

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.



APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

E.R.,
Appellant-Petitioner,

v.

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

July 28, 2021

Court of Appeals Case No.
21A-EX-307

Appeal from the Review Board of
the Department of Workforce
Development

Steven F. Bier, Chairperson
Larry A. Dailey, Member

Review Board No.
20-R-1875

May, Judge.

- [1] E.R. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“Review Board”), which affirmed the Administrative Law Judge’s (“ALJ”) dismissal of E.R.’s case. We affirm.

Facts and Procedural History

- [2] On April 15, 2020, E.R. filed an unemployment claim. On April 23, 2020, the Department of Workforce Development (“Department”) sent E.R. a Monetary Determination of Eligibility letter indicating the weekly benefit amount E.R. would receive. E.R. appealed the determination alleging that the eligibility determination failed to account for income received during the second and third quarters of 2019, and thus should have been a higher amount. On October 6, 2020, the Department notified the parties of a telephonic hearing for E.R.’s appeal. Under a section labeled “**IMPORTANT INFORMATION ABOUT THIS PROCESS,**” the notice stated:

- 1) To participate in this hearing, you **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.
- 2) Provide only **ONE** telephone number on the **Acknowledgement Sheet or by telephone**. At the scheduled date and time of your hearing the judge will call **YOU** at **THIS** telephone number.

(Ex. Vol. III at 10) (emphases in original). Additionally, the notice included further instructions for the hearing:

Contact Number: Return the enclosed Acknowledgement 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. . . . Provide your contact number by telephone, mail, fax, or in person **AT LEAST 24 hours prior to the hearing.** . . . 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.

(*Id.* at 12) (emphases in original). The notice also stated that the only issues presented for review were: “Whether the Claimant filed a timely appeal. IC 22-4-17-2(e). Whether the monetary determination was correctly computed. IC 22-4-14-5.” (*Id.* at 10.)

[3] E.R. never returned the Acknowledgement Sheet. On October 22, 2020, the ALJ called E.R. at the phone number he provided in his appeal, and he did not answer. The ALJ left a voicemail message indicating she would call back in fifteen minutes. E.R. did not answer the phone the second time the ALJ called. That same day, the ALJ dismissed the case because “[t]he party who requested the appeal failed to participate in the appeal hearing scheduled on Thursday October 22, 2020.” (Appellee’s App. Vol. II at 5.)

[4] On October 30, 2020, E.R. appealed the ALJ’s decision to the Review Board. On January 29, 2021, the Review Board affirmed the ALJ’s dismissal after adopting and incorporating the ALJ’s findings and conclusions of law.

Discussion and Decision

[5] We recognize E.R. proceeds pro se.

A litigant is not given special consideration by virtue of his pro se status. *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*.

Kelley v. State, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). “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.” *Ramsey v. Review Bd. of Indiana Dept. of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003).

[6] E.R.’s brief does not comport with several of the Indiana Rules of Appellate Procedure. An appellant’s brief “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” App. R. 46(A)(8)(a). E.R.’s brief does not contain citations to the record, legal precedent, or relevant statutes. E.R.’s brief contains numbered paragraphs reciting the facts of his unemployment experience followed by an argument focusing on a subsequent request from the Department that E.R. payback some of the benefits he received.

- [7] Further, his appendix does not include those components required for our review of his appeal, including the orders of the Review Board and the ALJ. *See* App. R. 50(A)(2)(b) (requiring the appellant's appendix to include the appealed judgment or order). E.R.'s appendix is limited to the email correspondence with his previous employer, the Pandemic Extended Unemployment Compensation Monetary Determination letter, and E.R.'s 2019 Form W-2. We were able to ascertain the few facts in this opinion based upon the Appellee's appendix. Due to the deficiencies in the material E.R. submitted to the Court, his argument is waived. *See Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) ("It is well settled that we will not consider an appellant's assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules.").
- [8] Waiver notwithstanding, we note that E.R. did not appear at the telephonic hearing with the ALJ despite receiving actual notice of the hearing. We have previously held that a person who receives actual notice of a hearing and does not appear waives their opportunity for a hearing. *See Art Hill, Inc. v. Review Bd. of Indiana Dept. of Workforce Dev.*, 898 N.E.2d 363, 368 (Ind. Ct. App. 2008) ("we hold that a party to an unemployment hearing may voluntarily waive the opportunity for a fair hearing where the party received actual notice of the hearing and failed to appear at or participate in the hearing"). Thus, E.R. had the opportunity to appear and cannot now allege error in a process in which he failed to participate.

Conclusion

[9] E.R. has failed to follow Appellate Rules in several respects and therefore his arguments on appeal are waived. Waiver notwithstanding, E.R. did not attend the hearing for which he received notice and, therefore, cannot not claim error in the process in which he did not participate. Accordingly, we affirm.

[10] Affirmed.

Bailey, J., and Robb, J., concur.