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

Cornelius Redmond,
Appellant-Petitioner,

v.

Review Board of the Indiana Department of Workforce Development,
Appellee-Respondent

May 20, 2022

Court of Appeals Case No. 21A-EX-1780

Appeal from the Review Board of the Department of Workforce Development

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

Trial Court Cause No. 21-R-3751

May, Judge.

[1] Cornelius Redmond[1] appeals the decision of the Review Board ("Review Board") of the Indiana Department of Workforce Development ("Department"), which affirmed Administrative Law Judge ("ALJ") Curtis Foulks's decision adverse to Redmond. Redmond asserts he was denied a fair hearing and should be eligible to receive Pandemic Unemployment Assistance ("PUA"). On cross-appeal, the Review Board asserts: (1) Redmond waived his arguments for appeal, and (2) the Review Board's affirmation of the ALJ's decision was not erroneous. We affirm.

Facts and Procedural History

[1] On October 2, 2020, a claims investigator for the Department determined Redmond was ineligible for PUA from April 4, 2020, through December 26, 2020. Redmond timely filed for an appeal of the investigator's determination. The Department set a hearing about Redmond's eligibility for PUA on February 2, 2021, at 10:30 a.m. and mailed notice of the telephonic hearing to the parties. On February 2, 2021, AJL Natalya Cross called the number

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[1] Identities of unemployment claimants "are generally subject to the confidentiality requirements prescribed in Indiana Code Section 22-4-19-6(b)." *Recker v. Review Bd. of Ind. Dep't of Workforce Dev.*, 958 N.E.2d 1136, 1139 n.4 (Ind. 2011). The confidentiality requirement is implemented into judicial proceedings by Indiana Administrative Rule 9(G)(1), which also provides the information needs only be kept confidential if the parties took steps to restrict public access. *See* Adm. R. 9(G)(1.2). Herein, where Redmond has identified himself on his briefs and not requested his identity remain confidential, we refer to him by his full name, rather than with initials. *See Recker*, 958 N.E.2d at 1139 n.4 (explaining why court used appellant's full name).

provided by Redmond on his appeal request, but the call went to his voicemail. ALJ Cross left the following message:

> Hello, this is Administrative Law Judge Cross, calling for Mr. Cornelius Redmond, for the Unemployment Insurance Appeals hearing that was scheduled for today, February 2nd, 2021, at 10:30 a.m. It is now 10:32 a.m. It is not possible for you to call into the hearing, so I will call you back in approximately fifteen minutes to see if you are able to participate. If I am unable to reach you after the second attempt, this appeal will be dismissed. Thank you.

(Tr. Vol. II at 3) (superscript in original). ALJ Cross called him again fifteen minutes later, and Redmond did not answer. Accordingly, ALJ Cross dismissed Redmond's appeal.

[2] Redmond timely appealed ALJ Cross's dismissal to the Board and asserted he had not received notice of the telephonic hearing. The Board found Redmond had created a genuine issue of fact about notice, and it remanded Redmond's case for a new ALJ to hold a hearing and determine whether Redmond had good cause for missing the hearing with ALJ Cross. The Order also provided:

> If the Claimant proves that he had good cause for failing to participate in the Administrative Law Judge's hearing, the Appellate Division must vacate Administrative Law Judge Cross's dismissal and hold a hearing to allow both parties an opportunity to participate in a hearing on the merits. If the Claimant does not prove that he had good cause for failing to participate in the Administrative Law Judge's hearing, the new Administrative Law Judge shall reissue Administrative Law Judge Cross's dismissal of the Claimant's appeal.

(Ex. Vol. at 17.)

[3] The Department scheduled the new hearing for June 14, 2021, at 9:15 a.m. and mailed notice to the parties. Redmond called the number provided in the notice to report the telephone number at which the ALJ could reach him on June 14. ALJ Curtis Foulks called Redmond's phone number at 9:17 a.m. on June 14, and the call went to voicemail. ALJ Foulks left a message indicating he was calling from the Department of Workforce Development for the hearing about Redmond's unemployment benefits, he would call again at 9:30 a.m., and the appeal would be dismissed if Redmond was not available at that time. When ALJ Foulks called a second time, Redmond again did not answer. Based thereon, ALJ Foulks determined Redmond did not have good cause for failing to participate in the February hearing with ALJ Cross, and ALJ Foulks reissued ALJ Cross's dismissal of Redmond's appeal of the denial of his request for PUA. Redmond timely appealed to the Board, and the Board affirmed ALJ Foulks's decision.

Discussion and Decision

[4] The State cross-appeals to assert Redmond has waived any argument he could have raised on appeal by providing an argument section that cites neither legal authority nor the record on appeal. The Argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal

relied on[.]" Ind. Appellate Rule 46(A)(8)(a). "It is not sufficient for the argument section that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support." *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014) (waiving three arguments that had neither cogent reasoning nor citation to authority), *trans. denied*. Moreover, when "a party refers to facts without citation to designated *evidence* in support of those facts, we need not consider those facts." *Reed v. City of Evansville*, 956 N.E.2d 684, 688 n.1 (Ind. Ct. App. 2011) (emphasis in original), *trans. denied*. Failure to abide by Appellate Rule 46(A)(8) has often resulted in waiver of arguments on appeal. *See*, *e.g.*, *Shields v. Town of Perrysville*, 136 N.E.3d 309, 312 n.2 (Ind. Ct. App. 2019) (finding, in part, argument waived because Shields failed to cite any legal authority to support contention that trial court erred). Though Redmond's argument is waived for appeal, we address the merits briefly to explain why we cannot give him the relief he requests.

