

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

M.S.,
Appellant,

v.

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

August 17, 2022

Court of Appeals Case No.
21A-EX-2739

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

The Honorable Gabriel Paul,
Chairman

The Honorable Larry A. Dailey,
Member

The Honorable Heather D.
Cummings, Member

Application No.
21-R-3578

Tavitas, Judge.

Case Summary

- [1] M.S. appeals the decision of the Review Board of the Indiana Department of Workforce Development (“Review Board”), which affirmed the decision of the Administrative Law Judge (“ALJ”) denying M.S.’s unemployment benefits. M.S. contends that the Review Board erred by finding that she voluntarily left her employment without good cause. Finding that the Review Board’s decision is supported by substantial evidence, we affirm the Review Board’s decision.

Issues

- [2] M.S. raises several issues, which we consolidate and restate as whether the Review Board erred by concluding that M.S. voluntarily left her employment without good cause.

Facts

- [3] M.S. was employed by E.E.P. (“Employer”), a temporary staffing service, which placed M.S. in the laundry department of Green, Inc. On April 3, 2020, M.S. stopped working at Green, Inc. The circumstances of M.S.’s departure are in dispute. M.S. claimed that she became ill, and Green, Inc. told her to quarantine at home until she was feeling better. M.S. also claimed that she told Green, Inc. that she was uncomfortable with the work environment because other employees were getting sick with COVID-19; Green, Inc. told M.S. that she could go home; and M.S. later became ill. Once she recovered, M.S. never contacted Employer indicating she was returning to work.

[4] According to Employer, M.S. did not contact Employer when she ended her assignment at Green, Inc. Green, Inc. told Employer that M.S. left on April 3, 2020, because M.S. “did not feel like she could continue working there because of people getting sick.” Tr. Vol. II pp. 32-33. M.S. did not report any concerns about Green, Inc. to Employer before April 3, 2020. Employer was unaware that M.S. was ill until M.S. left a message with Employer on April 6, 2020. Employer attempted to contact M.S., but M.S. did not return Employer’s telephone calls.

[5] M.S. applied for unemployment benefits, and on November 4, 2020, the claims investigator with the Department of Workforce Development (“DWD”) determined that M.S. “[v]oluntarily left employment without good cause in connection with the work.” Ex. Vol. III p. 3. The claims investigator found that M.S. “quit due to job dissatisfaction” and that the information “provided does not support the claimant made a reasonable effort to resolve the dissatisfaction prior to quitting.” *Id.*

[6] M.S. appealed the claims investigator’s determination. A hearing before the ALJ was held on June 4, 2021. The ALJ found:

In March of 2020, the COVID-19 pandemic caused multiple employees in Claimant’s laundry department to become ill. Green, Inc. was doing temperature and symptom checks for employees before they reported for work. Claimant felt concerned about the number of employees who were becoming ill around her, and she did not feel safe. Claimant did not report these concerns to Employer, the temporary agency, or to Green, Inc., the placement business. When Claimant did report her

concerns to Green, Inc., she already had COVID-19-like symptoms such as a fever and coughing. Green, Inc. told Claimant to go home. Green, Inc. reported back to Employer that Claimant voluntarily quit because she could not continue working there because people were getting sick, and she did not feel safe. Green, Inc. did not indicate to Employer that Claimant had symptoms. If Claimant had reported her safety concerns to Employer, it would have assisted her with addressing the concerns or finding a new placement. No other employees reported safety concerns during this time period regarding this employer.

Claimant did not seek out a medical diagnosis or a COVID-19 test because she thought it was too expensive. Claimant did not call in to Employer at any time to report her symptoms while employed with Green, Inc. Claimant did call Employer on one occasion two days after she was no longer employed there. Claimant did not report to Employer that she had quit working at Green, Inc. Claimant did not request any accommodations or sick pay for these symptoms, and she did not call in daily to Employer to report her absences.

When Claimant's symptoms subsided, she did not make any effort to contact either Employer or Green, Inc. about the process to return to work. Employer reached out to Claimant several times after April 3, 2020, to offer work, but she did not respond. Claimant reported that after her symptoms subsided, she sought work elsewhere and that she did [sic¹] wish to return to Green, Inc. for a variety of reasons, in addition to the COVID-19 safety concerns.

¹ We infer that a "not" was intended here.

Ex. Vol. III pp. 21.

- [7] Regarding whether M.S. voluntarily left her employment, the ALJ concluded that “Claimant voluntarily left employment but not for good cause in connection with work as defined by Indiana Code 22-4-15-1 (a).” *Id.* at 22. Regarding whether M.S.’s unemployment was the result of a medically substantiated physical disability, the ALJ found: “Claimant was not involuntarily unemployed due to a medically substantiated physical disability and she failed to make reasonable efforts to maintain the employment relationship. Therefore, Claimant failed to meet the requirements for the statutory exception found in Indiana Code 22-4-15-1(c)(2).” *Id.* at 23. Thus, the ALJ affirmed the claims investigator’s initial determination of eligibility.
- [8] M.S. appealed the ALJ’s determination to the Review Board. On November 4, 2021, the Review Board “adopt[ed] and incorporate[d] by reference the findings of fact and conclusions of law of the Administrative Law Judge and affirm[ed] the Administrative Law Judge’s decision” Appellant’s App. Vol. II p. 3. M.S. now appeals.

