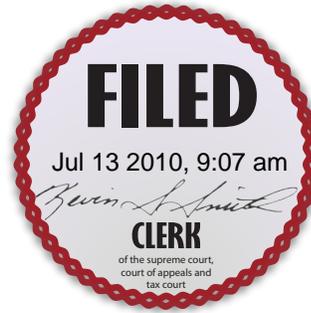


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

V.B.,)
)
Appellant-Defendant,)
)
vs.) No. 93A02-0911-EX-1140
)
REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and DAIMLER)
CHRYSLER CO., LLC)
)
Appellees-Plaintiffs.)

**APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF
WORKFORCE DEVELOPMENT
Steven F. Bier, Chairperson
George H. Baker, Member
Larry A. Dailey, Member
Cause No. 09-R-05412**

July 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

V.B. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“Review Board”) dismissing her appeal of a determination that she was not eligible for benefits. V.B. raises one issue for our review that we restate as whether the Review Board correctly determined her appeal was untimely. Concluding the record supports the Review Board’s finding that the appeal was untimely, we affirm.

Facts and Procedural History

V.B. was employed by DaimlerChrysler Company, LLC, beginning in November 1999. At some point, V.B. was put on indefinite layoff. On March 30, 2009, V.B. accepted a buyout offer from the company. On May 27, 2009, a Determination of Eligibility letter was mailed to V.B. informing her that her benefits were suspended because she voluntarily retired. The letter stated, “Right of appeal – this determination will become final on 06/08/2009 if not appealed.” Appellant’s App. at 10. On June 22, 2009, V.B. filed an appeal of the eligibility determination. On June 29, 2009, a notice of dismissal for lack of jurisdiction was mailed to V.B. informing her that her appeal was dismissed because it was untimely. The notice stated, “This decision will become final unless the party receiving the adverse Decision appeals to the Review Board within eighteen (18) calendar days after the mailing date of this decision.” *Id.* at 11. On November 2, 2009, V.B. filed an appeal to the

Review Board. The Review Board dismissed her appeal as untimely. V.B. then filed a notice of appeal with this court.

Discussion and Decision

I. Standard of Review

On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. We are bound by the Review Board's resolution of all factual matters; thus, we neither reweigh evidence nor reassess witness credibility. Rather, we consider only the evidence most favorable to the [Review] Board's decision and the reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the [Review] Board's conclusion, it will not be set aside. When an appeal involves a question of law, we are not bound by the agency's interpretation of law but rather determine whether the agency correctly interpreted the law and correctly applied the applicable law.

Szymanski v. Review Bd. of Ind. Dep't of Workforce Dev., 656 N.E.2d 290, 292 (Ind. Ct. App. 1995) (citations omitted).

II. Timeliness of Appeal

V.B. essentially asks that we reverse the Review Board's decision and remand for consideration of the merits of the initial determination of eligibility because the "reason for the untimely appeal is due to [her] lack of knowledge and [u]nderstanding of the appeals process." Appellant's Brief at 5.¹ The time period for perfecting an appeal for

¹ The State's brief focuses primarily on the deficiencies in V.B.'s brief. Although we have frequently stated that pro se litigants are held to the same standard as trained legal counsel, see In re Estate of Carnes, 866 N.E.2d 260, 265 (Ind. Ct. App. 2007), we have also frequently stated our preference for deciding cases on the merits, see Novatny v. Novatny, 872 N.E.2d 673, 677 (Ind. Ct. App. 2007). The facts of this case and the basis of V.B.'s claim are sufficiently clear from her brief and the record materials that we are not required to become advocates for V.B. in order to address the merits. Cf. Vandenburgh v. Vandenburgh, 916 N.E.2d 723, 726 n.2 (Ind. Ct. App. 2009) ("We prefer to decide cases on the merits, but when flaws in a brief require us to become advocates for a party, a line must be drawn."). We encourage the State to recognize the limitations of pro se litigants, especially in cases such as this where representing oneself is common, and to acknowledge and

unemployment benefits is statutorily defined. Indiana Code section 22-4-17-2(i) provides the claimant must request a hearing before an administrative law judge (“ALJ”) within ten days of a notification of benefit eligibility or disqualification. Indiana Code section 22-4-17-3(b) provides the claimant must appeal to the Review Board within fifteen days of an ALJ decision. Pursuant to Indiana Code section 22-4-17-14(c), an additional three days is added to the prescribed time periods where notice is served by mail. When a statute contains a requirement that an appeal or notice of intention to appeal is to be filed within a certain time, “strict compliance with the requirement is a condition precedent to the acquiring of jurisdiction, and non-compliance with the requirement results in dismissal of the appeal.” Szymanski, 656 N.E.2d at 293.

The record in this case reveals that V.B.’s purported appeal from the initial eligibility determination was untimely, as the determination was mailed to her on May 27, 2009, and she did not appeal within the thirteen days provided by statute. The ALJ therefore properly dismissed the appeal, and even if V.B. had timely appealed the ALJ’s decision, the Review Board would have properly affirmed the ALJ’s decision and dismissed the appeal. However, V.B.’s purported appeal from the ALJ’s decision was also untimely, as the decision was mailed to her on June 29, 2009, and she did not appeal within the eighteen days provided by statute. Because complying with the statutory time periods is a prerequisite to the acquiring of jurisdiction by the Review Board, even if V.B. were able to show a reason for the untimely

filings, she would not be entitled to relief. The Review Board correctly dismissed V.B.'s untimely appeal.

Conclusion

V.B.'s appeal of the eligibility determination was untimely and the Review Board therefore correctly dismissed the appeal.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.