

## MEMORANDUM DECISION

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

E.C.,  
*Appellant-Petitioner,*

v.

Review Board of the Indiana  
Department of Workforce  
Development,  
*Appellee-Respondent*

December 1, 2022

Court of Appeals Case No.  
22A-EX-1310

Appeal from the Review Board of  
the Indiana Department of  
Workforce Development

The Honorable  
Gabriel Paul, Chairman  
Larry A. Dailey, Member  
Heather D. Cummings, Member

Cause No.  
22-R-2421

**May, Judge.**

[1] E.C. appeals the denial of her request for Pandemic Unemployment Assistance (“PUA”) pursuant to the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”). She argues the Review Board erred when it adopted the findings and conclusion of the Administrative Law Judge (“ALJ”) who determined E.C. was not eligible for benefits for the week ending December 26, 2020.<sup>1</sup> We affirm.

## Facts and Procedural History

[2] Until May 2020, E.C. worked as a pharmacy technician with Indy Scripts. In May 2020, the location where she worked was closed due to the COVID-19 pandemic and E.C. lost her position at Indy Scripts. She applied for and received PUA benefits following her termination.

[3] On December 20, 2020, E.C. started training with Teleperformance, a “customer care call center[.]” (Tr. Vol. II at 11.) E.C.’s continued employment relationship with Teleperformance was contingent on her successful completion of the training, which lasted two weeks. E.C. was paid \$200.00 per week to

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<sup>1</sup> The ALJ’s order partially affirmed and partially denied the claims investigator’s determination that E.C. was not eligible for PUA benefits for the weeks ending December 12, 2020; December 19, 2020; and December 26, 2020. The ALJ reversed the claims investigator’s decision as to the weeks ending December 12, 2020, and December 19, 2020, and E.C. received PUA benefits for those weeks. However, the ALJ affirmed the claims investigator’s decision denying PUA benefits for the week ending December 26, 2020. Based on E.C.’s arguments, we deduce she appeals the portion of the ALJ’s decision denying her benefits for the week ending December 26, 2020.

attend training. E.C. was not successful in completing the training and thus did not attain full-time employment with Teleperformance.

[4] On December 12, 2020, the Department of Workforce Development (“DWD”) suspended E.C.’s PUA benefits because she “did not meet a necessary requirement to be eligible to receive PUA benefits at that time as [E.C.] was employed.” (Tr. Vol. II at 6.) Sometime thereafter, E.C. filed a request to have her PUA benefits reinstated. A claims investigator denied her request.<sup>2</sup> On February 4, 2022, E.C. filed an appeal of the claims investigator’s decision. On April 12, 2022, ALJ Joel Norman held a hearing on E.C.’s appeal.

[5] On April 14, 2022, ALJ Norman issued his order and found:

[E.C.] worked for Indy Scripts until May 2020. [E.C.] worked as a pharmacy technician. Indy Scripts had two locations. The location that [E.C.] worked at closed as a result of the COVID-19 pandemic. The other location for Indy Scripts remained open. [E.C.] lost her position at Indy Scripts and was not moved to the other location.

[E.C.] started a new position through Teleperformance. [E.C.] was in training. [E.C.] started the position on or about December 20, 2020. [E.C.] was in training for a few weeks. [E.C.] would not start the position until training was completed. [E.C.] received payment from Teleperformance for the training. If [E.C.] was unsuccessful at completing the training, the position would end. [E.C.] did not pass the training, and the position

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<sup>2</sup> The request is not in the record but, based on the context of the ALJ’s order, it would seem E.C. sought to reinstate her PUA benefits, and the claims investigator decided E.C. was not entitled to PUA benefits after December 12, 2020.

ended. [E.C.] has not held a position since that time. [E.C.] did start self-employment as an actor at the start of 2022.

(App. Vol. II at 3) (citations to the record omitted). Based thereon, ALJ Norman concluded:

Here, [E.C.] is eligible for PUA from the week ending December 12, 2020 through the week ending December 19, 2020 because [E.C.] was unemployed, partially employed, or unable or unavailable to work because of a reason listed in 15 USCS § 902(a)(3)(A)(ii)(1) [CARES Act]. . .

