

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

W.R.,
Appellant-Claimant,

v.

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

January 19, 2022

Court of Appeals Case No.
21A-EX-897

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

Steven F. Bier, Chairperson
Lawrence A. Dailey, Member
Heather D. Cummings, Member

Trial Court Cause No.
21-R-978

Molter, Judge.

- [1] W.R. applied for Pandemic Unemployment Assistance, and a claims investigator from the Department of Workforce Development concluded W.R. was ineligible and denied his request. W.R. then filed an administrative appeal, and the Department sent him a Notice of Telephonic Hearing informing him of the date and time an administrative law judge (“ALJ”) would initiate a hearing by calling him at a number he was to provide. He provided his telephone number but then misremembered the hearing date, so he missed all four of the ALJ’s calls to two different telephone numbers. As a result, the ALJ dismissed W.R.’s appeal pursuant to 646 Ind. Admin. Code § 5-10-6(c), and when he appealed that decision further, the Department’s Review Board affirmed. Because W.R. has waived his right to appellate review by failing to provide a cogent argument for reversal, and because any due process argument is foreclosed by our caselaw, we affirm.

Facts and Procedural History

- [2] In 2020, W.R. applied for Pandemic Unemployment Assistance, which provides benefits to individuals who do not normally qualify for traditional unemployment benefits, due to his increased risk of becoming seriously ill if exposed to COVID-19. Appellant’s App. Vol. 2 at 35; 15 U.S.C. § 9021. A claims investigator from the Department of Workforce Development denied W.R.’s request and determined that he did not meet the necessary requirements because W.R. was not considered unemployed, partially employed, or unable or unavailable to work. Soon after, in January 2021, W.R. appealed the claims

investigator’s decision. On February 19, 2021, the Department mailed W.R. a “Notice of Telephone Hearing.”

[3] The notice was accompanied by hearing instructions and stated that a hearing by telephone was scheduled for March 3, 2021 at 2:00 p.m. The hearing instructions instructed W.R. as follows:

Confirm the date, time, and location of your hearing. Check your Notice of Hearing to verify whether your hearing is by telephone or in-person. Some Indiana counties are in different time zones. Your hearing will start at the time and time zone listed on the Notice of Hearing. It is your responsibility to know which time zone you are located in, and what time the hearing will take place, and participate on that date and time.

. . . .

BEFORE THE DATE OF THE HEARING

Contact Number: Return the enclosed Acknowledgment Sheet or call the Appeals office to provide ONE contact number to reach you. If your hearing is by telephone, this is the number the judge will call for the hearing It is your responsibility to ensure that the judge has your contact telephone number If you are scheduled for a telephone hearing and have not provided your telephone number, the judge may attempt to call you at the number provided on your appeal statement. However, the judge is not required to search for a valid contact number. If the judge is not able to reach you, regardless of the cause, it may be considered as a lack of response and participation in the hearing. A decision or dismissal may be issued by the judge even if you do not participate.

. . . .

The judge may dismiss your cause if the party who filed the appeal cannot be reached within fifteen (15) minutes of the scheduled start time of your hearing.

Appellant's App. Vol. 2 at 6–8.

[4] On the day before the hearing, W.R. returned the Acknowledgement Sheet to the Department and provided his contact number. Right after the hearing was scheduled to begin, the ALJ attempted to reach W.R. by calling the contact number he provided on the Acknowledgement Sheet at 2:04 p.m. and 2:16 p.m. Then, at 2:19 p.m. and 2:26 p.m., the ALJ attempted to reach W.R. at the telephone number provided on his request for the appeal. Each time, the ALJ's call went to voicemail. Because W.R. failed to participate in the hearing, the ALJ dismissed his appeal.

[5] Five days after the hearing, on March 8, 2021, W.R. faxed a letter to the Department, apologizing for missing the hearing, admitting fault, and asking to reschedule it. The Department's Review Board then issued a notice of appeal from the ALJ's decision. It later adopted the ALJ's findings of fact and conclusions of law and affirmed the denial of W.R.'s benefits. W.R. now appeals.

