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IN THE
COURT OF APPEALS OF INDIANA

Monica C. Brown,

Appellant-Petitioner,

v.

Review Board of the Indiana Department of Workforce Development,

Appellee-Respondent.

February 9, 2022

Court of Appeals Case No. 21A-EX-1474

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

The Honorable Steven F. Bier, Chairperson

The Honorable Larry A. Dailey, Member

The Honorable Heather D. Cummings, Member

Review Board Case No. 21-R-709

Najam, Judge.

Statement of the Case

[1] Monica C. Brown appeals the decision of the Review Board of the Indiana Department of Workforce Development ("the Board") affirming the decision of the Administrative Law Judge ("ALJ") that Brown was not eligible to receive Pandemic Unemployment Assistance ("PUA") benefits under the CARES Act from the State of Indiana because Brown was last employed in New York.[1] We disagree with the Board's reasoning but affirm on different grounds, namely that Brown was not eligible to receive PUA benefits because she was not a covered individual under the CARES Act.

[2] We affirm.

Facts and Procedural History

[3] Brown is a self-employed actor. During 2019 and into 2020, Brown worked in Indiana, Florida, New Hampshire, and New York with various theatrical productions. The jobs lasted for defined periods of time and ended on specified dates. For example, Brown's job performing in a summer theater production in Warsaw, Indiana, lasted from August 20 through approximately September 8, 2019. Her job at a theater in New Hampshire lasted from October 10 through

[1] In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, that established pandemic unemployment assistance benefits for individuals who lost their jobs as a result of the pandemic and did not qualify for traditional unemployment benefits. 15 U.S.C. § 9001 *et seq*.

December 23, 2019. In 2019, Brown's income from acting was "about $9,000." Tr. Vol. 2 at 10.

[4] In January 2020, when the COVID-19 pandemic was in its early stages, Brown worked for Marlin Thomas Productions in New York City, performing in a play presented by the production company. Her job with the company lasted from mid-January until February 29, the date her employment with the company was scheduled to end.

[5] After her employment with the production company had ended, Brown began looking for work but was unable to find employment "due to the pandemic closing events [and theaters and due to] decreasing acting opportunities." Appellant's App. Vol. 2 at 3. Also, Brown was "unable and unavailable to work unless it [was by] telework" because she was diagnosed with contact dermatitis, which was aggravated by cleaning products that were being used by businesses to limit the spread of COVID-19. *Id.* Brown's acting income in 2020 totaled $700.

[6] On May 5, 2020, Brown filed what she characterized as a "combined state claim" for unemployment benefits in New York because she had income in 2019 and 2020 from multiple states, but the claim was denied by New York authorities because she was self-employed. Tr. Vol. 2 at 4. Brown did not file for PUA benefits in her New York claim. A representative of the New York Department of Labor advised Brown that she should file an unemployment claim in Indiana because Indiana was the only state in which she had received a

W-2 for income in 2019. Brown received that income for her work with the summer theater production in Warsaw.

[7] In June 2020, Brown filed a claim for unemployment benefits in Indiana. The Indiana Department of Workforce Development ("DWD") determined she had insufficient wages to qualify for unemployment benefits. Brown then filed a claim in Indiana for PUA benefits. Her claim was initially accepted, and, on June 14, 2020, she received PUA benefits in the amount of $8,112 for the time period of March 8 through June 20. Brown later informed the New York Department of Labor that she no longer needed to pursue the unemployment claim she had filed there.

[8] After June 20, Brown was locked out of the DWD's online benefits access system ("the Uplink system") due to an identity investigation. Brown regained access to the Uplink system in August but received no additional unemployment benefits after June 20. On October 23, Brown received a letter from the DWD stating that a claims investigator had determined she was ineligible for PUA benefits in Indiana because she "[was] not considered unemployed, partially unemployed, or unable or unavailable to work for one of the qualifying reasons identified under section 2102(a)(3)(A)(ii)(I) of the [CARES] Act[,]" and that she "should file [her unemployment benefits claim] in New York because that is where [she was] working when [she] became unemployed." Ex. Vol. 3 at 3.

