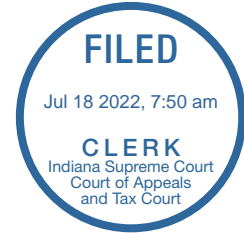


MEMORANDUM DECISION

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

Elba E. Rodriquez,
Appellant-Petitioner,
v.

Review Board of the Indiana
Department of Workforce
Development and Kinler LLC,
Appellees-Respondents.

July 18, 2022

Court of Appeals Case No.
21A-EX-2071

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

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

Case No. 21-R-4163

Friedlander, Senior Judge.

[1] Elba E. Rodriguez¹ appeals a decision from the Review Board of the Indiana Department of Workforce Development, in which the Review Board affirmed and adopted an administrative law judge's judgment that she was not entitled to unemployment benefits in relation to her former employer, Kinler LLC. We affirm.

Issues

- [2] Rodriguez raises five issues, which we consolidate and restate as:
- I. Whether Rodriguez was denied a reasonable opportunity to appear at an evidentiary hearing.
 - II. Whether the Review Board erred in refusing to consider her additional evidence.

Facts and Procedural History

[3] Rodriguez worked for Kinler from approximately July 2, 2020 until October 16, 2020. She resigned from Kinler, providing a two-week notice of her intent to

¹ We use the parties' full names in this memorandum decision. We acknowledge that Indiana Code section 22-4-19-6(b) (2019) provides:

Except as provided in this section, information obtained or obtained from any person in the administration of this article and the records of the department relating to the unemployment tax or the payment of benefits is confidential and may not be published or be open to public inspection in any manner revealing the individual's or the employing unit's identity, except in obedience to an order of a court or as provided in this section.

In *Recker v. Rev. Bd. of the Ind. Dept of Workforce Dev.*, 958 N.E.2d 1136, 1138 n.4 (Ind. 2011), the Indiana Supreme Court, considering Indiana Code section 22-4-19-6 in conjunction with Indiana Administrative Rule 9, determined that, in appeals from Review Board decisions, the Court would use parties' full names unless a party requests anonymity. Since that time, the Indiana Supreme Court has updated its rules that govern the withholding of case information from the public, including replacing the relevant provisions of former Indiana Administrative Rule 9 with the Indiana Rules on Access to Court Records. But the Court has not reconsidered its determination in *Recker*. *But see Chrysler Group, LLC v. Rev. Bd. of Ind. Dept. of Workforce Dev.*, 960 N.E.2d 118 (2012) (using employer's full name but referring to employee by initials). In our current case, neither party has requested confidentiality.

quit prior to the end of her employment. She later told personnel at the Indiana Department of Workforce Development (“DWD”) that she chose to quit “because of reasons not related to the job.” Appellant’s Appendix Vol. II, p. 6.

[4] On October 19, 2020, Rodriquez began working for Escalade Sports. She was fired from that job on or around November 12, 2020, and she applied for unemployment insurance benefits.

[5] For reasons that are unclear in the record, a DWD claims investigator determined Rodriquez might be entitled to benefits as to both Kinler and Escalade Sports. The DWD requested information from both employers regarding Rodriquez’s employment. Kinler responded to DWD’s request, arguing that Rodriquez was not entitled to unemployment benefits because she quit voluntarily, but Kinler’s response was not noted by the investigator. On December 2, 2020, the investigator determined Rodriquez was entitled to benefits in relation to Kinler because Kinler “failed to provide separation information as requested within the time limit set by law.” *Id.* at 11. The DWD paid unemployment benefits to Rodriquez.

[6] Kinler appealed the claims investigator’s decision, arguing: (1) Kinler timely responded to the DWD’s request for information; and (2) Rodriquez voluntarily quit her job. On June 23, 2021, the DWD’s Unemployment Insurance Appeals office (“the Appeals office”) issued to Rodriquez and Kinler a Notice of Telephone Hearing, stating that an administrative law judge (“ALJ”) would

preside over an evidentiary hearing. The Notice further provided that the hearing would be held on July 6, 2021, at 2:15 p.m. Indianapolis time, and the ALJ would call the parties at phone numbers they “provide[d] by telephone or on the Acknowledgement Sheet.” Tr. Vol. III, p. 7. The Notice further stated:

Important Information About This Process

- 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.
- 3) If you have documents you want the Judge to consider you **MUST** deliver them by mail, fax, or in person to the Appeals office **AND** the other party. The documents must be received at least 24 hours **BEFORE** the date of the scheduled hearing.
- 4) The Administrative Law Judge may take up to sixty (60) minutes to contact the parties for the hearing. If the parties are not contacted within sixty (60) minutes the parties may request a continuance.
- 5) Other **IMPORTANT INFORMATION** is provided in the enclosed U.I. **APPEALS HEARING INSTRUCTIONS** sheet.
- 6) If you have any questions, or would like to provide your telephone number for the hearing, contact the Appeals office by telephone at [phone number].