Here, [E.C.] is not eligible for PUA effective the week ending December 26, 2020 because [E.C.] was not unemployed, partially unemployed, or unable or unavailable to work because of a reason listed in 15 USCS § 902(a)(3)(A)(ii)(1) . . . because [E.C.] had started a position through Teleperformance. [E.C.] was in the training process for a few weeks for that employer. [E.C.] needed to pass the training in order to continue the position. [E.C.] did not complete the training and did not proceed with the employment. The separation occurred due to the direct result of not completing the training. That reason does not qualify as one of the listed reasons under the CARES Act because failing to complete the training at an employer is not a qualifying reason related to COVID-19. Therefore, Claimant is ineligible for PUA benefits effective the week ending December 26, 2020.

(*Id.* at 4.) On April 15, 2022, E.C. appealed the ALJ's decision to the Review Board. On June 3, 2022, the Review Board affirmed and adopted the ALJ's decision.

## Discussion and Decision

- [6] Initially, we note E.C. proceeds pro se. A litigant is not given special consideration by virtue of her pro se status.<sup>3</sup> *Sidener v. State*, 446 N.E.2d 965, 966 (Ind. 1983). Rather, “[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016) (internal citations omitted), *reh’g denied*.
- [7] E.C. argues the Review Board erred when it denied her appeal for PUA benefits.

The standard of review on appeal of a decision of the Board is threefold: (1) findings of basic fact are reviewed for substantial evidence; (2) findings of mixed questions of law and fact—ultimate facts—are reviewed for reasonableness; and (3) legal propositions are reviewed for correctness. *McClain v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 693 N.E.2d 1314, 1318 (Ind. 1998). Ultimate facts are facts that “involve an inference or deduction based on the findings of basic fact.” *Id.* at 1317. Where such facts are within the “special competence of the Board,” the Court will give greater deference to the Board's conclusions, broadening the scope of what can be considered reasonable. *See id.* at 1318.

*Recker v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011). We do not reweigh the evidence presented or judge the credibility of

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<sup>3</sup> While the State notes, and we acknowledge, that E.C.’s brief and record on appeal violate several Indiana Appellate Rules, we choose to exercise our discretion to consider, to the extent possible, the merits of E.C.’s appeal. *See Omni Ins. Group v. Poage*, 966 N.E.2d 750, 753 (Ind. Ct. App. 2012) (appellate court prefers “to decide a case on the merits whenever possible”), *trans. denied*.

witnesses. *Whiteside v. Ind. Dep't of Workforce Dev.*, 873 N.E.2d 673, 674 (Ind. Ct. App. 2007).

[8] Here, the Review Board's decision concerns the interpretation of the PUA portion of the CARES Act, codified at 15 USCA § 9021. Claimants can receive PUA benefits for a variety of reasons under the CARES Act. Here, the relevant portions of 15 USCA § 9021 state:

(a) Definitions

\* \* \* \* \*

(3) Covered individual

The term "covered individual"--

(A) means an individual who--

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title;

(ii) provides self-certification that the individual--

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because--

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct



result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section[.]

15 USCA § 9021(a)(3)(A)(ii)(I).

## 1. Employment

[9] E.C. argues the Review Board erred when it denied her request for reinstatement of her PUA benefits because she was never employed with Teleperformance. Instead, she contends, she was in training and was not retained for employment after she did not complete training. Regarding E.C.'s employment relationship with Teleperformance, the ALJ found:

[E.C.] started a new position through Teleperformance. [E.C.] was in training. [E.C.] started the position on or about December 20, 2020. [E.C.] was in training for a few weeks. [E.C.] would not start the position until training was completed. [E.C.] received payment from Teleperformance for the training. If [E.C.] was unsuccessful at completing the training, the position would end. [E.C.] did not pass the training, and the position ended.

(App. Vol. II at 3.)

[10] E.C. testified her “first training date” with Teleperformance was December 20, 2020. (Tr. Vol. II at 14.) Regarding her employment relationship with Teleperformance, E.C. testified:

So, it went through like the weeks of training, but it was like no pay. It was like just the beginning of training and then they said. Like so the 220 that I was referring to,<sup>[4]</sup> like we started getting paid, like because it was part-time, but like we were getting paid from like little like bonus stuff. But it wasn't like a real - like we were waiting to see if we were even getting hired on.

