

## 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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### APPELLANT PRO SE

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## IN THE COURT OF APPEALS OF INDIANA

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K.J.,  
*Appellant,*

v.

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

July 29, 2022

Court of Appeals Case No.  
22A-EX-751

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

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

Trial Court Cause No.  
22-R-796

**Brown, Judge.**

- [1] K.J., *pro se*, appeals a decision of the Review Board of the Indiana Department of Workforce Development (the “Board”). We affirm.

***Facts and Procedural History***

- [2] In a letter to K.J. dated January 27, 2022, an administrative law judge (“ALJ”) provided a summary of the case indicating that K.J. filed an appeal on October 13, 2021, of a claims investigator’s determination, the ALJ conducted a hearing on January 25, 2022, K.J. testified by telephone, and Northshore Health Centers, Inc., K.J.’s former employer, did not participate. The letter stated that “the appeal is not timely filed and this case is dismissed.” Appellee’s Appendix Volume II at 3. The letter stated:

The determination of eligibility was electronically sent to the claimant on October 1, 2021. Claimant received the determination of eligibility in her Uplink account on October 1, 2021. The tenth day after the determination of eligibility was delivered to Claimant fell on a legal holiday, Columbus Day. The next regular business day of the Department was October 12, 2021. Claimant filed her appeal on October 13, 2021. Claimant did not file the appeal by the deadline of October 12, 2021. Therefore, the appeal is not timely filed and this case is dismissed.

*Id.* Under the heading “Decision,” the letter states: “The Department’s initial determination dated October 1, 2021 is affirmed. Claimant did not file a timely

appeal. The claimant voluntarily left employment without good cause in connection with the work.”<sup>1</sup> *Id.* (capitalization omitted).

- [3] In a letter dated February 1, 2022, K.J. asserted that she was appealing the decision and argued that she did not abandon her job but did not assert that her October 13, 2021 appeal was timely. On March 18, 2022, the Board entered a decision adopting and incorporating by reference the findings of fact and conclusions of law of the ALJ and affirming the ALJ’s determination.

### *Discussion*

- [4] K.J. contends that she is “arguing the denial of the appeal for late submittal and the denial of unemployment benefits.” Appellant’s Brief at 5. She asserts that there was no evidence that she abandoned her job. The Board asserts that, in her appeal to the Board, K.J. argued the merits of her termination but not the timeliness of her appeal from the determination of eligibility and she “waived any contention that her appeal was timely by failing to present that argument.” Appellee’s Brief at 6. It also asserts K.J. failed to present cogent reasoning supported by citations to relevant authorities and the record. It contends that K.J. failed to preserve any challenge to the sufficiency of the evidence supporting the ALJ’s findings by failing to request a transcript of the hearing. It further argues that, waiver aside, this Court should affirm because K.J.’s appeal was untimely.

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<sup>1</sup> The record does not contain a copy of the October 1, 2021 determination.

[5] We note that K.J. is proceeding *pro se*. Such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Martin v. Hunt*, 130 N.E.3d 135, 136 (Ind. Ct. App. 2019) (citing *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*). This Court will not “indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal.” *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 679 n.1 (Ind. Ct. App. 2009) (citation omitted), *reh’g denied, trans. denied*.

[6] K.J. does not cite to any caselaw, statutes, or to the record in the argument section of her brief. *See* Ind. Appellate Rule 46(A)(8) (providing 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”); Ind. Appellate Rule 22(C) (providing that “[a]ny factual statement shall be supported by a citation to the volume and page where it appears in an Appendix, and if not contained in an Appendix, to the volume and page it appears in the Transcript or exhibits”). We note that K.J. did not file an appendix.<sup>2</sup> *See* Ind. Appellate Rules 49, 50. Also, K.J. did not request a transcript of the January 25, 2022 hearing. Under these circumstances, we conclude that K.J. has waived her arguments. *See Price*

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<sup>2</sup> The Review Board filed an Appellee’s Appendix.

*v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 2 N.E.3d 13, 16 (Ind. Ct. App. 2013) (holding the claimant's brief did not present cogent argument related to one of her claims and she waived the claim for appellate review); *Lifeline Youth & Fam. Servs., Inc. v. Installed Bldg. Prod., Inc.*, 996 N.E.2d 808, 814-815 (Ind. Ct. App. 2013) (holding that appellant waived any argument where it relied on evidence presented during the trial when appellant did not request transcription of the trial pursuant to Ind. Appellate Rule 9(F)(5)).

[7] Waiver notwithstanding, to the extent K.J. mentions that she is “arguing the denial of the appeal for late submittal,” Appellant’s Brief at 5, we cannot say that reversal is warranted. The standard of review on appeal of a decision of the 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. Review Bd. of Ind. Dep't of Workforce Dev.*, 958 N.E.2d 1136, 1139 (Ind. 2011). Ultimate facts are facts that involve an inference or deduction based on the findings of basic fact. *Id.* Where such facts are within the special competence of the Board, the Court will give greater deference to the Board’s conclusions, broadening the scope of what can be considered reasonable. *Id.*

[8] Ind. Code § 22-4-17-2(e) provides:

In cases where the claimant’s benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of the claim, the eligibility of the claimant for waiting period credit or benefits, or the

imposition of a disqualification period or penalty, or the denial of the claim, and of the cause for which the claimant left the claimant's work, of the determination and the reasons for the determination.

Ind. Code § 22-4-17-2(f) provides in relevant part that “unless the claimant . . . , within ten (10) days after the notification required by subsection (e), was sent by the department to the claimant . . . , asks for a hearing before an administrative law judge, the decision shall be final and benefits shall be paid or denied in accordance with the decision.” *See also* 646 Ind. Admin. Code 5-10-19 (addressing the computation of time and providing that “[r]esponses filed outside of a time period computed pursuant to this section will be considered to be untimely”).

[9] In its January 27, 2022 letter, the ALJ found that the determination of eligibility was electronically sent to K.J. on October 1, 2021, she received the determination in her Uplink account that same day, the tenth day after the determination of eligibility was delivered to K.J. fell on a legal holiday, Columbus Day, the next regular business day was October 12, 2021, and K.J. failed to file her appeal until October 13, 2021. The ALJ's findings, which were adopted and incorporated by the Board and which K.J. does not challenge, support the conclusion that K.J.'s appeal was untimely.

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

[11] Affirmed.

Mathias, J., and Molter, J., concur.