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IN THE
COURT OF APPEALS OF INDIANA

J.M.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-1106-EX-560
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT,	)	
	)	
Appellee.	)	

APPEAL FROM THE REVIEW BOARD OF THE
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 11-R-02108

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

J.M. appeals the denial of unemployment compensation benefits by the Indiana Department of Workforce Development following the termination of his employment with Manchester College. He raises a single issue for our review: whether there is sufficient evidence that Manchester College terminated him for "just cause." We affirm.

Facts and Procedural History

Manchester College hired J.M. as a safety officer in August 2007. J.M.'s duties were to patrol the campus grounds and buildings, ensure that the campus buildings were secure, and respond to calls for assistance and emergencies from students, staff, and faculty. For each shift, Manchester College safety officers are expected to record the times that they check the various campus grounds and buildings into a patrol log.

In February 2011, out of recent concern that J.M. was not making his required building patrols, Campus Safety Sergeant Jamin Sands ("Sands") followed J.M. on his patrol for three successive nights without J.M.'s knowledge.[1] After each night, Sands cross-checked J.M.'s activity with his entries into the patrol log. There were major discrepancies each night. On the final night, J.M. left the safety office for only thirty-nine minutes during his entire eight hour shift and every log entry he made that night was false.

On February 21, 2011, Sands, Manchester College Director of Safety Les Gahl ("Director Gahl"), and another officer held a meeting with J.M. to discuss what had been discovered. When confronted with the log discrepancies, J.M. admitted that he had entered

[1] J.M.'s normal shift began at 12:00 a.m. and ended until 8:00 a.m.

false entries in his patrol log. He explained that he had been disgruntled for some time and that he was having problems at home with his son. J.M. also stated that other officers were not performing their patrols and were logging false entries, and therefore he thought he did not need to do so either.

Manchester terminated J.M.'s employment on February 23, 2011 because J.M. had falsified his patrol log entries. This was in violation of "Summary Rule 3" in the Manchester College employee handbook which prohibits, among other things, "falsification of any business record." Tr. 9. According to the handbook, "[i]f an employee violates a Summary Rule…his or her employment will normally be terminated." Exhibit E. J.M. received and signed for a copy of the employee handbook on his first day of work and the employee handbook is posted online.

J.M. applied for unemployment benefits and on March 14, 2011, a claims deputy at the Indiana Department of Workforce Development determined that J.M. was not discharged for just cause and that he was eligible for unemployment benefits. Manchester College appealed, and after an administrative hearing on April 7, 2011, the Administrative Law Judge ("ALJ") reversed the initial decision by the claims deputy in a written decision on April 7, 2011. The Indiana Department of Workforce Development Review Board (the "Review Board") affirmed the ALJ's decision on May 24, 2011, and adopted and incorporated the ALJ's findings of fact and conclusions of law into its opinion.

J.M. now appeals. Additional facts will be discussed as necessary.

Discussion and Decision

Standard of Review

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 Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact. I.C. § 22-4-17-12(f); Coleman v. Review Bd. of Ind. Dep't of Workforce Dev., 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009). "'Under this standard, we review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions.'" Coleman, 905 N.E.2d at 1019 (quoting Quakenbush v. Review Bd. of Ind. Dep't of Workforce Dev., 891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008)).

When reviewing a decision by the Review Board, we must 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 do not reweigh the evidence or assess witness credibility, and consider only the evidence most favorable to the Review Board's findings. Id. Under the substantial evidence test, findings of the Review Board are conclusive and binding unless they fall within one of the exceptions for which appellate courts may reverse, such as being fraudulent, unreasonable, arbitrary, or based on evidence devoid of probative value. McClain v. Review Bd. of Ind. Dep't of Workforce Dev., 693 N.E.2d 1314, 1317 n.2 (Ind. 1998).

Analysis

An unemployed claimant is ineligible for unemployment benefits if he or she has been discharged for "just cause." Pursuant to the Indiana Code, "just cause" includes a "knowing violation of a reasonable and uniformly enforced rule of an employer." I.C. § 22-4-15-1(d)(2). Manchester contended that it fired J.M. for knowingly violating a reasonable and uniformly enforced work rule, and we must therefore confine our analysis to that issue and cannot consider other grounds for J.M.'s discharge. See Coleman, 905 N.E.2d at 1019.