Tr. Vol. III, p. 8.

[7] The U.I. Appeals Hearing Instructions Sheet mirrored the Notice’s provisions, informing the parties that they were required to notify the Appeals office of

their phone numbers by returning the Acknowledgement Sheet or by calling the office, and to submit exhibits in advance of the hearing date. The sheet further provided:

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.

Id. at 13. The Acknowledgement Sheets that the Appeals office sent to Rodriquez and Kinler also set forth the date and time of the hearing and advised that failure to appear at the hearing could result in an unfavorable decision.

[8] Rodriquez did not return an Acknowledgement Sheet to the Appeals office or call to provide a telephone number at which she could be reached. Kinler also failed to return the Acknowledgement Sheet, but it did send documents to the Appeals office in advance of the hearing.

[9] At the July 6, 2021 telephonic evidentiary hearing, the ALJ noted Kinler had sent in exhibits despite failing to return the Acknowledgement Sheet, and he found Kinler's telephone number on the company's request for an appeal. He called Kinler's owner, who answered. The ALJ further noted that Rodriquez did not return an Acknowledgement Sheet, and he did not attempt to locate a

phone number for her. The ALJ placed Kinler's owner under oath, and he testified that Rodriguez had voluntarily resigned from Kinler to start a new job.

[10] On July 7, 2021, the ALJ issued a decision, noting that Rodriguez had failed to appear. The ALJ further determined that Kinler had demonstrated: (1) it had timely responded to the DWD's request for information; and (2) Rodriguez had voluntarily ended her employment with Kinler without good cause in connection with work. As a result, the DWD later directed Rodriguez to repay some of the benefits she had received.

[11] On July 9, 2021, Rodriguez appealed the ALJ's decision to the Review Board. In her appeal letter, she asked for a new evidentiary hearing, arguing that she was aware of the hearing's date and time and had been ready to participate, but she had forgotten to return her Acknowledgment Sheet prior to the hearing. Rodriguez further claimed she had attempted to call the ALJ at some point after the scheduled time for the hearing had elapsed.

[12] As to the merits of the dispute, Rodriguez alleged that she had intended to request unemployment benefits only as to Escalade Sports, not Kinler. Rodriguez stated that she and Kinler had "parted ways without issue" so that she could start a new job, and Kinler "should not have been investigated in the first place." Appellee's App. Vol. II, pp. 4-5. She attached evidentiary materials to her request for an appeal.

[13] On August 27, 2021, the Review Board issued an order affirming and adopting the ALJ's decision without considering any additional evidence. This appeal followed.

Discussion and Decision

Standard of Review

[14] The Review Board is governed by the Unemployment Compensation Act, which is intended 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 (Ind. Ct. App. 2021). When a party appeals a decision of the Review Board, we may review: “(1) determinations of specific or ‘basic’ underlying facts; (2) conclusions or inferences from those facts, sometimes called ‘ultimate facts,’ and (3) conclusions of law.” *J.M. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012) (quoting *McClain v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998)).

[15] The decision of the Review Board is “conclusive and binding as to all questions of fact.” Ind. Code 22-4-17-12(a) (1995). Consequently, when we consider the Review Board's findings, we neither reweigh evidence nor judge the credibility of witnesses. *J.M.*, 975 N.E.2d 1283. We instead consider only the evidence most favorable to the Review Board's findings, and we will reverse only if there is no substantial evidence to support the Review Board's findings. *Id.*

[16] Ultimate facts—typically mixed questions of fact and law—are reviewed to ensure the Board has drawn a reasonable inference in light of its findings on the basic, underlying facts. *Chrysler Group*, 960 N.E.2d at 122. We review questions of law de novo and accord the administrative tribunal below no deference. *Company v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 113 N.E.3d 1214 (Ind. Ct. App. 2018).

