

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.



APPELLANT PRO SE

David Budd
New Albany, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Supervising Deputy Attorney
General
Indianapolis, Indiana

Jay R. S. Parks
Review Board Staff Attorney
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

David Budd,
Appellant,

v.

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

March 28, 2022

Court of Appeals Case No.
21A-EX-1170

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

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

Review Board No.
21-R-1897

Brown, Judge.

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

Facts and Procedural History

[2] On June 9, 2020, a claims investigator with the Adjudication Center of the Indiana Department of Workforce Development (“DWD”) issued a determination which stated “during the week ending 04/11/2020 the claimant earned wages that were more than the weekly benefit amount,” “benefits are suspended as shown below,” and “your benefits for week ending 04/11/2020 are not payable as your deductible income exceeds your weekly benefit amount.” Exhibits at 3 (capitalization omitted). The determination stated that it would become final on June 19, 2020, if not appealed and provided instructions to appeal. On September 3, 2020, Employee sent an email to DWD appealing the Adjudication Center’s determination. Employee’s email contained a phone number under his name.

[3] On March 24, 2021, DWD sent a Notice of Telephone Hearing to Employee stating that a hearing by telephone was scheduled for “April 7, 2021 at 9:00 AM Indianapolis time.” *Id.* at 18. The notice stated the issues were “[w]hether the Claimant filed a timely appeal” and “[w]hether the claimant is receiving or has received deductible income.” *Id.* The notice also attached hearing instructions which stated in part: “Contact Number: Return the enclosed Acknowledgment Sheet or call the Appeals office to provide ONE contact number to reach you. If your hearing is by telephone, this is the number the judge will call for the

hearing. . . . Provide your contact number by telephone, mail, fax, or in person AT LEAST 24 hours prior to the hearing.” *Id.* at 20.

[4] On April 7, 2021, the ALJ held the scheduled hearing. The ALJ stated the parties did not submit a telephone number for the hearing. He stated there was a number on Employee’s appeal. The ALJ then called the number and left a voicemail which stated: “I’m an Administrative Law Judge with [DWD], calling regarding a hearing for [Employee]. It’s 9:21 am. I’ll try to call back in a few minutes to see if anyone’s available.” Transcript Volume II at 3. The ALJ called the number a second time and left a voicemail which stated: “I’m an Administrative Law Judge with [DWD], calling regarding a hearing for [Employee]. It’s 9:28 a.m. This is the second phone call that’s been placed. I am going to issue an order dismissing the appeal at this point. A copy of that will be mailed out to all parties.” *Id.* The ALJ issued a Notice of Dismissal on April 7, 2021. The decision stated: “The party who requested the appeal failed to participate in the appeal hearing scheduled on . . . April 7, 2021. The claimant did not submit a telephone number for the hearing. The number on the appeal . . . was called at 9:22 am and 9:28 am. Each call was answered by voicemail. The [ALJ], therefore, dismissed the appeal.” Exhibits at 27.

[5] On April 16, 2021, Employee filed a letter appealing the decision of the ALJ to the Board.¹ On May 21, 2021, the Board issued a decision affirming the decision of the ALJ and adopting the ALJ’s findings of fact and conclusions of law. Employee now appeals the Board’s decision.

Discussion

[6] 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*.

[7] Employee, *pro se*, states the issue “is whether the claimant became an employee on 4/12/2020 or in the previous week ending 4/11/2020 as claimed by IDWD.” Appellant’s Brief at 3. Under a heading titled “Reasons for Past Decisions,” Employee states “I received a spam call to which I never answer.

¹ In his letter, Employee argued that his first day of work for the employer was on April 12, 2020. The letter also stated:

P.S. I apologize for missing my court time. . . . I was sleeping when the Judge called. . . . Well I was dead asleep. My phone rings and it says “spam.” So I ignore it. Then it rings again, spam again. Then I got a notification saying I got voicemail – it was the Judge. I called immediately but the line was DWD. Oh well, this is how I know I have to send in this appeal.

Appellee’s Appendix Volume II at 5.

Now I also work nights so I sleep during the day. Well I received 2 spam calls. I am half asleep, but I did decide to see if a voice mail was left. Sure enough it was [the ALJ] - I returned the call immediately but got IDWD. They just said I have to appeal.” *Id.* at 4. In his summary of argument, Employee states “I want to know why IDWD never contacted [employer] Human Resources for my employment verification,” “[i]nstead IDWD uses erroneous numbers to calculate earnings and insinuate I worked the days of 4/9/20 (Thursday) and 4/10/20 (Friday) for 23.70 hours. Why?,” and “[a]lso 23.70 hours breaks down to working two 12 hour shifts – never happened.” *Id.* at 5. He further states: “Example – IDWD says I earn \$15.00 per hour – [employer’s] pay rate at that time was 17.50 per hour. Because night shift and Covid,” “Example – IDWD guessed I was working 12 hour shifts. Yet [employer] hired me for 10 hour shifts,” “Example – IDWD calculating that I worked days on Thursday and Friday. [Employer] hired me to work nights, Sunday through Wednesday. Four days at 10 hour night shifts. NOT Thursday or Friday,” and “Summarizing IDWD has no facts to even have this case in court.” *Id.* In his “Argument/Conclusion” section, Employee states “Day 1 at [employer] was 4/12/2020. Also on 4/12/2020, [employer] gave me an [employer] badge,” “[t]he badge allows entry into the building, but also tracks all work and movement in the building,” “this is a very simple case,” “[a]t issue is the date of hire. To which [employer] has supplied all the necessary documents for verification,” and “[p]lease reverse judgment, I did nothing wrong.” *Id.* at 6.

- [8] The State maintains that Employee has waived his claim by failing to present a cogent argument and that, waiver aside, the Board did not deny Employee a reasonable opportunity for a fair hearing. We agree.
- [9] We find that Employee has not presented a cogent argument on appeal. The majority of the statements in Employee's briefs do not address the ALJ's dismissal of his appeal. *See Price 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 her claims and as such she waived the claim for appellate review).
- [10] Further, waiver notwithstanding, to the extent Employee suggests he was denied due process, reversal is not warranted. On March 24, 2021, DWD sent a Notice of Telephone Hearing to Employee stating that a hearing by telephone was scheduled for 9:00 a.m. on April 7, 2021, and the notice attached hearing instructions. Employee does not argue that he did not receive the Notice of Telephone Hearing or the attached instructions or that the phone number provided in his September 3, 2020 email was not his phone number. The record reveals that the ALJ called the phone number for Employee two times and Employee did not answer the calls. The ALJ left a voicemail at approximately 9:21 a.m. which stated that he would call again a few minutes later, and then the ALJ called the phone number again at 9:28 a.m. Employee acknowledged, both in his April 16, 2021 letter to the Board and in his appellant's brief, that his phone rang two times and he did not answer. The record supports the conclusion that Employee received notice of the April 7,

2020 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*).

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

[12] Affirmed.

May, J., and Pyle, J., concur.