Discussion and Decision

- [9] M.S. appeals the decision of the Review Board, which affirmed the ALJ’s denial of M.S.’s claims. Our Supreme Court has held that the “standard of review of appeal of a decision of the [Review] 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.” *Recker v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011).

[10] Decisions of the Review Board are “conclusive and binding as to all questions of fact.” Ind. Code § 22-4-17-12(a). When the decision of the Review Board is challenged, we make an inquiry into: “(1) ‘the sufficiency of the facts found to sustain the decision’ and (2) ‘the sufficiency of the evidence to sustain the findings of fact.’” *J.M. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012) (quoting I.C. § 22-4-17-12(f)). We neither reweigh the evidence nor assess witness credibility, and we consider only the evidence most favorable to the Board’s findings. *Id.* We will reverse the Board’s decision only if there is no substantial evidence to support the Board’s findings. *Id.* We are not bound by the Review Board’s conclusions of law, but “[a]n interpretation of a statute by an administrative agency charged with the duty of enforcing the statute is entitled to great weight, unless this interpretation would be inconsistent with the statute itself.” *Chrysler Group, LLC v. Rev. Bd. of the Ind. Dep’t of Workforce Dev.*, 960 N.E.2d 118, 122-23 (Ind. 2012) (quoting *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000)).

[11] M.S. first contends that her due process rights were violated when the Review Board “rubber stamped” the ALJ’s decision.² Appellant’s Br. p. 10. M.S.

² M.S. also argues that she was denied due process by the ALJ’s failure to address the basis of her appeal of the claims investigator’s decision. Specifically, M.S. contends that she made an error on her benefits application, which triggered the denial of her benefits. M.S. also argues that she was denied due process by

argues that the Review Board should be required to state the reasons for its decision. Indiana Code Section 22-4-17-5(e) provides:

The review board may on the board's own motion affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge on the basis of any of the following:

- (1) Evidence previously submitted to the administrative law judge.
- (2) The record of the proceeding after the taking of additional evidence as directed by the review board.
- (3) A procedural error by the administrative law judge.

Additionally, 646 Indiana Administrative Code 5-10-12(d) provides: "A decision of the review board that reverses, in whole or in part, the decision of the administrative law judge shall not incorporate by reference or restatement, in whole, the findings of the administrative law judge, but rather shall contain its own findings and conclusions." Accordingly, where the Review Board

the failure to have a full DWD investigation before benefits were denied. M.S. contends that "she was unable to access an email communication from DWD, sent six months after she had requested reconsideration of DWD's denial of benefits, and attempted to rectify the issue immediately upon learning she had missed the inordinately short deadline imposed by the DWD investigator." Appellant's Br. pp. 14-15. M.S. did not present evidence to support these assertions during the hearing before the ALJ. Accordingly, these issues are waived.

Furthermore, although the Review Board made findings regarding whether M.S. had a medically substantiated physical disability, *see* Indiana Code Section 22-4-15(c)(2), M.S. makes no argument concerning these findings. In her reply brief, M.S. notes that this issue is "irrelevant." Appellant's Reply Br. p. 10. Accordingly, we do not address the issue further.

affirms an ALJ's decision, as it did here, the Review Board is allowed to incorporate by reference the ALJ's findings. Accordingly, M.S.'s argument fails.

[12] M.S. next contends that the Review Board erred when it determined that she voluntarily left her employment without good cause. "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." *Foley v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 167 N.E.3d 344, 348 (Ind. Ct. App. 2021) (citing *Brown v. Ind. Dep't of Workforce Dev.*, 919 N.E.2d 1147, 1150-51 (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." *Id.* (citing *Y.G. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 936 N.E.2d 312, 314 (Ind. Ct. App. 2010); I.C. § 22-4-15-1(a)). "Whether a person leaves employment without good cause in connection with the work is a question of fact to be determined by the Board." *Id.*

[13] "The claimant has the burden to prove that the claimant left employment voluntarily with good cause." *Id.* (citing *Brown*, 919 N.E.2d at 1151). "The claimant must establish (a) the claimant's reasons for abandoning the claimant's employment would impel a reasonably prudent person to terminate under the same or similar circumstances and (b) these reasons or causes are objectively related to the employment." *Id.*

[14] M.S. contends that her separation from employment was involuntary because she had symptoms of COVID-19 and was sent home. The Review Board, however, found that M.S. did not report to Employer that she was ill until three days after she left her employment with Green, Inc. M.S. also contends that a reasonably prudent person would not have returned to work in Green, Inc.'s unsafe environment. M.S., however, did not report these concerns to Employer, and M.S. did not respond to Employer's calls to her. M.S.'s arguments are merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Under these circumstances, M.S. failed to meet her burden of demonstrating that she left her employment voluntarily with good cause. The Review Board's denial of M.S.'s claim is supported by substantial evidence.

Conclusion

[15] M.S.'s challenge to the Review Board's decision fails. Accordingly, we affirm the Review Board's denial of unemployment benefits.

[16] Affirmed.

Riley, J., and May, J., concur.