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IN THE
COURT OF APPEALS OF INDIANA

LARRY CARLIN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 93A02-0610-EX-871
	)	
REVIEW BOARD OF THE	)	
DEPARTMENT OF	)	
WORKFORCE DEVELOPMENT,	)	
and	)	
J & J PACKAGING COMPANY,	)	
	)	
Appellees-Respondents.	)	

APPEAL FROM THE REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 06-R-02540

November 2, 2007

OPINION ON REHEARING - NOT FOR PUBLICATION

ROBB, Judge

In Carlin v. Review Bd. of the Dep't of Workforce Dev., No. 93A02-0610-EX-871 (Ind. Ct. App., June 25, 2007), we affirmed the decision of the Review Board that Larry Carlin had voluntarily quit his job at J & J Packaging Company without good cause. Slip op. at 4. Carlin has filed a petition for rehearing, which we grant for the purpose of addressing several issues raised therein. We affirm our original opinion in all respects, however.

Carlin contends that we applied the standard for reviewing basic facts rather than for reviewing ultimate facts in reviewing the Review Board's decision that Carlin voluntarily quit his employment. Carlin contends that we should not have deferred to the Review Board but "should have applied [our] own analysis concerning the inferences surrounding the ultimate fact of voluntary leave." Petition for Rehearing at 3. Where questions of ultimate fact are within the particular expertise of the Review Board, we defer to the reasonableness of its conclusion; where the ultimate facts are not within the Review Board's area of expertise, "we may exercise our own judgment." Trelleborg YSH, Inc. v. Bd. of Indiana Dep't of Workforce Dev., 798 N.E.2d 484, 486 (Ind. Ct. App. 2003) (emphasis added). Whether we are reviewing basic facts or ultimate facts, we are reviewing the sufficiency of the evidence sustaining the findings of fact.[1]

Carlin also contends that the decision relies on a "materially incorrect fact." Pet. for Reh'g at 3. We noted Carlin testified that "when he had been suspended previously, he was asked for his badge at that time." Slip op. at 4. Carlin correctly points out that he also

[1] Carlin argues that we erroneously reviewed the Board's determination as if the findings were of basic facts rather than ultimate facts and concludes that we therefore erred in using the substantial evidence standard. Pet. For Reh'g at 2. However, he then contends that we should have applied our own analysis based "on facts found and supported by substantial evidence." Id. at 3 (emphasis added). Carlin's argument in this regard is internally inconsistent.

testified that "they asked me for my badge and told me I was terminated when [my supervisor] wrote up the report on me." Tr. at 27. Thus, when he was asked for his badge previously, he was told he was being terminated, but it was later changed to a suspension. Regardless, Carlin's testimony can be interpreted that he knew being asked for his badge did not necessarily mean he was being terminated.[2] Because Carlin is appealing from a negative judgment,[3] we will not reweigh the evidence in favor of Carlin's interpretation of his testimony. See Mueller v. DaimlerChrysler Motors Corp., Transmission Plant, 842 N.E.2d 845, 848 (Ind. Ct. App. 2006).

Finally, Carlin contends that we failed to independently consider whether Carlin had good cause to voluntarily quit his employment. Giving appropriate deference to the Review Board's decision that he quit without good cause, we determined that the Review Board's determination was a reasonable one under the facts. Again, Carlin is appealing from a negative judgment, and we will not reverse the judgment of the Review Board unless it is contrary to law. See Frye v. Vigo County, 769 N.E.2d 188, 192 (Ind. Ct. App. 2002).

Subject to the above, and in accordance with our earlier opinion, we affirm the Review Board's decision.

VAIDIK, J., concurs.

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[2] This is not to say that a different fact finder could not have reasonably determined that Carlin was entitled to believe he was being terminated. Nonetheless, this fact finder determined that he voluntarily quit, and under the facts as presented, this was a reasonable determination.

[3] The employer has the burden of proving that an employee was terminated for just cause, Stanrail Corp. v. Unemployment Ins. Review Bd., 734 N.E.2d 1102, 1105 (Ind. Ct. App. 2000), trans. denied; the employee has the burden of proving that he voluntarily quit for good cause, M & J Management v. Review Bd. of Dep't of Workforce Dev., 711 N.E.2d 58, 62 (Ind. Ct. App. 1999). The Review Board determined that Carlin voluntarily quit his job without good cause.

SULLIVAN, Sr. J., concurs in result.