[9] On October 24, Brown appealed that determination to the ALJ. Following a telephonic hearing, the ALJ affirmed the claims investigator's determination and concluded, in relevant part, as follows:

> Section 2102(d)(1)(A)(i) of the CARES Act . . . provides that *the assistance authorized by the Act shall be determined by "the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed."*
>
> In this instance, the Administrative Law Judge concludes that Claimant was last employed in the state of New York when her employment ended on February 29, 2020[,] due to the acting assignment ending. The Administrative Law Judge concludes that Claimant has been unable to find acting work due to the Covid closure of theaters, events. Any claim for Pandemic Unemployment Assistance would be authorized and determined based on the unemployment compensation laws of the state of New York where she was last employed, not Indiana. *Based on the evidence presented and in accordance with Section 2102(d)(1)(A)(i) of the CARES Act* . . . , the Administrative Law Judge concludes that Claimant is not eligible to receive PUA benefits in the state of Indiana.

Appellant's App. Vol. 2 at 4 (emphases added). Brown appealed the decision to the Board. The Board affirmed the ALJ's decision without a hearing and without accepting additional evidence. This appeal ensued.

Discussion and Decision

Standard of Review

[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 Board is challenged,

an appellate court makes a two-part 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. Review Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012); *see also* I.C. § 22-4-17-12(f). Under this standard, (1) the Board's findings of basic fact are reviewed for substantial evidence, (2) findings of mixed questions of law and fact (i.e., ultimate facts) are reviewed for reasonableness, and (3) legal propositions are reviewed for correctness. *K.S. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 33 N.E.3d 1195, 1197 (Ind. Ct. App. 2015). This Court neither reweighs the evidence nor assesses witness credibility, and it considers only the evidence most favorable to the Board's findings. *Id.* This Court will reverse the Board's decision only if there is no substantial evidence to support the Board's findings. *J.M.*, 975 N.E.2d at 1286.

[11] Further,

> [u]ltimate facts[, more appropriately characterized as mixed questions of law and fact,] are reviewed to ensure the Board has drawn a reasonable inference in light of its findings on the basic, underlying facts. [*McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317-18 (Ind. 1998)]. . . . "[T]he court examines the logic of the inference drawn and imposes any rules of law that may drive the result." *Id.*[at 1318]. The Board's conclusion must be reversed "if the underlying facts are not supported by substantial evidence or the logic of the inference is faulty, . . . or if the agency proceeds under an incorrect view of the law." *Id.*

> We are not bound by the Board's conclusions of law, though "[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." *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000).

Chrysler Group, LLC v. Rev. Bd. of the Ind. Dep't of Workforce Dev., 960 N.E.2d 118, 122-23 (Ind. 2012).

The CARES Act

[12] The CARES Act, signed into law on March 27, 2020, "create[d] a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 at 1 (April 5, 2020), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (last visited Feb. 2, 2022). Thus, the PUA program is federally funded but implemented by the States. *See id.* at 2. Under section 2102(b) of the Act, the Secretary of Labor "shall provide to any *covered individual* unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation[.]" 15 U.S.C. § 9021(b) (emphasis added).

[13] Under Section 2102(a)(3)(A) of the CARES Act, a "covered individual" eligible to collect PUA benefits is an individual who "is not eligible for regular

compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation[,]" and who self-certifies that she

> (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—

of one of eleven reasons related to the COVID-19 pandemic, specifically:

> (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; or
>
> (II) [self-certifies that she] is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation . . . and meets the requirements of subclause (I)[.]

15 U.S.C. 9021(a)(3)(A). As the U.S. Department of Labor ("Department of Labor") has explained, "PUA is a benefit of last resort for anyone who does not

qualify for other [unemployment compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act." Unemployment Insurance Program Letter No. 16-20 Change 1 at I-8 (April 27, 2020), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf (last visited Feb. 2, 2022).

[14] The Department of Labor has issued guidance on how to administer the PUA program in Unemployment Insurance Program Letter ("UIPL") No. 16-20 and in subsequent UIPLs referred to as Changes 1-6 to UIPL 16-20. Relevant here, Change 2 to UIPL 16-20 asks: "If an individual becomes unemployed for reasons *unrelated* to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?":

> Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. *Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason*.

UIPL 16-20 Change 2 at I-6 ¶ 14 (July 21, 2020), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_2.pdf (last visited Feb. 2, 2022) (emphases added).

[15] With this as background, we turn to the question of whether the Board erred when it determined that Brown was not eligible to receive PUA benefits in Indiana.