Discussion and Decision

[6] W.R. asks us to reverse the Review Board's decision because he believes the ALJ's decision to dismiss his appeal was "inequitable," and "dismissal of his

appeal is greatly out of proportion to the minimal costs of rescheduling a telephonic hearing.” Appellant’s Br. at 7. But he does not articulate any legal basis for reversing. For example, he does not identify any statute, rule, or constitutional provision which he contends the ALJ or Review Board violated, and, contrary to Appellate Rule 46(A)(8), he does not even identify what standard of review he thinks we should apply. Simply saying that the outcome of the case seems unfair does not convey a cogent legal argument, and W.R. waives his right to appellate review on that basis. *See Price v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 2 N.E.3d 13, 16–17 (Ind. Ct. App. 2013) (concluding the claimant waived her claim for appellate review by failing to present cogent argument).

[7] We cannot become an advocate for W.R., but the Review Board has assumed W.R.’s appeal is based on a due process argument. *See Ramsey v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003) (“We will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.” (quotations omitted)). Waiver notwithstanding, that argument fails.

[8] When the Department denies an individual’s request for Pandemic Unemployment Assistance, the individual may request a hearing to challenge that decision before an ALJ. Ind. Code §§ 22-4-17-2, 22-4-17-3, 22-4-32-5. The ALJ is required to provide notice of the hearing and give the parties a reasonable opportunity for a fair hearing before affirming, modifying, or reversing the decision of the claims deputy. Ind. Code §§ 22-4-17-3, 22-4-17-6.

The ALJ may hold the hearing by telephone absent an objection from an interested party and after determining that a hearing by telephone is proper and just. Ind. Code § 22-4-17-8.5(b)(4). If a party in a pending hearing fails to appear before an ALJ at a scheduled hearing, the appeal shall be dismissed, and the underlying decision will be final unless the appeal is reinstated. 646 Ind. Admin. Code § 5-10-6(c). The Review Board may affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an ALJ. Ind. Code § 22-4-17-5.

[9] In a series of cases, our court has held that a party is not denied due process when their administrative appeal is dismissed due to their failure to participate in the ALJ's hearing. *Art Hill, Inc. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 898 N.E.2d 363, 368 (Ind. Ct. App. 2008) (holding that a claimant, who missed the ALJ's call but tried returning it through a different telephone number moments later, voluntarily waived the opportunity for a fair hearing because the claimant failed to participate in the hearing); *Wolf Lake Pub, Inc. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 930 N.E.2d 1138, 1140 (Ind. Ct. App. 2010) (denying an employer's due process challenge where the employer provided a contact number, the ALJ called it twice at the time of the hearing, and the employer never answered); *S.S. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 941 N.E.2d 550, 555 (Ind. Ct. App. 2011) (concluding that parties who confused time zones and thus failed to participate in a hearing were not denied an opportunity to be heard); *T.R. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 950 N.E.2d 792, 795–96 (Ind. Ct. App. 2011) (concluding that the claimant's missed opportunity to

participate in the hearing could have been prevented if she confirmed whether the ALJ received her participation sheet and contact information and her failure to take advantage of the opportunity to be heard did not constitute a denial of due process); *Employer v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 955 N.E.2d 210, 214 (Ind. Ct. App. 2011) (concluding that the employer voluntarily waived the opportunity to be heard at an unemployment hearing when the employer did not participate in the hearing because the employer's attorney failed to properly calendar the time of the hearing); *Bailey v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 132 N.E.3d 386, 391 (concluding that the claimant, who twice missed the ALJ's telephone calls and tried to call into the hearing moments later, voluntarily failed to participate in the hearing and was not denied due process); *Switzerland Cnty. v. Rev. Bd.*, 146 N.E.3d 936, 941 (Ind. Ct. App. 2020) (denying a county's due process challenge where the county failed to provide the ALJ with its acknowledgement sheet or contact number).

[10] Here, it is undisputed that the ALJ complied with Indiana Code section 22-4-17-6 by providing W.R. with timely notice of the telephonic hearing and instructions for W.R. to provide a single telephone number where he could be contacted at the time of the hearing. The ALJ specified that the hearing would take place on March 3, 2021, at 2:00 pm. W.R. received the notice, as shown by his return slip stating his single contact number and that he would participate in the hearing.

[11] At the time of the hearing, the ALJ attempted to call W.R. twice at the contact number he provided on his return slip. Further, although the hearing

instructions stated that the ALJ was “not required to search for a valid contact number,” the ALJ twice tried to reach W.R. on the telephone number that he provided on his request for the appeal. Appellant’s App. Vol. 2 at 6. All four times, the ALJ’s telephone calls went to voicemail. Under our caselaw, this does not constitute a due process violation.

[12] Therefore, we affirm the decision of the Review Board.

[13] Affirmed.

Robb, J., and Riley, J., concur.