

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

L.W.,
Appellant-Petitioner,

v.

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

October 14, 2022

Court of Appeals Case No.
22A-EX-1081

Appeal from the Review Board of
the Department of Workforce
Development

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

Trial Court Cause No.
22-R-1644

Robb, Judge.

[1] From 2010 to 2012, L.W. claimed unemployment benefits for several different periods that she described as fall, winter, spring, and summer breaks from her employment as a bus monitor. In 2013, the Indiana Department of Workforce Development (“DWD”) determined L.W. had received benefits to which she was not entitled by failing to disclose or misrepresenting material facts in filing her claims. L.W. was assessed an overpayment and penalties. The written determination was mailed to L.W. on April 22, 2013.

[2] In September 2021, L.W. appealed the overpayment decision by sending a letter to the “Appeals Dept.” in which she essentially acknowledged that she had notice of the decision in 2013. *See* Appellee’s Appendix, Volume 2 at 6 (letter stating, “I’m writing to appeal the overpayment that was filed in the year of 2013. This overpayment is an overpayment *that I have been trying to resolve since then.*”) (emphasis added). An Administrative Law Judge (“ALJ”) held a telephonic hearing and issued a written ruling dismissing L.W.’s appeal as untimely. L.W. appealed the ALJ’s ruling, and the Review Board adopted and affirmed the decision of the ALJ without holding a hearing or accepting additional evidence. L.W. now appeals the Review Board’s decision to this court.¹

¹ The Review Board argues that L.W.’s appeal should be dismissed for failure to follow the Appellate Rules, specifically the rule requiring an argument to be supported by cogent argument. *See* Brief of Appellee at 9-10. We hold pro se litigants to the same standard as trained attorneys. *T.B. v. Rev. Bd. of Ind. Dep’t of Workforce*

[3] Here, the Review Board adopted the ALJ's legal conclusion that L.W.'s appeal was untimely. A determination that an appeal was untimely is a legal conclusion. *Cunningham v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 913 N.E.2d 203, 206 (Ind. Ct. App. 2009). We review the legal conclusions of the Review Board de novo and assess whether the Board "correctly interpreted and applied the law." *Whiteside v. Ind. Dep't of Workforce Dev.*, 873 N.E.2d 673, 675 (Ind. Ct. App. 2007).

[4] The DWD determined on April 22, 2013, that when applying for unemployment benefits L.W. had failed to disclose or had misrepresented material facts that would have disqualified her or made her ineligible for benefits and that she was therefore required to repay the overpayment plus penalties. A copy of the determination was mailed to L.W. on that same date. Pursuant to Indiana Code section 22-4-13-1.1(c), that determination was an initial determination for purposes of section 22-4-17-2(a) and was subject to the hearing and review provisions of that chapter. Indiana Code section 22-4-17-2(a) states that an initial determination shall be final unless, within ten days

Dev., 980 N.E.2d 341, 345 (Ind. Ct. App. 2012). Litigants' failure to support their arguments with cogent reasoning, legal authority, and citations to the record results in the waiver of the claims for our consideration. *Id.* And indeed, L.W. has followed virtually none of the appellate rules in drafting her brief or compiling the appendix. However, we prefer to decide issues on the merits, *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016), and L.W.'s noncompliance, although substantial, does not impede our consideration of the issue or require us to become an advocate on her behalf as the only issue involves a legal, not a factual, determination, *see Broxton v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 999 N.E.2d 1069, 1075 n.2 (Ind. Ct. App. 2014), *trans. denied*. Accordingly, we decline to decide this case on waiver.

after the determination was sent to the claimant, the claimant asks for a hearing before an ALJ.

[5] When a statute contains a requirement that an appeal be filed within a certain time, strict compliance with the requirement is a condition precedent to the acquiring of jurisdiction, and non-compliance with the requirement results in dismissal of the appeal. *Amico v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 945 N.E.2d 162, 164 (Ind. Ct. App. 2009). Although L.W. claims to have been “dealing with this for years now[,]” [Appellant’s Brief] at 7, there is no evidence that L.W. asked for a hearing in any manner within ten days of the April 22, 2013, initial determination and she does not argue otherwise in this appeal.

[6] Because there is no dispute that L.W. filed her appeal of the adverse determination by the DWD well beyond the statutorily prescribed ten-day time limit, the ALJ did not acquire jurisdiction over L.W.’s case and was unable to consider her underlying claim that she did not knowingly fail to disclose or misrepresent material facts when filing her unemployment claims a decade earlier. Dismissal was appropriate.

[7] Accordingly, the Review Board’s conclusion affirming the decision of the ALJ that L.W.’s appeal should be dismissed as untimely was a correct interpretation and application of the law and the Review Board’s decision is affirmed.

[8] Affirmed.

Mathias, J., and Pyle, J., concur.