Eligibility for PUA Benefits in Indiana

[16] Brown challenges the ALJ's conclusion that she was not entitled to PUA benefits from the State of Indiana because she was last employed in New York. And Brown maintains that the ALJ erred when she relied on Section 2102(d)(1)(A)(i) of the CARES Act in support of her conclusion. As noted above, Section 2102(d)(1)(A)(i) provides in relevant part that the amount of assistance shall be "the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed[.]" 15 U.S.C. § 9021(d)(1)(A)(i). According to Brown, that section of the CARES Act "governs the *amount* of [unemployment benefits] assistance [a claimant may receive], not *where* the [unemployment benefits] claim should be filed." Appellant's Br. at 10 (emphases added). Brown contends that "[t]his section says nothing about where a claim should be filed[,]" that "there is nothing at all in Section 2102(d)—or any other provision of the CARES Act—that supports the ALJ's conclusion[,]" and that "Indiana's unemployment compensation statute [does not] require that Brown file her claim for PUA . . . benefits in New York." *Id.* at 11.

[17] Brown also argues that she properly filed her claim for PUA benefits in Indiana and was not required to file her claim in New York because she filed an interstate unemployment claim, that is, a "combined-wage claim." *See id.* at 11-

12. A combined-wage claimant is defined as "[a] claimant who has covered wages under the unemployment compensation law of more than one State and who has filed a claim under this arrangement." 20 C.F.R. § 616.6(d). This type of claim may be filed by "[a]ny unemployed individual who has had employment covered under the unemployment compensation law of two or more States, whether or not the individual is monetarily qualified under one or more of them." 20 C.F.R. § 616.7(a). Brown maintains that, once she filed the combined-wage claim in Indiana, the unemployment agencies for each state in which she had employment and wages were required to work together to determine the benefits to which she was entitled. *See* 20 C.F.R. §§ 616.6, 616.8, 616.9. In other words, according to Brown, Indiana, as the paying state, was required to request from the transferring states, New York, Florida, and New Hampshire, Brown's employment and wages during the base periods. *See id.*

[18] The State contends first that Brown is not entitled to PUA benefits in Indiana because she was required to file her claim in the state in which she was last employed, that is, New York. In the alternative, the State argues that Brown is not entitled to PUA benefits at all "because she did not become unemployed, partially unemployed, or unable or unavailable for work due to one of the qualifying reasons under the CARES Act." Appellee's Br. at 10.

[19] We agree with Brown that neither the provisions of the CARES Act nor those of Indiana's Unemployment Compensation Act require that she file her PUA benefits claim in New York, where she was last employed. And PUA benefits are available to claimants who have been employed in more than one state

during the base period. *See* UIPL No. 16-20 at I-14 ¶ 21(b), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf (last visited Feb. 2, 2022). Thus, to the extent that the Board, in its affirmation of the ALJ's decision, determined that Brown was ineligible for PUA benefits in Indiana simply because she was last employed in New York, the Board erred.[2] However, reversal of the Board's decision is not required, as we find on other grounds that Brown was not eligible for PUA benefits in Indiana. We agree with the State's alternative argument that Brown is not eligible for PUA benefits in Indiana because she did not become unemployed, partially unemployed, or unable or unavailable for work due to one of the qualifying reasons under the CARES Act.

[20] Upon judicial review, a trial court's judgment may be affirmed upon grounds different from those reflected in the trial court's decision. *Kimberlin v. DeLong*, 637 N.E.2d 121, 125 (Ind. 1994), *cert. denied*, 116 S. Ct. 98 (1995). In other words, a trial court may get it right, but for the wrong reason. Our Supreme Court applied this principle to Review Board cases in its decision in *J.M.* 975 N.E.2d 1283.

[21] In *J.M.*, a claimant sought unemployment compensation after he was fired from his job for failure to follow his supervisor's instructions regarding missed work.

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[2] We note that the DWD claims investigator did determine that Brown was ineligible for PUA benefits in Indiana because she did not meet one of the eleven criteria identified in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, and the ALJ affirmed the investigator's determination. *See* Ex. Vol. 3 at 3; Appellant's App. Vol. 2 at 4.

Id. at 1284. The Board found that J.M. was not entitled to unemployment benefits because he was discharged for just cause under subsection (d)(2) of the statute that sets forth when an individual is discharged for just cause. *Id.* at 1287; Ind. Code § 22-4-15-1(d)(2) ("Discharge for just cause . . . include[s] but is not limited to . . . (2) knowing violation of a reasonable and uniformly enforced rule of an employer, including a rule regarding attendance[.]"). A panel of this Court overturned the Board's decision and held that J.M. did not violate subsection (d)(2). However, "[the panel] did not consider subsection (d)(5)[, discharge for just cause for "refusing to obey instructions,"] because [the subsection] was not named in the conclusions of law by the Review Board." *J.M.*, 975 N.E.2d at 1287. Instead, the panel

> found it could not affirm a just cause finding on different grounds than the one cited by the Review Board . . . [and] relied on the proposition that "[w]hile the Board's task is to use any applicable definition in the statute to determine whether an employee was discharged for just cause, our review is limited to determining whether the Board made sufficient findings to support the definition it selected to apply."

