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IN THE
COURT OF APPEALS OF INDIANA

LISA BLAKE,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	
	)	No. 93A02-0812-EX-1180
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and CELADON TRUCKING SERVICES,	)	
	)	
Appellee-Defendants.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 08-R-03833

October 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Lisa Blake appeals, pro se, the Unemployment Insurance Review Board's ("Review Board") decision that affirmed the decision of an Administrative Law Judge ("ALJ") finding Blake ineligible to receive unemployment insurance benefits. For our review, Blake raises two issues, which we restate as: (1) whether she was given a reasonable opportunity to participate in the administrative hearing; and (2) whether she should be liable for the repayment of unemployment benefits she has already received. Concluding Blake was not denied a reasonable opportunity to participate in the administrative hearing, we affirm the decision of the Review Board. However, it is not within our power to decide whether Blake is entitled to a waiver of her obligation to repay the unemployment insurance benefits she received.

Facts and Procedural History

On July 22, 2008, Blake voluntarily quit her job as a truck driver for Celadon Trucking Services ("Celadon"). Blake subsequently filed for unemployment insurance benefits claiming she quit her job with Celadon for good cause. Blake claimed: the company did not provide her with sufficient hours; her truck was often in disrepair, causing her to lose work; and the company would not allow her to idle the truck and use the air conditioning system during warm weather months, requiring her to stay in a hotel at her own expense. On August 27, 2008, a claims deputy of the Department of Workforce Development determined Blake quit her job for good cause and was entitled to unemployment insurance benefits.

Celadon appealed the claims deputy's decision on September 8, 2008. An ALJ scheduled a telephone hearing for October 26, 2008, and mailed notices of hearing with instructions to Blake and Celadon on October 17, 2008. The notice of hearing stated the hearing would begin at 11:30 AM. The instructions required Blake to submit a telephone number at which she could be contacted for the hearing. The instructions also stated:

> If you choose to use a cell phone or cordless telephone, you must have adequate minutes, a fully charged battery and good reception. The judge's telephone number may not display, or may show as "private" or "blocked." Privacy Manager or similar screening devices must be disabled prior to the hearing. … It is not possible for you to call the judge, so you must be available and you must answer the telephone when it rings, or your case may be dismissed. … Should you become disconnected after being called, hang up and check that your telephone is operational and ready to receive another call. The judge will call you back. … Although the judge may make more than one attempt to reach you, the judge is not required to do so. If you cannot be reached at or near the time scheduled for your hearing you will be considered to have not participated and the judge may dismiss your case or decide against you. … Judges may be behind in their hearing schedule, so please be patient.

Appellee's Appendix – B at 4. Blake provided the ALJ with a telephone number to a cellular phone as her contact number for the hearing.

The hearing transcript shows the ALJ attempted to contact Blake at the number she provided but reached her voicemail. Blake initially explained that she answered the ALJ's call but could not hear anyone speaking; however, she later claimed that she mistakenly hit the end button on her phone rather than the talk button when she tried to answer the ALJ's call. After missing the ALJ's call, Blake attempted to call and fax a message to the ALJ without success. At the hearing, the ALJ determined Blake had failed to participate and bore the burden of proving she quit her job for good cause. On November 20, 2008, the ALJ

issued his order finding Blake quit her job without good cause and is ineligible to receive unemployment insurance benefits.

On November 21, 2008, Blake appealed the ALJ's decision to the Review Board by sending a letter to the Review Board. In the letter, Blake attempted to explain her nonparticipation in the hearing and the reasons that she quit her job. On December 17, 2008, the Review Board issued its decision affirming the ALJ's decision. The Review Board's decision indicates "[n]o hearing was held … and no additional evidence was accepted." Blake now appeals.

Discussion and Decision

I. Standard of Review

On review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. Scott v. Review Bd. of the Ind. Dep't of Workforce Dev., 725 N.E.2d 993, 995 (Ind. Ct. App. 2000). When the Review Board's decision is challenged as being contrary to law, we consider whether the evidence is sufficient to support its findings of fact and whether the findings are sufficient to sustain the decision. Now Courier, Inc. v. Review Bd. of the Ind. Dep't of Workforce Dev., 871 N.E.2d 384, 387 (Ind. Ct. App. 2007). The Review Board's findings of fact are generally conclusive and binding. Id. However, when an appeal involves a question of law, we are not bound by the Review Board's interpretation of the law. Id.