Evidentiary Hearing and Due Process

[17] Rodriguez argues that she did not receive an equal opportunity to participate in the evidentiary hearing, pointing to evidence that the ALJ looked for Kinler’s phone number in the record but did not do the same for her. In effect, she claims that she was deprived of due process.

[18] The Review Board is a quasi-judicial body, and it must afford due process to parties. *Fruehauf Corp. v. Rev. Bd. of Ind. Emp. Sec. Div.*, 448 N.E.2d 1193 (Ind. Ct. App. 1983). With respect to hearings before an ALJ, the General Assembly provided in Indiana Code section 22-4-17-3 (2009) that an ALJ must give parties “a reasonable opportunity for fair hearing.” Whether a party was afforded due process in an unemployment proceeding is a question of law. *Fid. Auto. Group, Inc. v. Rev. Bd. of Ind. Dep’t of Workforce Dev.*, 133 N.E.3d 234 (Ind. Ct. App. 2019).

[19] In *Art Hill, Inc. v. Review Board of the Indiana Department of Workforce Development*, 898 N.E.2d 363 (Ind. Ct. App. 2008), an ALJ scheduled a telephonic

evidentiary hearing after an employee of Art Hill, Inc. appealed the denial of his claim for unemployment benefits. The scheduling order directed the parties to submit telephone numbers where they could be contacted for the hearing. The employee mailed a return slip with his telephone number, and Art Hill called to provide a telephone number with an extension at which its representative could be reached.

[20] On the day of the hearing, the ALJ reached the employee by telephone but was unable to reach Art Hill's representative. The ALJ concluded Art Hill had failed to appear and continued with the hearing. The ALJ ultimately found in favor of the employee. Art Hill appealed to the Review Board, claiming that it failed to participate in the hearing because its representative had switched to a phone with a different extension number, but had failed to advise the ALJ of the switch. The Review Board affirmed the ALJ's decision. Next, a panel of this Court affirmed the Review Board, concluding that Art Hill had voluntarily waived the opportunity for a fair hearing by failing to appear at or participate in the hearing despite receiving actual notice of the hearing.

[21] In the current case, Rodriguez does not dispute receiving actual notice of the telephonic hearing, and she concedes that she unintentionally forgot to send in the Acknowledgement Sheet, which would have advised the ALJ of her phone number. Kinler also failed to return an Acknowledgement Sheet, but it instead sent documents to be considered at the hearing. Under these circumstances, it

was not unreasonable for the ALJ to attempt to locate Kinler's telephone number, having understood Kinler's submission of documents to be some form of an acknowledgement of the hearing, and to choose not to look for a telephone number for Rodriguez, who had sent nothing.

[22] Rodriguez cites *G.D. v. Review Board of Indiana Department of Workforce Development*, 938 N.E.2d 298 (Ind. Ct. App. 2010), *trans. denied*, but that case is distinguishable. In *G.D.*, an ALJ dismissed an employee's unemployment benefits appeal after he apparently failed to file an acknowledgement of a telephonic hearing and did not appear for the hearing. The Review Board denied G.D.'s request to reinstate his case. On appeal, G.D. claimed the Review Board should have reinstated his case because he had told the Review Board that he had good cause to quit, and he had faxed in his acknowledgement document to the DWD, but that document somehow was not transmitted to the ALJ. A panel of this Court concluded G.D. had alleged that he made substantial efforts to comply with the DWD's procedures, and an evidentiary hearing was required to determine if his allegations were accurate.

[23] The circumstances in *G.D.* are dissimilar from those of Rodriguez's case, because she concedes she mistakenly did not send in her acknowledgement form. Regardless of the reason for her oversight, she, unlike G.D., did not make substantial efforts to comply with the DWD's procedures.

[24] Rodriquez also refers the Court to *A. Y. v. Review Board of Indiana Department of Workforce Development*, 948 N.E.2d 373 (Ind. Ct. App. 2011), *trans. denied*, in which a panel of this Court reversed the decision of the Review Board and remanded for an evidentiary hearing. A.Y. appealed a determination that she was not entitled to unemployment benefits, and an ALJ scheduled a telephonic evidentiary hearing. The parties were instructed to submit participation slips in advance of the hearing, including their phone numbers. On the day of the hearing, the ALJ did not have a participation slip or other contact information for A.Y., so the ALJ dismissed the appeal. A.Y. appealed, arguing that she had faxed documents to the DWD in advance of the hearing, and had received confirmation that the documents were received, and she had further called the ALJ's office during the time allotted to the hearing but could not speak with the ALJ. The Review Board affirmed the ALJ's decision, but this Court determined: (1) the Review Board must hold a hearing to determine whether A.Y. had contacted the ALJ's office during the time allotted for the hearing; and (2) if so, her appeal should be reinstated.

