

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.

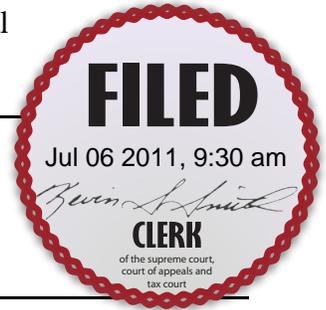
APPELLANT PRO SE:

STEPHEN RINER
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

PAMELA S. MORAN
Deputy Attorney General
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN RINER,)
)
Appellant-Claimant,)
)
vs.)
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT,)
)
Appellee-Employer.)

No.93A02-1011-EX-1233

APPEAL FROM REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 10-R-5002

July 6, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Claimant, Stephen Riner (Riner), appeals the decision by the Review Board of the Indiana Department of Workforce Development (Review Board) that Riner voluntarily left his employment without good cause and thus is not eligible for unemployment benefits.

We affirm.

ISSUE

Riner raises one issue on appeal which we restate as: Whether the Administrative Law Judge (ALJ) abused her discretion by denying Riner's request to subpoena certain witnesses.

FACTS AND PROCEDURAL HISTORY

As stated by the Review Board, the facts in the instant cause are as follows:

[Riner] worked as a full time car salesman for [Campbell Ford Lincoln Mercury Inc.]. [Riner] worked from April 15, 2010 until May 21, 2010. [Riner] quit his employment due to hostile work conditions.

[Riner] cites the following as evidence of a hostile work environment. [Riner] recalls the general manager telling him that he could not sell anything to anyone, and he wasn't to be trusted with the customers. [Riner] also states the Employer pressured the workers to sell and continuously expected the employees to prove themselves. The Employer required the workers to listen to a radio broadcast as part of the Employer's stall meetings. Finally [Riner] disputes that he was hired to be a salesperson and believes his job was given to another employee.

(Appellant's App. p. 28).

On July 21, 2010, a claims deputy with the Department of Workforce Development determined that Riner "voluntarily left employment with good cause in connection with the

work” and was eligible to receive unemployment benefits. (Appellant’s App. p. 35). On July 26, 2010, Riner’s employer, Campbell Ford Lincoln Mercury Inc. (Campbell Ford), appealed the deputy’s determination. That same day, the ALJ sent a notice to the parties, notifying them of a hearing scheduled on August 16, 2010. On August 3, 2010, the ALJ sent out a corrected notice reflecting that Campbell Ford was the appealing party, not Riner. On August 16, 2010, the ALJ conducted the hearing. Four days later, on August 20, 2010, the ALJ reversed the claims deputy determination of eligibility, concluding that Riner had voluntarily left his employment without good cause and thus was not entitled to unemployment benefits. On September 7, 2010, Riner appealed the ALJ’s conclusion to the Review Board who affirmed the decision.

Riner now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

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 § 22-4-17-12(a). Review Board decisions may, however, be challenged as contrary to law, in which case the reviewing court examines 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). “Under this standard, we review determinations of specific or basic underlying facts, conclusions or inferences drawn from those facts, and legal conclusions.” *Brown v. Indiana Dept. of Workforce Dev.*, 919 N.E.2d 1147, 1150 (Ind. Ct. App. 2009).

When reviewing a decision by the Review Board, our task is to determine whether the decision is reasonable in light of its findings. *Id.* Our review of the Review Board’s findings is subject to a substantial deference standard of review. *Id.* We neither reweigh the evidence nor assess witness credibility and we consider only the evidence most favorable to the Review Board’s findings. *Id.* We will reverse the decision if there is no substantial evidence to support the Review Board’s findings. *Id.*

II. *Subpoena*

Riner now contends that the ALJ abused her discretion when she denied his request to subpoena certain witnesses. He maintains that as a result of this denial, he is entitled to a new hearing.

The record reflects that on August 3, 2010, the ALJ sent a corrected notice of the hearing to Riner. This notice included the following language:

Representatives and Witnesses. If you have a representative and/or witnesses, these individuals must be at the telephone number you provide to the judge, or those individuals must be present at the hearing site.

Subpoenas A subpoena is a command from the judge requiring a party to provide documents or witnesses that may be important to your case. Subpoena’s are issued solely at the discretion of the judge. Contact the judge’s clerk IMMEDIATELY if you believe you need a subpoena.

(Appellant’s App. p. 15).

On August 9, 2010, Riner sent a fax to the ALJ requesting to subpoena two individuals, identified by name and telephone number, as well as a brief explanation of who they were. Additionally, he requested a subpoena for the “Better Business Bureau Niles, MI & South Bend, IN” without providing a telephone number or identifying any specific

individuals within the Better Business Bureau. (Appellee's App. p. 2). Riner also signed and returned the participation slip and submitted exhibits to the ALJ.

On August 16, 2010, shortly after the commencement of the hearing, the ALJ asked Riner if he would "have any witnesses participating in today's hearing." (Transcript p. 3). Riner replied that he did not have any witnesses. During the hearing, Riner did not attempt to call any witnesses and it was not until the end of the hearing that he made a very fleeting mention of his requested subpoenas. The ALJ did not respond or question him about the subpoenas.

In light of the evidence before us, we cannot say that the ALJ abused its discretion by denying Riner's request for subpoenas. Although Riner identified his proposed witnesses by name and phone number, he failed to provide an address to deliver the subpoena to or an explanation as to the content of their testimony. Additionally, when asked at the beginning of the hearing if Riner had any witnesses to present, he denied the need for witnesses on his behalf. As such, we find that the ALJ's refusal was within her discretion and we conclude that Riner is not entitled to a new hearing.

CONCLUSION

Based on the foregoing, we conclude that the Review Board properly affirmed the ALJ's decision that Riner had voluntarily left his employment without good cause and therefore was not eligible to receive unemployment benefits.

Affirmed.

DARDEN, J., and BARNES, J., concur.