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**IN THE
COURT OF APPEALS OF INDIANA**

O.P.,)
)
Appellant-Defendant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT, et al.,)
)
Appellees-Plaintiffs.)

No. 93A02-1003-EX-408

APPEAL FROM THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
The Honorable Ann M. Schlagenhauf, Judge
The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Larry A. Dailey, Member
Cause No. 10-R-00694

OCTOBER 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Claimant-Appellant O.P. appeals the denial of her request for unemployment benefits by the Review Board of the Indiana Department of Workforce Development (“the Board”). We affirm.

ISSUE

O.P. raises one issue for our review, which we restate as: whether sufficient evidence of termination for just cause supports the Board’s determination that O.P. is not entitled to unemployment benefits.

FACTS AND PROCEDURAL HISTORY

On October 11, 2007, O.P. was hired as a cook by LHI. On February 5, 2009, she received a written disciplinary warning after she refused to prepare stuffed mushrooms for a LHI resident. The warning states that O.P.’s supervisor explained the procedure for preparing the food item, and O.P. told him that “she does not do stuffed mushrooms.” Transcript Exhibit E-2 at 16. On February 17, 2009, O.P. received a second written disciplinary warning after she refused to prepare a tenderloin for a resident. The warning states that O.P. told her supervisor “that she was not making the tenderloin.” Transcript Exhibit E-3 at 17. Under the heading of “Additional Remarks/Resolution,” the warning states that a meeting was held with the cooks on February 18, 2009, to emphasize the cooks’ accountability to the residents. *Id.*

On March 26, 2009, the supervisor asked O.P. to clean out the freezer, and she refused. LHI terminated O.P.'s employment on the next day, and the Board subsequently denied her request for unemployment benefits after it determined that she was discharged for just cause. She now appeals.

DISCUSSION AND DECISION

O.P. contends that the Board erred in determining she was discharged for just cause because it failed to find that she knowingly violated a uniformly applied rule and that she had “intentionally done anything that warranted discipline, let alone termination.” Appellant’s Br. at 4.

In Indiana, a claimant is ineligible for unemployment benefits if she is discharged for “just cause.” *Brown v. Indiana Department of Workforce Development*, 919 N.E.2d 1147, 1151 (Ind. Ct. App. 2005); Ind. Code § 22-4-15-1. “Just cause” includes discharge for a “knowing violation of a reasonable and uniformly enforced rule of an employer” Ind. Code § 22-4-15-1(d)(2). To have knowingly violated an employer’s rule, the employee must have known of the rule and must have known that her conduct violated the rule. *Brown, id.*

Here, the Administrative Law Judge (“A.L.J.”) found that “the disciplinary guidelines are applicable to all employees” and that “neither party offered specific examples of inconsistent enforcement of the guidelines.” Appellant’s App. at 3. The A.L.J. further found that O.P. was subject to the employer’s guidelines pertaining to progressive discipline and was aware of them. The A.L.J. concluded, “They are reasonable and uniformly enforced. The employer issued a minimum of two written

warnings, dated February 5 and 17, 2009, to [O.P.] that discussed her insubordinate behavior before she was discharged for the final incident.” Appellant’s App. at 4.

It is clear that although the A.L.J. discusses the knowing violation of a reasonable and uniformly enforced rule, that violation does not form the ultimate basis for the denial of benefits. The rules discussed by the A.L.J. govern the employer’s actions; they are not rules that O.P. had to follow. The A.L.J. was merely showing that LHI complied with its own disciplinary rules.

The ultimate basis for denial of benefits is the A.L.J.’s determination that O.P. was insubordinate in failing to follow clear instructions from her employer. The A.L.J. concludes that the written warnings and the dismissal were based on her refusal to prepare food for LHI residents and to clean the freezer. The first two actions are classified by the A.L.J. as “insubordinate behavior,” and the final action is classified as “flat out insubordinate behavior.” Appellant’s App. at 4. “Discharge for just cause” includes both “refusing to obey instructions” and “any breach of duty in connection with work which is reasonably owed an employer by an employee.” Ind. Code § 22-4-15-1(d).

O.P. argues that the Board erred in denying benefits because she “testified that she complied with each of the employer’s rules and/or instructions.” Appellant’s Br. at 7. The Board, however, accepted the testimony of the employer and gave credit to the contents of the written disciplinary warnings. We will not reweigh the evidence.

O.P. further argues that she did not receive the written disciplinary warnings. Again, the Board accepted the testimony of the employer that she was given written

warnings upon her refusal to obey reasonable employer orders, and we will not reweigh the evidence.

O.P. also argues that the dates on the written disciplinary warnings are incorrect. However, an examination of the warnings discloses that the “different” dates, which are located on the employee’s signature line after the notation “refused to sign,” merely show the day upon which the employer made its notation that O.P. had refused to sign the warnings. They do not show the date of the refusals.

O.P. argues that she could not comply with her supervisor’s requests because the “food product was not in the building” and that “she was never told to clean out the freezer.” Appellant’s Reply Br. at 2. The transcript discloses that the supervisor testified that he ordered O.P. to prepare the food, and, in the first instance, he prepared the stuffed mushrooms after O.P.’s refusal to do so. The supervisor also testified that he ordered O.P. to clean the freezer, but she refused. As before, the Board accepted the testimony of the employer, and we will neither reweigh nor assign credibility to witnesses.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.