[5] Redmond appeals the Review Board's affirmation of a decision by the ALJ.

> Upon appeal of a Review Board decision, we utilize a two-part inquiry into the sufficiency of the facts sustaining the decision and the sufficiency of the evidence sustaining the facts. Under this standard, we review determinations of basic underlying facts, conclusions or inferences from those facts, and conclusions of law. Any decision of the review board shall be conclusive and binding as to all questions of fact. Therefore we neither reweigh the evidence nor judge the credibility of witnesses, we consider only the evidence most favorable to the Review Board's findings of basic fact, and we accept those findings if they are supported by substantial evidence. As to inferences of ultimate fact, we determine whether the Review Board's finding of ultimate fact is

> a reasonable one. Finally, we review conclusions of law de novo, assessing whether the Review Board correctly interpreted and applied the law.

S.S. v. Review Bd. of Ind. Dep't of Workforce Dev., 941 N.E.2d 550, 554 (Ind. Ct. App. 2011) (internal citations and quotations omitted), *reh'g denied*.

[6] The Review Board adopted and incorporated the findings entered by the ALJ on June 14, 2021. Those findings stated:

> The party who requested the appeal failed to participate in the appeal hearing scheduled on Monday June 14, 2021.
>
> Two telephone calls were placed by the Administrative Law Judge to the telephone number that was called in by the Claimant, voicemail was reached on both attempts.

(Ex. Vol. at 30.) Redmond does not challenge the veracity of those findings, which is proper, as our review of the record suggests any such challenge would be futile.

[7] Instead, Redmond asserts he wanted to participate in the appeal hearing on June 14, 2021, and he "received 2 phone calls from the administrative law judge but it was not at the accurate time that was stated and I didn't know the number that they were calling from." (Appellant's Br. at 3.) On reply, Redmond further explains that he was not responsible for missing the telephone hearing because the ALJ was to call at 9:30 a.m., but the ALJ did not call until 9:33 a.m., which was "not the exact time as scheduled[.]" (Appellant's Reply Br. at 5.)

[8] While the Indiana Code requires parties to disputes over unemployment benefits to have a "reasonable opportunity for a fair hearing," Ind. Code § 22-4-17-3(a), that hearing may occur by telephone. *See* Ind. Code § 22-4-17-8.5(b)(1) (providing ALJ may hold hearing by telephone if claimant is not located in Indiana).[2] Moreover, "a party to an unemployment hearing may voluntarily waive the opportunity for a fair hearing where the party received actual notice of the hearing and failed to appear at or participate in the hearing." *Art Hill, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 898 N.E.2d 363, 367 (Ind. Ct. App. 2008). We have followed that rule when failure to appear was caused by poor cell phone reception, *Wolf Lake Pub, Inc. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 930 N.E.2d 1138, 1142 (Ind. Ct. App. 2010), and when caused by confusion about the time zone. *S.S.*, 941 N.E.2d at 555.

[9] We see no logical reason for a different result in this circumstance. The Notice for the hearing on June 14, 2021, informed Redmond that: "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." (Ex. Vol. at 19.) In addition, the Notice explained:

> **Telephone Considerations**: If your Notice of Hearing indicates your hearing is by telephone, these considerations apply. If your telephone disconnects during the hearing, the judge will attempt

[2] Redmond lives in Illinois.

> to call you back. Please speak clearly during the hearing. Try to be in a quiet area where you will not be interrupted. If you use a cell phone or cordless phone, you must have adequate minutes, a fully charged battery, and good reception. The judge's number may not display on your caller ID, or may show as "private", "blocked", or from another state. Disable Privacy Manager and similar screening devices prior to the hearing. Do not interrupt when others are speaking. The judge may dismiss your case if the party who filed the appeal cannot be reached within fifteen (15) minutes of the scheduled start time of your hearing. The judge may be behind in their hearing schedule, so please be patient. If you do not have a telephone, ask a friend or a neighbor if you may use theirs. You may also visit your local WorkOne center to use their telephone. You cannot call in and be connected to a hearing that is already in progress.

(*Id*. at 21) (emphases in original). Redmond's failure to read the instructions, adjust his telephone privacy settings, or accept the calls that came two or three minutes later than the scheduled times did not deprive Redmond of a fair hearing, because those factors were within Redmond's control. *See Bailey v. Review Bd. of Ind. Dep't of Workforce Dev.*, 132 N.E.3d 386, 391 (Ind Ct. App. 2019)) (affirming dismissal because "matters within the control of the party that prevent them from participating in a hearing do not deprive that party of a fair hearing" and claimant's "voluntarily fail[ure] to participate in the hearing" was not a due process violation).

Conclusion

[10] Although Redmond waived his argument for appeal by failing to cite authority or the record on appeal, we nevertheless determine Redmond was not denied

his due process right to a fair hearing. Redmond failed to answer his telephone when the ALJ called him for a hearing about whether Redmond had good cause for missing the prior hearing regarding Redmond's request for PUA. As Redmond has not demonstrated error by the Review Board's adoption of the ALJ's findings of fact and dismissal of Redmond's appeal of the claim investigator's decision, we affirm.

[11] Affirmed.

Riley, J., and Tavitas, J., concur.