MEMORANDUM DECISION

APPELLANT PRO SE

N.D.
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IN THE
COURT OF APPEALS OF INDIANA

N.D.,

Appellant,

v.

Review Board of the Indiana Department of Workforce Development,

Appellee.

November 7, 2022

Court of Appeals Case No. 22A-EX-768

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

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

Review Board No. 22-R-336

Weissmann, Judge.

[1] N.D. alleges that the determination by the Review Board of the Indiana Department of Workforce Development that she is ineligible for unemployment benefits is contrary to law. We disagree and affirm the Review Board's order.

Facts

[2] N.D. worked for the conglomerate 3M as a full-time general operator. 3M has an employee attendance policy that lays out a system where employees receive "points" for unexcused absences from work. An employee who receives 6 or more points over a twelve-month period is terminated. Employees receive a verbal warning after accumulating 3 points, a written warning at 4 points, and a final warning at 5 points. When N.D. started work, she received a written copy of this attendance policy and signed an acknowledgment that she reviewed the policy and received training on its provisions.

[3] 3M let N.D. go after she received 9 absence points. Right before she was discharged, however, N.D. only had 3½ points. N.D. suddenly acquired another 5½ points all at once when her pending requests for excused absences under the Family and Medical Leave Act (FMLA) were denied.[1] The third-party administrator in charge of evaluating FMLA absences rejected N.D.'s

[1] 3M's employee manual describes the FMLA as providing "up to 12 or 26 weeks of job protected leave to eligible employees for certain family, medical and military leave related reasons . . . . [A]bsences covered by the FMLA, whether paid or not, will not be counted against an employee for purposes of disciplinary actions." Exhs., p. 36; *see generally* 29 U.S.C. § 2601 *et seq*.

claims because she had exceeded the cap on hours for FMLA absences and provided insufficient paperwork describing the need for the absence.

[4] A month after her discharge, the Department of Workforce Development denied N.D.'s claim for unemployment benefits, finding 3M discharged her for "just cause." Exhs., p. 50. Under Indiana law, an employee discharged for "just cause" is ineligible for unemployment benefits. Ind. Code § 22-4-15-1(a). N.D. quickly appealed this determination to an Administrative Law Judge (ALJ).

[5] The ALJ held a fact-finding hearing. From evidence gathered at the hearing, the ALJ determined that N.D.'s managers had inaccurately advised N.D. about claiming FMLA excused absences and so 2½ points were improperly attributed to her. But as this still left N.D. with 6½ points—more than the 6 needed for termination—the ALJ concluded that N.D. had been discharged for just cause and therefore ineligible for unemployment benefits.

[6] N.D. appealed the ALJ's ruling to the Review Board, which adopted the ALJ's factual findings and affirmed. N.D. now appeals the Board's ruling.

Discussion and Decision

[7] N.D., proceeding pro se, asks us to reverse the Review Board's denial of her unemployment benefits as contrary to law. We disagree and do not find the Review Board's decision contrary to law.

[8] The Review Board's decision is reviewed on appeal through a two-part inquiry into whether the facts support the decision and whether the evidence supports

the facts. *J.M. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 975 N.E.2d 1283, 1286 (Ind. 2012) (applying Ind. Code § 22-4-17-12(f)). Appellate courts do not reweigh evidence nor judge the credibility of witnesses. *Id.* The Review Board acts as the "ultimate factfinder" whose determination of the facts is "conclusive and binding." *Russell v. Rev. Bd. of Ind. Dep't of Emp. & Training Servs.*, 586 N.E.2d 942, 946 (Ind. Ct. App. 1992); Ind. Code § 22-4-17-12(a). The Review Board's decision will be reversed "only if there is no substantial evidence to support the Board's findings." *J.M.*, 975 N.E.2d at 1286 (citing *McClain v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1317 (Ind. 1998)).

[9] The Review Board correctly determined that 3M discharged N.D. for just cause and thus rendered her ineligible for unemployment benefits. An employee may be terminated for just cause by committing a "knowing violation of a reasonable and uniformly enforced rule of an employer, *including a rule regarding attendance*." Ind. Code § 22-4-17-12(f) (emphasis added). As found by the ALJ and affirmed by the Review Board, that standard was met here. 3M's attendance policy lays out the system governing absences and the penalties for accruing them. *See* Exhs., pp. 34-42. It provides for notice of an employee's absences before termination and N.D. does not allege it is not uniformly enforced. N.D. received both a copy of the policy and training on its enforcement and use.

[10] Yet N.D. claims she did not knowingly violate the attendance policy. For an employee to "knowingly" violate a rule, she must "(1) know of the rule; and (2) know [her] conduct violated the rule." *Stanrail Corp. v. Rev. Br. of Dep't of*

Workforce Dev., 735 N.E.2d 1197, 1203 (Ind. Ct. App. 2000). N.D. asserts she was unaware of her approaching termination because she did not receive a written warning when she accrued 4 points or a final warning when she accrued 5 points. Instead, 3M discharged her in violation of its absence warning policy when, due to the denial of her FMLA claims, her point total instantly jumped from 3½ points to more than the 6 points needed for termination. Her argument is unpersuasive.

[11] N.D. knew the rules of 3M's attendance policy and that her actions violated them. At the factfinding hearing, 3M's representative testified that employees are responsible for tracking their absence hours. Tr. Vol II, p. 64. N.D. did not dispute this in her testimony at the hearing and the ALJ subsequently adopted it in his decision. Exhs., p. 50. And sufficient evidence in the record shows N.D. did exceed the cap on FMLA hours. *Id.* at 49; Tr. Vol. II, pp. 59. In summary, N.D. knew, or should have known, that her requested absences under the FMLA would be denied for exceeding the cap. She thus knowingly violated 3M's attendance policy and 3M discharged her for just cause. N.D.'s attempt to recharacterize the issue as 3M disregarding the attendance policy's rules is misplaced because N.D.'s own knowing violation of the rules prevented her from receiving the warnings.

[12] We affirm the Review Board's determination that N.D. is ineligible for unemployment benefits.

May, J., and Crone, J., concur.