MEMORANDUM DECISION

APPELLANT PRO SE

A.R.
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

A.R.,

Appellant-Petitioner,

v.

Review Board of the Indiana Department of Workforce Development, and MBC Group Inc.,

Appellees-Respondents,

May 4, 2022

Court of Appeals Case No. 21A-EX-1976

Appeal from the Review Board of the Department of Workforce Development

Steven F. Bier, Chairman
Larry A. Dailey, Member
Heather D. Cummings, Member

Trial Court Cause No. 21-R-4150

Robb, Judge.

Case Summary and Issue

[1] A.R., pro se, appeals a decision by the Review Board of the Indiana Department of Workforce Development ("Board") finding her ineligible for unemployment benefits. Concluding the Board's decision is reasonable and supported by substantial evidence, we affirm.

Facts and Procedural History

[2] In September 2020, A.R. began working for MBC Group, Inc. ("Employer"), a "temp to hire staffing service." Transcript, Volume 2 at 5. Employer's attendance policy requires twenty-four-hour notice of scheduled absences (such as doctor's appointments) and at least one-hour notice for emergencies or last-minute issues so it can "relay to the clients when Employees are going to be absent." *Id.* at 7; *see also* Exhibits, Volume 3 at 7. A.R. was scheduled to work for Lippert Components, a client of Employer's, on eight days from October 17 to October 27, 2020. However, A.R. was absent on each of those days without giving notice to Employer. She was terminated retroactive to October 16 for job abandonment.

[3] A Department of Workforce Development claims investigator determined that A.R. was not disqualified from receiving unemployment benefits. Employer appealed that determination, and a Notice of Telephone Hearing ("Notice") before an Administrative Law Judge ("ALJ") was sent on June 9, 2021, to A.R., Employer, and Employer's agent. The hearing was to be held by

telephone on June 22, 2021. The Notice informed the parties that in order to participate in the hearing, they "*must* deliver the enclosed Acknowledgement Sheet to the Appeals office by mail, fax, or in person *or* provide your telephone number by calling the number below" at least twenty-four hours prior to the hearing because "you will receive a call from the [ALJ] at the number you provide by telephone or on the Acknowledgement Sheet" on the date and at the time scheduled for the hearing. Ex., Vol. 3 at 10-11, 14. The Notice also informed the parties that they must deliver any documents they wanted the ALJ to consider at the hearing to the Appeals Office and the other party at least twenty-four hours before the scheduled hearing. The issues to be considered at the hearing were whether Employer discharged A.R. for just cause and/or whether A.R. voluntarily left the employment without good cause in connection with the work. *See id.* at 10.

[4] On June 22, 2021, the ALJ held the telephonic hearing. Amanda Deverell, on behalf of Employer, was contacted at the number Employer provided on the Acknowledgement Sheet and gave testimony. A.R. did not appear because she had not returned the Acknowledgement Sheet or otherwise provided contact information to the ALJ. Deverell testified that Employer has a written attendance policy and A.R. was advised of the policy both in writing and verbally. Nonetheless, Deverell testified that Employer did not know why A.R. was absent from October 17 to October 27, 2020, and that during that time, A.R. did nothing to maintain her employment. In addition to having provided the written policy to the ALJ in advance, Deverell read the policy into the

record and indicated that if any other employee had engaged in the same or similar conduct as A.R., "their assignment would be ended for job abandonment." Tr., Vol. 2 at 7. Following the hearing, the ALJ determined A.R. "was a no call no show for eight consecutive shifts" and therefore "voluntarily left employment but not for good cause in connection with work as defined by Indiana Code 22-4-15-1(a)." Ex., Vol. 3 at 22-23.[1] Accordingly, the ALJ declared A.R. ineligible for unemployment benefits effective the week ending October 17, 2020.

