

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

L.W.,
Appellant,

v.

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

June 23, 2023

Court of Appeals Case No.
23A-EX-427

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

The Honorable Gabriel Paul,
Chairman

The Honorable Larry A. Dailey,
Member

The Honorable Heather D.
Cummings, Member

Application No.
23-R-262

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] L.W. received overpayments of unemployment benefits and requested a waiver of her repayment obligations. The Review Board of the Indiana Department of Workforce Development (“Review Board”) determined that L.W. was ineligible for a waiver of her repayment obligations, and L.W. appeals that determination. We find that the Review Board’s determination was not unreasonable and, accordingly, affirm.

Issue

- [2] L.W. raises one issue on appeal, which we restate as whether the Review Board’s determination that L.W. was ineligible for a waiver of her repayment obligations was unreasonable.

Facts

- [3] The underlying facts of this case are largely set forth in L.W.’s related appeal, *L.W. v. Review Board of Workforce Development*, Case No. 22A-EX-1081, 2022 WL 7831148 (Ind. Ct. App. Oct. 14, 2022). To summarize, in April 2013, the Department of Workforce Development (“DWD”) determined that, when applying for unemployment benefits, L.W. knowingly underreported her earnings, which would have “disqualified her or made her ineligible for benefits” *Id.*, slip op. at 3. As a result, the DWD determined that L.W. was “required to repay the overpayment plus penalties.” *Id.* L.W. appealed the DWD’s overpayment determination in September 2021; however, because her appeal was untimely, the DWD’s determination was upheld. *See generally id.*
- [4] On September 20, 2021, L.W. filed a request for a waiver of her repayment obligations with the DWD. On March 31, 2022, the DWD claims investigator determined that L.W. was ineligible for a waiver because, as the DWD previously determined, L.W. underreported her earnings when applying for unemployment benefits, and was, therefore, “not . . . without fault” for the overpayments. Appellee’s App. p. 17. L.W. appealed the DWD’s determination to the Administrative Law Judge (“ALJ”).
- [5] The ALJ held a hearing on the matter and, on January 6, 2023, determined that, “because [L.W.] knowingly failed to disclose the fact that she was working and earning wages while receiving benefits,” L.W. “was at fault” for the receipt

of the overpayments. *Id.* at 52. Accordingly, the ALJ determined that L.W. was ineligible for a waiver of her repayment obligations.

[6] L.W. appealed, and the Review Board affirmed and adopted the ALJ's findings of fact and conclusions thereon. *Id.* at 2. L.W. now appeals.

Discussion and Decision¹

[7] L.W. challenges the Review Board's determination that she was ineligible for a waiver of her repayment obligations. We find no error with the Review Board's determination.

[8] Our review of the Review Board's determination 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.* (quoting *McClain v. State*, 693 N.E.2d 1314, 1317 (Ind. 1998)).

[9] Turning to the relevant statutes, Indiana Code Section 22-4-13-1(c) provides,

¹ We note at the outset that L.W. proceeds in this appeal pro se. It is well established that, in Indiana, "[a]n appellant who proceeds pro se is held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action." *See, e.g., McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 825 (Ind. 2017).

Any individual who knowingly:

- (1) fails to disclose amounts earned during any week in the individual's waiting period, benefit period, or extended benefit period;
- (2) fails, or causes another to fail, to disclose a material fact; or
- (3) falsifies, or causes another to falsify, a material fact;

that would disqualify the individual for benefits, reduce the individual's benefits, or render the individual ineligible for benefits or extended benefits, and as a result thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount. . . .

[10] Subsection (i), meanwhile, provides:

Liability for repayment of benefits paid to an individual (other than an individual employed by an employer electing to make payments in lieu of contributions) for any week may be waived upon the request of the individual if:

- (1) the benefits were received by the individual **without fault of the individual**;
- (2) the benefits were the result of payments made:
 - (A) during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; or

(B) because of an error by the employer or the department; and

(3) repayment would cause economic hardship to the individual.

[11] The Review Board urges, as a threshold matter, that L.W. has waived her challenge to the Review Board’s determination. Under the circumstances here, we are constrained to agree with the Review Board.

[12] First, L.W. does not present a coherent argument supported by authority. *See* Ind. App. R. 46(A)(8)(a) (requiring that the appellant’s argument be “supported by cogent reasoning” and “citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on”). L.W.’s argument section contains only three sentences, none of which discusses: (1) the Review Board’s findings of fact and conclusions thereon;² (2) the relevant statutory language; or (3) any other legal authority. We, thus, are unable to discern which aspect of the Review Board’s determination that L.W. claims is erroneous.

[13] Additionally, L.W. did not request a transcript of the proceedings, and as a result, we are left with an incomplete picture of the arguments made and evidence presented below. *See* Ind. App. R. 9(F)(5) (“If the appellant intends to

² Because the Review Board affirmed and adopted the ALJ’s findings of fact and conclusions thereon, we treat them as one and the same.

urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.”). L.W. appears to argue that she could not have been at fault for the overpayments because her unemployment card was stolen. Without the benefit of a transcript, however, it is impossible for us to determine whether that argument was presented to the Review Board. *See, e.g., Thalheimer v. Halum*, 973 N.E.2d 1145, 1150 (Ind. Ct. App. 2012) (observing that “an argument or issue not presented to the trial court is generally waived for appellate review” because the trial court “cannot be found to have erred as to an issue or argument that it never had an opportunity to consider” and because “an intermediate court of appeals, for the most part, is not the forum for the initial decisions in a case.” (quoting *GKC Ind. Theatres, Inc. v. Elk Retail Invs., LLC.*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2022))). Accordingly, we find that L.W.’s challenge is waived.

[14] Waiver notwithstanding, we cannot say that the Review Board erred. L.W. does not appear to challenge the finding that she underreported her earnings, and as a result, received overpayments of unemployment benefits. The ALJ determined that, based on that finding, L.W. was not without fault for the underpayments and was, therefore, ineligible for a waiver of her repayment obligations. The Review Board affirmed and adopted the ALJ’s determination.

[15] L.W. argues that requiring her to repay the DWD would cause her “economic hardship”; however, L.W. was still required to prove that she was “without fault” for the overpayments. *See* I.C. 22-4-12-1(i). The Review Board

determined that L.W. was not without fault, and we cannot say that the determination was unreasonable.

Conclusion

[16] The Review Board's determination that L.W. was ineligible for a waiver of her repayment obligations was not unreasonable. Accordingly, we affirm.

[17] Affirmed.

Bailey, J., and Kenworthy, J., concur.