

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Jennifer McLaughlin,
Appellant

v.

Review Board of the Indiana Department of Workforce
Development and Company,
Appellees

March 25, 2024

Court of Appeals Case No.
23A-EX-2967

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

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

Review Board Case No.
23-R-2702

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Jennifer McLaughlin (“Employee”), *pro se*, appeals a decision by the Review Board of the Indiana Department of Workforce Development (“Board”) affirming the dismissal of her appeal by the Administrative Law Judge (“ALJ”). We affirm.

Facts and Procedural History

- [2] On September 14, 2023, a claims investigator with the Adjudication Center of the Indiana Department of Workforce Development (“DWD”) issued a determination to Employee stating “your benefits right are suspended effective week ending 07/22/2023.” Exhibits Volume at 3 (capitalization omitted). The determination stated that it would become final on September 25, 2023, if not appealed and provided instructions to appeal. Employee appealed, and her appeal contained a phone number ending in 9375 under her name. A Notice of Telephone Hearing indicated that it was sent on October 19, 2023, and stated that a hearing by telephone was scheduled before the ALJ for November 3, 2023, at 8:30 a.m. The notice stated: “You will receive a call from the Judge at the number you provide by telephone or on the Acknowledgment Sheet.” *Id.* at 10. Under the heading “IMPORTANT INFORMATION ABOUT THIS PROCESS,” the notice stated: “To participate in this hearing, you MUST

deliver the enclosed Acknowledgment Sheet to the Appeals office by mail, fax, or in person OR provide your telephone number by calling the number below.” *Id.* at 11. The notice also stated: “Provide only ONE telephone number on the Acknowledgment Sheet or by telephone. At the scheduled date and time of your hearing the Judge will call YOU at THIS telephone number.” *Id.* An acknowledgment sheet in the record states: “Telephone Number for Hearing: [---]-[---]-9375.” *Id.* at 19.

- [3] On November 3, 2023, the ALJ held the scheduled telephonic hearing. The transcript reveals the ALJ stated Employee “provided contact information. [---]-[---]-9375. That number is from the Notice of Hearing for [Employee]. Time, 8:43 a.m. on November 3rd, 2023, and I’m going to dial the parties.” Transcript Volume II at 3. He stated: “[---]-[---]-9375. Dialing now at 8:44 a.m.” *Id.* The ALJ received an automatic voice message system, and he left a voicemail message stating “[h]ello, this is [the ALJ] calling for [Employee] for the unemployment insurance appeals hearing scheduled for today, November 3rd, 2023, at 8:30 a.m.,” “[t]ime is now 8:44 a.m.,” “I’ll attempt to call this number back in about five minutes to see if you’re able to participate,” “[i]f I’m not able to reach you after this next attempt, this appeal will be dismissed,” and “please do be prepared to answer the phone.” *Id.* The transcript indicates there was a pause and that then the ALJ stated: “Back on the record Gonna make my next attempt to contact [Employee]. Same number as before, [---]-[---]-9375. Time 8:50; first call placed 8:44. Dialing now.” *Id.* at 4. The ALJ received an automatic voice message system and stated: “I attempted to reach

you earlier at about 8:44 a.m. The time is now 8:50 a.m. Since I have been unable to reach you, this appeal will be dismissed. You will receive the Notice of Dismissal within the next few days.” *Id.* The ALJ’s docket notes indicate that he attempted to call Employee two times at the phone number ending in 9375, the first time at 8:44 a.m. and second time at 8:50 a.m.

- [4] The ALJ issued a Notice of Dismissal stating that Employee failed to participate in the hearing and therefore her appeal was dismissed. On November 4, 2023, Employee appealed the ALJ’s decision to the Board alleging: “I . . . had my phone with me and never received a call from the judge as well as no voicemail.” Appellant’s Appendix Volume II at 7. On November 13, 2023, the Board affirmed the decision of the ALJ. Employee now appeals the Board’s decision.

Discussion

- [5] Upon review of an unemployment compensation proceeding, we determine whether the Board’s decision is reasonable in light of its findings. *Fid. Auto. Grp., Inc. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 133 N.E.3d 234, 237 (Ind. Ct. App. 2019). We are bound by the Board’s resolution of all factual issues. *Id.* Whether a party was afforded due process in an unemployment proceeding is a question of law. *Id.* Litigants who proceed *pro se* are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*.

[6] Employee argues “I never received the phone call from [the ALJ] on November 3, 2023, at 8:30 am,” “I called into the appeal office at 8:45am,” “I was told the Judge had up to an hour to call me,” and “[a]t approximately 9:00am I looked at the uplink claimant login and saw that the Judge stated that the case was dismissed because I missed the appointment.” Appellant’s Brief at 4. The Board argues that Employee does not dispute that she had notice of the hearing and that “the record shows that the ALJ called [Employee] twice at the telephone number that was provided on her appeal of the claims investigator’s determination and was provided on [her] hearing notice and acknowledgement sheet: [---]-[---]-9375.” Appellee’s Brief at 9. In her reply brief, without citation to the record, Employee states “[a]s evidence also shows that I did not have any incoming phone calls at the said time of 8:44 am nor at 8:50 am the morning of November 3, 2023,” “[t]he evidence does in fact show that I called the appeal office at 8:56 am November 3, 2023, when I questioned why I hadn’t received a phone call as of that time,” and “[e]vidence also shows that I called the appeal office again at 9:53am.” Appellant’s Reply Brief at 3.

[7] Employee does not argue that she did not receive the Notice of Telephone Hearing which indicated it was sent on October 19, 2023, and which set forth the date and time of the telephonic hearing. Further, she does not argue that the phone number which the ALJ used to call her phone was not a correct phone number for her. While Employee states in her reply brief that evidence shows that she did not receive incoming phone calls at 8:44 a.m. or 8:50 a.m. on November 3, 2023, she does not cite to the record and our review of the

record does not reveal any evidence or filings by Employee showing the incoming calls to her phone and that her phone did not receive incoming calls at 8:44 a.m. and 8:50 a.m.¹ The record reveals that the ALJ called the phone number for Employee two times and that she did not answer the calls. The ALJ left a voicemail at approximately 8:44 a.m. stating that he would call again about five minutes later, and then the ALJ called the phone number again at 8:50 a.m. The record supports the conclusion that Employee received notice of the November 3, 2023 hearing before the ALJ and was not denied a reasonable opportunity to participate in the hearing. *See Fid. Auto. Grp., Inc.*, 133 N.E.3d at 238-239 (noting the appellant did not argue that it did not receive the Notice of Telephone Hearing which set forth the date and time of the telephonic hearing and concluding that it was not denied due process or a reasonable opportunity to participate in a telephonic hearing) (citing *T.R. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 950 N.E.2d 792, 795-796 (Ind. Ct. App. 2011) (noting the instructions received by the appellant regarding participation in the hearing before the administrative law judge and holding the appellant was given notice and an opportunity to be heard), *adhered to on reh'g*).

[8] For the foregoing reasons, we affirm the decision of the Board.

¹ Ind. Appellate Rule 46(A)(8)(a) provides that “[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning” and “[e]ach 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.”

[9] Affirmed.

Riley, J., and Foley, J., concur.

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