[5] A.R. appealed the ALJ's decision to the Board. Her appeal consisted of a letter in which she attempted to explain the situation and enclosed "all [her] proof[.]" Appellee's Appendix, Volume 2 at 7. No hearing was held by the Board and no additional evidence was accepted. On August 27, 2021, the Board issued its decision adopting and incorporating by reference the findings of the ALJ and affirming the ALJ's decision. A.R. now appeals.

Discussion and Decision

[6] The Indiana Unemployment Compensation Act provides that any decision of the Board is conclusive and binding as to all questions of fact. Ind. Code § 22-

[1] The ALJ decision says that A.R.'s first day with Employer was September 8, 2020, her last day was October 16, 2020, and she "did not show up for scheduled shifts on 9/17/2020, 9/19/2020, 9/20/2020, 9/21/2020, 9/22/2020, 9/23/2020, 9/26/2020, and 9/27/2020." *Id.* at 22. It is clear from the transcript of the hearing, however, that the dates A.R. missed were actually in October, not September. *See* Tr., Vol. 2 at 6 (Employer's representative stating that A.R. was scheduled on "October 17[], 19[], 20, 21, 22, 23, 26 and 27").

4-17-12(a). 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 facts. Ind. Code § 22-4-17-12(f). Under this standard, we review (1) findings of basic fact to ensure "substantial evidence" supports those findings, (2) conclusions of law for correctness, and (3) inferences or conclusions from basic facts for reasonableness. *Q.D.-A., Inc. v. Ind. Dep't of Workforce Dev.*, 114 N.E.3d 840, 845 (Ind. 2019). When conducting our review, we will neither reweigh the evidence nor assess the credibility of the witnesses and we consider only the evidence most favorable to the Board's findings. *K.S. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 33 N.E.3d 1195, 1197 (Ind. Ct. App. 2015).

[7] A.R. contends she did not voluntarily quit her job but was terminated due to no fault of her own.[2] *See* [Appellant's Brief] at 7. The purpose of the Unemployment Compensation Act is to provide benefits to those who are involuntarily out of work, through no fault of their own, for reasons beyond their control. *Brown v. Ind. Dep't of Workforce Dev.*, 919 N.E.2d 1147, 1150-51

---

[2] The Board contends that A.R.'s appeal should be dismissed for failure to comply with the Indiana Appellate Rules of Procedure, especially Appellate Rule 46(A)(8)(a) which requires an argument to be supported by cogent argument. *See* Brief of Appellee at 9-10. We acknowledge that pro se litigants are held to the same standards as trained attorneys and are afforded no inherent leniency simply because they are self-represented. *Reinoehl v. St. Joseph Cnty. Health Dep't*, 181 N.E.3d 341, 362 (Ind. Ct. App. 2021), *trans. denied*. And we acknowledge that A.R.'s representation of herself on appeal has fallen short in many areas. However, despite the deficiencies in briefing, it is not difficult to understand A.R.'s contentions as to why she believes the Board has committed error, and we are not required to make and advance arguments for her in order to address whether there is error. We therefore choose to address her appeal on the merits rather than dismiss it. *See Webb v. City of Carmel*, 101 N.E.3d 850, 856 n.3 (Ind. Ct. App. 2018) (noting that we prefer to decide cases on the merits when possible).

(Ind. Ct. App. 2009). When a person voluntarily leaves employment "without good cause in connection with the work," the person is generally disqualified from receiving unemployment compensation benefits. *Y.G. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 936 N.E.2d 312, 314 (Ind. Ct. App. 2010) (quoting Ind. Code § 22-4-15-1(a)). However, there are circumstances when an employee who voluntarily leaves her employment is justified in doing so, and no disqualification results. *Brown*, 919 N.E.2d at 1151. Whether a person voluntarily quit working for good cause is a question of fact to be determined by the Board, and the employee bears the burden of establishing the existence of good cause. *Davis v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 900 N.E.2d 488, 492 (Ind. Ct. App. 2009). Good cause means the employee's reasons for quitting were objectively related to the job, in that the working conditions were so unreasonable and unfair that a reasonably prudent person under similar circumstances would have felt compelled to terminate the employment. *Id*.