II. Opportunity to be Heard

Blake first contends she was denied an opportunity to present her evidence to the ALJ and the Review Board. The ALJ, after "affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy." Ind. Code § 22-4-17-3. The ALJ may hold the hearing by telephone absent an objection from an interested party and after determining that a hearing by telephone is proper and just. Ind. Code § 22-4-17-8.5(b)(4). "Each party to a hearing before an [ALJ] held under [Indiana Code section 22-4-17-3] shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the date, place, and time of the hearing [and] identifying the issues to be decided." Ind. Code § 22-4-17-6(c). "[A] party to an unemployment hearing may voluntarily waive the opportunity for a fair hearing where the party received actual notice of the hearing and failed to appear at or participate in the hearing." Art Hill, Inc. v. Review Bd. of the Ind. Dep't of Workforce Dev., 898 N.E.2d 363, 368 (Ind. Ct. App. 2008).

The ALJ complied with Indiana Code section 22-4-17-6 by providing notice of the telephone hearing with instructions to both parties. Blake provided a phone number at which she could be reached for the hearing. The ALJ's instructions specifically state the ALJ is not required to make more than one attempt to contact a party to the hearing. The transcript from the hearing indicates the ALJ reached Blake's voicemail when he attempted to contact her. Even accepting Blake's initial argument that the inability of the ALJ to contact her resulted from a malfunction of the phone – rather than her own carelessness – this does not equate to a denial of her reasonable opportunity to participate in the hearing. It was Blake's

responsibility to ensure that her phone was "in good working order and accepts incoming calls." Appellee's App. – B at 4.

Neither was Blake denied a reasonable opportunity to present her evidence to the Review Board. 646 Indiana Administrative Code section 3-12-8(b) provides specific instructions for Blake to present evidence to the Review Board. The Review Board may, but need not, accept additional evidence upon written application of either party. Id. The application must "set forth the names of witnesses whose testimony will be offered and the facts to which they are expected to testify" and include a copy of any documents proposed to be introduced. Id. In addition, the party seeking to introduce new evidence must show a good reason why such additional evidence was not introduced at the ALJ's hearing. Id.

Blake apparently appealed the ALJ's ruling by sending a single letter to the Review Board, which included an explanation of her non-participation in the hearing and of her reasons for quitting her job. Blake did not offer any documentary evidence with this letter. She also did not file a separate written application to present additional evidence. The admission of evidence is within the Review Board's discretion and we will not disturb the Review Board's decision unless it is arbitrary or capricious as revealed by the uncontradicted facts. Smitty's Painting, Inc. v. Review Bd. of the Dep't of Workforce Dev., 908 N.E.2d 244, 246 (Ind. Ct. App. 2009). In light of Blake's noncompliance with the administrative appeal procedures, we cannot say the Review Board abused its discretion when it did not consider her additional evidence. As a result, Blake was not denied a reasonable opportunity to participate in the administrative hearing.

III. Waiver of Repayment

Blake next asserts that she is unable to repay the benefits she received between the finding of eligibility by the claims deputy and the finding of ineligibility by the ALJ. Blake argues that she meets the requirements for a waiver of repayment under Indiana Code section 22-4-13-1(h). The statute allows a waiver to be granted, upon the request of an individual, where the benefits were received without fault of the individual, the benefits were the result of payments made before an ALJ determined the individual to be ineligible to receive benefits, and repayment would cause an economic hardship to the individual. Id. Blake may well qualify for a waiver of repayment under the statute, however, it is not in this court's power to grant such a waiver. Rather, Blake must seek a waiver of repayment from the Department of Workforce Development. See DWD: Overpayment FAQ, http://www.in.gov/dwd/2432.htm.

Conclusion

Blake was not denied a reasonable opportunity to participate in the administrative hearing, and this court does not have the power to grant Blake a waiver of the repayment of her benefits.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.