[25] The circumstances in *A. Y.* do not compel reversal in this case. Unlike A.Y., Rodriquez did not send any documents to the Appeals office prior to the hearing. Further, Rodriquez did not attempt to call the ALJ until after the time allotted for the hearing had ended. We conclude, as the Court did in *Art Hill*,

Inc., that Rodriquez waived her opportunity for a fair hearing, and the Review Board did not violate Rodriquez’s due process rights.

Review Board and Additional Evidence

- [26] Rodriquez argues the Review Board should have considered the evidence she submitted with her request for review of the ALJ’s decision, arguing that the evidence demonstrates that she did not intend to defraud the Review Board. She further argues that the amount of benefits she was ordered to repay is “unjust and unaffordable,” Appellant’s Br. p. 12, and that affirmance of the Review Board’s decision may result in ineligibility to receive unemployment benefits in the future.
- [27] 646 Indiana Administrative Code 5-10-11 (2017) authorizes the Review Board to accept additional evidence “upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why the additional evidence was not procured and introduced at the hearing before the administrative law judge.” We review the Review Board’s decision to admit or deny additional evidence for an abuse of discretion. *Switzerland Cnty. v. Rev. Bd.*, 146 N.E.3d 936 (Ind. Ct. App. 2020).
- [28] In *Switzerland County*, an employer who missed the ALJ’s telephonic evidentiary hearing ultimately received an unfavorable decision. The employer appealed, asking the Review Board to consider additional evidence when

reviewing the ALJ's decision. The Review Board denied the employer's request.

[29] On appeal, the employer argued that the Review Board should have considered its additional evidence. This Court determined that the employer had received notice of the ALJ's evidentiary hearing but had failed to file an acknowledgement sheet with its phone number due to a "bureaucratic misstep." *Id.* at 942. As a result, the employer waived its right to be present at the evidentiary hearing. In light of the employer's waiver, the employer had failed to provide the Review Board with good cause to consider the additional evidence.

[30] In the current case, we have determined that Rodriguez's failure to return her Acknowledgement Sheet to the DWD Appeals office or to otherwise provide a telephone number in advance of the evidentiary hearing amounted to a waiver of her right to attend the hearing. Based on this evidence, and following the holding in *Switzerland County*, she failed to establish good cause for the Review Board to consider her evidence.

[31] Rodriguez cites *R.D. v. Review Board of the Indiana Department of Workforce Development*, 941 N.E.2d 1063 (Ind. Ct. App. 2010) in support of her claim, but the circumstances of that case greatly differ from Rodriguez's case. In *R.D.*, a laid-off employee applied to the DWD to use funding established by a federal statute, and administered by the DWD, to pay for retraining in a new field. On

appeal, the parties disputed whether the Review Board had erred in denying his application on grounds that a different training program was cheaper. This Court concluded the Review Board had erred as a matter of law in concluding that a cheaper program was substantially similar to the program the employee wanted to pursue.

[32] *R.D.* did not involve a claim that the Review Board should have considered additional evidence. In addition, Rodriguez’s case does not involve retraining funding under a federal statute. As a result, *R.D.* is not useful in resolving the current appeal.

[33] Even if the Review Board should have considered Rodriguez’s evidence, she has failed to demonstrate that the Review Board’s decision should be reversed. An individual who voluntarily ends employment “without good cause in connection with the work” is ineligible for unemployment benefits. Ind. Code § 22-4-15-1 (2017). Rodriguez has never disputed that she voluntarily quit Kinler, with two weeks’ notice, to take a different job, and she has not complained of any mistreatment by Kinler. Under these circumstances, regardless of any initial confusion by the DWD’s claims investigator, Rodriguez was not entitled to unemployment benefits related to Kinler. The Review Board did not abuse its discretion in rejecting Rodriguez’ additional evidence, and it did not err in affirming the ALJ’s decision.

Conclusion

[34] For the reasons stated above, we affirm the judgment of the Review Board.

[35] Judgment affirmed.

Brown, J., and Tavitas, J., concur.