Id.

[22] Our Supreme Court affirmed the Review Board's decision on grounds of subsection (d)(5)—that J.M. refused to obey instructions—and held: "We may rely on a different statutory ground of a just cause finding than the one relied upon by the Review Board when, as here, the Review Board's findings of

fact clearly establish the alternate subsection's applicability." *Id.* at 1289. The Court concluded:

> This analysis comports with the deferential standard given to the trial courts of this state: "on appellate review the trial court's judgment will be affirmed if sustainable on any theory or basis found in the record." *Havert v. Caldwell*, 452 N.E.2d 154, 157 (Ind. 1983). "Moreover it is well established that a decision of the trial court will be sustained if a valid ground exists to support it, whether or not the trial court considered those grounds." *Bruce v. State*, 268 Ind. 180, 200, 375 N.E.2d 1042, 1054 (1978). To state it yet another way, we "may affirm a trial court's judgment on any theory supported by the evidence." *Dowdell v. State*, 720 N.E.2d 1146, 1152 (Ind. 1999).

Id.

[23] In the case before us, the Board's conclusion that Brown was ineligible for PUA benefits in Indiana was correct, but for reasons different from those relied upon by the ALJ and the Board. Specifically, again, we agree with the State's alternative argument on appeal and hold that Brown is ineligible to receive PUA benefits in Indiana because she was not a "covered individual" under the CARES Act, that is, she was not unemployed, partially unemployed, or unable or unavailable to work for one of the eleven COVID-19 related reasons listed under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. 15 U.S.C. § 9021(a)(3)(A).

[24] Here, the basic facts are not in dispute. The ALJ found that, when the pandemic began, Brown was self-employed as an actor, working with a

production company in New York. Her assignment with the company started in mid-January and was scheduled to end—and in fact ended—on February 29, 2020. Brown "was looking for other acting work but had no jobs lined up." Appellant's Vol. 2 at 3. She could not find any work after February 29 because the pandemic closed "events[and theater[s,] and decreas[ed] acting opportunities." *Id.* Brown contracted contact dermatitis, which caused her to be "unable and unavailable to work unless [by] telework." *Id.* Brown "was not diagnosed with COVID" and was not "ordered to quarantine because of COVID." *Id.* at 4.

[25] At the hearing before the ALJ, Brown did not present any evidence that she was unemployed or unable to work "*as a direct result of COVID-19*." 15 U.S.C. § 9021(a)(3)(A)(I)(ii), (jj) (emphasis added). To the contrary, Brown testified that her job in New York ended on February 29 because "[t]he assignment ended[.]" Tr. Vol. 2 at 5. Brown answered in the affirmative when asked if the cleaning agents prevented her from working as an actor. And Brown told the ALJ that she was being treated by a physician for her contact dermatitis. However, she testified that she had not been ordered by a doctor to quarantine and that she had not "been exposed to COVID or anything like that." *Id.* at 8.

[26] Further, when the ALJ inquired whether Brown was currently employed, Brown told the ALJ, "[T]o this day, I am unemployed[.]" *Id.* at 7. And Brown answered in the affirmative when the ALJ asked if she was looking for work but added, "[A]s far as theatrical work, there's really not any work happening. There's few and far jobs between. I was contacted about a job in South

Carolina. They weren't able to put it on due to the worsening of the pandemic[.]" *Id.* However, Change 2 to Unemployment Insurance Program Letter 16-20 provides that a claimant is not eligible for PUA if she becomes unemployed for reasons unrelated to COVID-19. *See* UIPL 16-20 Change 2 at I-6 ¶ 14. And Change 2 clearly states that "[n]ot being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19" is not considered a COVID-19-related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. *Id.*

[27] The ALJ's findings show that Brown does not meet any of the eleven criteria listed in subsections (aa) through (kk) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, and the findings are supported by substantial evidence. Accordingly, we affirm the Board's order affirming the ALJ's decision on the ground that Brown was not a covered individual under the CARES Act and therefore was not entitled to PUA benefits.

[28] Affirmed.

Vaidik, J., and Weissmann, J. concur.