The employer bears the initial burden of establishing that the employee was terminated for just cause. Id. To establish a prima facie case for just cause termination based upon violation of an employer rule, the employer must show that the claimant: (1) knowingly violated; (2) a reasonable; and (3) uniformly enforced rule. Id. It is not enough to prove that the employee violated a known rule; the employer must establish that the employee knowingly violated the rule. Id. If the employer meets this burden, the claimant must present evidence to rebut the employer's prima facie showing. Id. The reason for requiring uniform enforcement of a known rule is to give notice to employees about what punishment they can reasonably anticipate if they violate the rule, and to protect employees against arbitrary enforcement. Id.

J.M. first challenges the Review Board's finding that he "knowingly" violated Summary Rule 3. We initially note, and the Review Board concedes, that Manchester College did not offer a written copy of Summary Rule 3 into evidence. Instead, Manchester College's Director of Human Resources, Dale Carpenter, read the rule into evidence. Absent

stipulation, an employer's asserted work rule must be reduced to writing and introduced into evidence in order for us to fairly and reasonably evaluate a determination that an employee was justly discharged for a knowing violation of that rule. Watterson v. Review Bd. of Ind. Dep't of Employment and Training Servs., 568 N.E.2d 1102, 1105 (Ind. Ct. App. 1991). However, J.M. did not contest the content of Summary Rule 3 at the hearing and did not object to Carpenter reading the rule into evidence. A party who fails to raise an issue before an administrative body has waived the issue for appeal. T.C. v. Review Bd. of Ind. Dep't of Workforce Dev., 930 N.E.2d 29, 31 (Ind. Ct. App. 2010). This is the case even where, as here, the claimant proceeds pro se. Id.

J.M. also does not argue or even raise the issue in his appellate brief. An appellant who does not offer a cogent argument with citation to authority waives the issue for our review. Doughty v. Review Bd. of Dep't of Workforce Dev., 784 N.E.2d 524, 527 (Ind. Ct. App. 2003). We must therefore conclude that reversal is not warranted based upon Manchester College's failure to introduce a written copy of the rule.

We thus turn to J.M.'s argument. To have "knowingly" violated an employer's rule, the employee must: (1) know of the rule; and (2) know his conduct violated the rule. Stanrail v. Review Bd. of Dep't of Workforce Dev., 735 N.E.2d 1197, 1203 (Ind. Ct. App. 2000), trans. denied. We have also held that "misconduct which will justify discharge of an employee so as to make the employee ineligible for unemployment is the 'wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rule, or wrongful intent.'" Id. (quoting Merkle v. Review Bd. of Ind. Employment Sec. Div., 120

Ind. App. 108, 90 N.E.2d 524, 526 (1950)).

J.M. received and signed for the employee handbook upon his hire, and he was told to read it. The handbook was also posted online. During safety officer training and at their monthly meetings, it is stressed that "entries in the daily patrol log need to be completely accurate." Exhibit A. On February 14, 2011, all the safety officers received an e-mail reminding them to ensure that log entries were accurate. Upon being confronted with the entries in his log, J.M. did not state that he did not know it was a violation to falsify records. Instead, he conceded that he falsified his entries, and offered several excuses. We find no error in the Review Board's finding that J.M. knowingly violated Summary Rule 3.

J.M. also challenges the Review Board's finding that Summary Rule 3 is reasonable. A work rule is reasonable if it protects the interests of the employees as well as those of the employer. Giovanoni v. Review Bd. of Ind. Dep't of Workforce Dev., 927 N.E.2d 906, 909 (Ind. 2010). The Review Board determined that the employer has the rule in place to ensure accuracy of records. In particular, Manchester College had an interest in protecting the integrity of its patrol logs because "patrol logs are part of the records that get reported to the federal government." Tr. 10. It is reasonable to conclude that Manchester College would want to ensure that any representations it makes to the federal government are accurate.