[8] A.R. claimed in her appeal letter to the Board and claims on appeal that she did not abandon her employment because on the days in question she was quarantining due to COVID-19 exposure and Lippert Components was aware of the reason for her absence. She faults Employer for failing to communicate with Lippert Components about the reason for her absence, but she also admits she "never even spoke with [Employer] after [she] took [a] drug test for employment" despite the attendance policy requiring her to advise Employer of any absences. [Appellant's Br.] at 5. Regardless, A.R. did not participate in the ALJ hearing to offer testimony or documentary evidence for the ALJ's

consideration on this point.[3] Based on the record of the hearing, there was substantial and uncontroverted evidence that A.R. did not report to work for eight consecutive shifts without offering any explanation to Employer or doing anything to otherwise maintain her employment. Further, the ultimate finding that A.R. is not entitled to unemployment benefits because she voluntarily left employment without showing good cause is reasonable in these circumstances.

[9] We also note that the alternative issue for consideration at the ALJ hearing was whether A.R. was discharged for just cause. *See* Ex., Vol. 3 at 12. Although not a stated basis for the ALJ's decision,[4] a claimant discharged from employment for just cause is also ineligible for unemployment benefits. Ind. Code § 22-4-15-1(a). "Discharge for just cause" includes a "knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance[.]" Ind. Code § 22-4-15-1(d)(2). Subsection (d)(2) applies

---

[3] To the extent A.R. claims it was error for the Board not to hold a hearing or consider the evidence she offered in her letter of appeal, *see* [Appellant's Br.] at 10, we note that the Indiana Administrative Code provides that hearings before the Board "shall be confined to the evidence submitted before the [ALJ]" although the Board, on its own motion or the written motion of either party, may hear or procure additional evidence if good cause is shown "together with a showing of good reason why the additional evidence was not procured and introduced at the hearing before the [ALJ]." 646 I.A.C. § 5-10-11(b). A.R. received notice of the hearing, but contends she misread it and was not aware that she needed to provide her contact information in advance in order to participate in the ALJ hearing. Even assuming A.R.'s explanation and submission of "proof" to the Board when appealing the ALJ decision could be considered a written motion for the Board to consider such evidence, we review the Board's decision to admit or deny additional evidence for an abuse of discretion. *Switzerland Cnty. v. Rev. Bd.*, 146 N.E.3d 936, 942 (Ind. Ct. App. 2020). A.R. admitted she received the Notice and therefore, she had all of the information necessary to participate in the ALJ hearing and offer evidence at that time. She offered no good reason for failing to follow the instructions and thus, the Board did not abuse its discretion in not considering her additional evidence.

[4] When the ALJ asked the Employer's representative at the hearing if Employee quit or was discharged, she answered, "it kind of depends on how you look at it[,]" but ultimately alleged job abandonment. Tr., Vol. 2 at 6.

if substantial evidence establishes (1) there was a rule; (2) the rule was reasonable; (3) the rule was uniformly enforced; (4) the claimant knew of the rule; and (5) the claimant knowingly violated the rule. *Co. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 58 N.E.3d 175, 178 (Ind. Ct. App. 2016). "[A]n employer's asserted work rule must be reduced to writing and introduced into evidence to enable this court to fairly and reasonably review the determination that an employee was discharged for 'just cause'" under subsection (d)(2). *Reed v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 32 N.E.3d 814, 823 (Ind. Ct. App. 2015). There was also substantial evidence that Employer had an attendance rule, the rule was reasonable, the rule was uniformly enforced, A.R. was informed of the rule, and A.R. knowingly violated the rule by not apprising Employer of her attendance status as required.

Conclusion

[10] The Board's decision that A.R. was not entitled to unemployment benefits was reasonable and supported by substantial evidence. We therefore affirm.

[11] Affirmed.

Pyle, J., and Weissmann, J., concur.