(*Id.*) (errors in original).

[11] Based on E.C.'s testimony and the evidence she presented regarding her wages, the ALJ determined E.C. was entitled to benefits for the weeks ending December 12, 2020, and December 19, 2020, because she was not employed during those weeks. By her own admission, E.C. began training with Teleperformance on December 20, 2020, and received payment of \$220.00 for that week's work. Based thereon, the ALJ determined E.C. was not eligible for benefits because, when she started her employment relationship with Teleperformance on December 20, 2020, she was no longer “unemployed, partially unemployed, or unable or unavailable to work” because of one of the stated reasons pursuant to the PUA portion of the CARES Act. 15 USCS § 9021(a)(3)(A)(ii)(I).

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<sup>4</sup> E.C. testified she earned \$220.00 from Teleperformance.

[12] Reviewing under the standards set forth in *Recker*, we conclude (1) there was substantial evidence to support the ALJ’s findings regarding the timeframe E.C. had an employment relationship with Teleperformance; (2) the ALJ’s determination that E.C. was not eligible for PUA benefits for the week ending December 26, 2020, was reasonable because there existed evidence E.C. received payment from Teleperformance and thus was no longer unemployed, partially unemployed, or unable or unavailable to work; and (3) the ALJ’s decision is consistent with the requirements set forth in 15 USCS § 9021(a)(3)(A)(ii)(I). We therefore hold the ALJ did not err when he concluded E.C. was not eligible for PUA benefits for the week ending December 26, 2020.

## **2. COVID-19 Diagnosis**

[13] E.C. additionally argues the Review Board erred when it denied her request for PUA benefits because she contracted COVID-19 during the relevant timeframe. 15 USCS § 9021(a)(3)(A)(ii)(I)(aa) states a person is eligible for PUA benefits when that person “has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis[.]” In his order, the ALJ found, “[E.C.] was sick near the end of 2020. [E.C.] was not tested for COVID-19. [E.C.] had a bad cough, sneezing, and vomited as symptoms while they were sick. [E.C.] was ill for about two or three weeks.” (App. Vol. II at 3.)

[14] During the hearing, E.C. presented a list of COVID-19 symptoms from her local hospital’s website. E.C. also testified, “I got sick . . . I don’t know if it was

COVID, but I definitely got sick” sometime in December 2020. (Tr. Vol. II at 19.) She further stated,

I had like a really bad cold, and I was throwing up. I didn’t really know what it was, so I didn’t leave the house. That’s why I picked, you know, something that was like work from home because it was like - it lasted like, I want to say, about two or three weeks. Like I was coughing, I was sneezing. Like I was throwing up. I had, you know, watery eyes. So, I just end up just staying in the house, you know. I didn’t even want to go out and get tested, but I felt like it was COVID. But I just stayed in the house.

(*Id.* at 27-8.) When asked if she was diagnosed with COVID-19 during that time, E.C. indicated she saw a doctor via a telehealth visit, though she did not say if that doctor diagnosed her with COVID-19.<sup>5</sup>

[15] E.C. asserts the ALJ did not consider she “had symptoms of covid-19” and was not diagnosed with COVID-19 because she “was instructed by hospital staff, to not leave home but to quarantine until symptoms were gone.” (Br. of Appellant at 3) (errors in original). However, 15 USCS § 9021(a)(3)(A)(ii)(I)(aa) requires she was diagnosed with COVID-19 or sought a medical diagnosis of COVID-19. According to E.C.’s own testimony, she was not diagnosed with COVID-19 and did not leave the house to get tested. Her argument is an invitation for this court to reweigh the evidence and judge her

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<sup>5</sup> When speaking of her illness during the relevant time, E.C. also recounted that she tested positive and was in the hospital for COVID-19 in 2022. The testimony is not clear whether she tested positive for COVID-19 during the time period relevant to her request for PUA benefits.

credibility as a witness, which we cannot do. *See Whiteside*, 873 N.E.2d at 674 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, we hold the evidence presented supports the ALJ's finding.

## Conclusion

[16] The Review Board did not err when it denied E.C.'s request for PUA benefits because she was not eligible to receive PUA benefits during the challenged time frame. Accordingly, we affirm.

[17] Affirmed.

Crone, J., and Weissmann, J., concur.