Accurate patrol logs also benefit the safety officers because they serve to memorialize that the officers are doing their work. They also enable the officers to review what campus areas have been checked and follow-up on any problems because the officers are supposed to log "anything out of the normal." Tr. 13. We therefore find no error in the Review Board's

determination that Summary Rule 3 is reasonable.

Lastly, J.M. contends that the Review Board erred when it determined that Summary Rule 3 was uniformly enforced. A uniformly enforced rule is one that "is carried out in such a way that all persons under the same conditions and in the same circumstances are treated alike." McClain v. Review Bd. of Ind. Dep't Workforce Dev., 693 N.E.2d 1314, 1319 (Ind. 1998) (quoting General Motors Corp. v. Review Bd. of Ind. Dep't of Workforce Dev., 671 N.E.2d 493, 498 (Ind. Ct. App. 1996)). To evaluate uniformity, we must define the class of persons against which uniformity is measured. Id. This is usually a rule of law but it may be informed by appropriate findings as to employer practices. Id.

Here, the Review Board found that "[a]ll employees who are found to have knowingly falsified documents are terminated from their employment." App. 2. Thus, the class against which uniformity was measured was comprised of those safety officers who knowingly falsified records. Aside from J.M., the only other person found to have knowingly falsified a record was a safety officer who falsified a probable cause affidavit in an effort to help a friend in a sexual assault case. His employment was terminated. Although J.M. asserted that other safety officers were also not doing their patrols and were logging false entries, Director Gahl testified that this assertion was "incorrect." Tr. 18.

In addition to J.M. and the safety officer who falsified the probable cause affidavit, Director Gahl testified that some officers rounded the patrol times on their log to the nearest five minute interval. These officers continued to round their times even after Director Gahl instructed them that he wanted them recorded exactly. Nevertheless, Director Gahl

determined that these officers did not knowingly, intentionally, or deliberately falsify their documents. No evidence was offered to refute this conclusion. We do not assess witness credibility or reweigh the facts, Coleman, 905 N.E.2d at 1019, and must therefore conclude that the officers who rounded their patrol log times do not fall within the class of officers who have knowingly falsified records.

Because the only other officer aside from J.M. found to have knowingly falsified a document was terminated, substantial evidence supports the Review Board's finding that all employees who knowingly falsify documents are terminated. It was also therefore reasonable for the Review Board to then conclude that the rule is uniformly enforced.

Conclusion

Although Manchester College did not introduce a written version of Summary Rule 3 into evidence, J.M. did not object at the hearing or on appeal, and therefore waived our review of the issue. Sufficient evidence supports the Review Board's findings that J.M. knowingly violated a reasonable and uniformly enforced rule. Its decision is affirmed.

Affirmed.

DARDEN, J., concurs.

BAKER, J., concurs in result with opinion.

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REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT,	)	
	)	
Appellee.	)	

BAKER, Judge, concurring in result

I concur in the result reached by the majority but write separately to express my disagreement with the majority's use of initials. In Moore v. Review Board of Indiana Department of Workforce Development, a panel of this Court determined that "it is appropriate for this Court to use the full names of parties in routine appeals from the Review Board." 951 N.E.2d 301, 306 (Ind. Ct. App. 2011). We reasoned that Indiana Code section 22-4-19-6 provided an exception for "'an order of a court'" and that Administrative Rule 9, which governs court records, provided that courts on appeal may disclose names "'as essential to the resolution of litigation or appropriate to further the establishment of precedent

or the development of the law.'" Id. at 305 (quoting applicable statutory or administrative rule provisions). The Moore panel noted that "using initials or other generic identifiers in every case makes one virtually indistinguishable from another" and impedes efficiency. Id. See also Davis v. Review Bd. of the Ind. Dep't of Workforce Dev., 955 N.E.2d 790 (Ind. Ct. App. 2011) (using names instead of initials); Lacher, et al., v. Review Bd. of the Ind. Dep't of Workforce Dev., 954 N.E.2d 1098 (Ind. Ct. App. 2011) (same). Therefore, I must concur in result.