not calling in and only sending a text messages [sic]. Claimant also breached a reasonable duty owed to Employer by missing so many days in short period of time. Employer had a right to expect an employee to be available for work most of the time, however here Claimant missed almost half of his scheduled days of work. This is a clear and deliberate breach of a reasonable duty owed to Employer. Therefore, Employer discharged Claimant for just cause.

Appellee's Appendix at 44-45.

Plasky appeals, presenting six issues, the gist of which (as best we can discern) are that the evidence does not support the Review Board's determination that he was discharged for just cause. Before addressing Plasky's argument, we note several deficiencies in Plasky's brief. One who proceeds pro se is "held to the same established rules of procedure that a trained legal counsel is bound to follow" and, therefore, must be prepared to accept the consequences of his or her action. *Mullis v. Martin*, 615 N.E.2d 498, 500 (Ind. Ct. App. 1993). Ind. Appellate Rule 46 sets forth the format and content of an appellate brief. The purpose of the rule is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case. "We will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood." *Terpstra v. Farmers & Merchants Bank*, 483 N.E.2d 749, 754 (Ind. Ct. App. 1985), *trans. denied*.

Plasky's brief on appeal does not contain a statement of the facts or summary of the argument section. *See* App. R. 46(A)(6), (7). Plasky also did not include a table of authorities, *see* App. R. 46(A)(2), which is a result of the fact that Plasky fails to cite any authority whatsoever in support of his arguments. In his argument section, Plasky fails to cite the appropriate standard of review, but instead, jumps right into ramblings about why the decision of the Review Board is erroneous in light of the evidence Plasky provided. Plasky continues in his argument section by asserting legal conclusions without citation to authority or cogent argument in support thereof. *See* App. R. 46(A)(8)(a) (“[t]he argument must contain the contents of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities [and] statutes . . .”). Given the many deficiencies in Plasky's brief, it would be well within our discretion to find Plasky's alleged errors waived. We prefer, however, to decide cases on the merits. *See Mullis v. Martin*, 615 N.E.2d 498.

Waiver issues aside, we note that unemployment compensation benefits are intended for those who are out of work through no fault of their own. *Wasylk v. Review Bd. of Ind. Employment Sec. Div.*, 454 N.E.2d 1243 (Ind. Ct. App. 1983). Fault or just cause for discharge, in the unemployment context, means “failure or volition, and does not mean something blameworthy, culpable, or worthy of censure.” *Wakshlag v. Review Bd. of Ind. Employment Sec. Div.*, 413 N.E.2d 1078, 1082 (Ind. Ct. App. 1980) (explaining what conduct constitutes just cause for discharge). This includes, among other things, “a carelessness or negligence of such a degree or recurrence as to . . . show an intentional or substantial

disregard of the employer's interest, or of the employee's duties or obligation to his employer." *Id.*

The Indiana Unemployment Compensation Act provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. Ind. Code Ann. § 22-4-17-12(a) (West, PREMISE through Public Laws approved and effective through 4/20/2009). When reviewing a decision by the Review Board, our task is to determine whether the decision is reasonable in light of its findings. *Abdirizak v. Review Bd. of Dept. of Workforce Development*, 826 N.E.2d 148 (Ind. Ct. App. 2005). Our review of the Review Board's findings is subject to a "substantial evidence" standard of review. *Id.* In this analysis, we neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Review Board's findings. *Id.* Further, we will reverse the decision only if there is no substantial evidence to support the Review Board's findings. *Id.*

Here, the evidence determined to be credible by the Review Board established that Plasky continued to call off by sending text messages even after being told that such method was inappropriate and unacceptable. The evidence further establishes that Plasky missed nearly half of his scheduled days of work during the period of time at issue. Plasky failed to communicate with his employer when asked to do so, thereby prompting his employer to terminate his employment on grounds Plasky abandoned his job. The evidence supports the Review Board's findings and its conclusion that Plasky was terminated for just cause. Based on such findings and conclusion, Plasky was not entitled to unemployment compensation benefits.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.