

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andre Williams,
Appellant,

v.

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

July 13, 2022

Court of Appeals Case No.
21A-EX-2763

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

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

No. 21-R-5628

Bailey, Judge.

Case Summary

- [1] Andre Williams (“Williams”), appearing pro se, appeals the decision of the Indiana Department of Workforce Development Unemployment Insurance Review Board (“Review Board”) affirming the conclusion of law made by the Administrative Law Judge (“ALJ”) that Williams failed to timely appeal the June 23, 2020 denial of unemployment benefits for the week ending May 30, 2020. We address a consolidated and restated issue: whether the Review Board correctly determined that Williams’s appeal was untimely.¹ We affirm.

Facts and Procedural History

- [2] On April 30, 2020, Williams, who was then employed by Elwood Staffing, was injured. His treating physician cleared him to return to work on May 12, 2020, with the restriction that he could lift no more than fifteen pounds. Elwood Staffing informed Williams that there were no light duty positions available to him. Williams applied for, and was denied, worker’s compensation benefits. He obtained a light duty part-time position with another temporary

¹ Williams articulates an issue with respect to whether he received “equal protection of law” and was “given a fair trial guaranteed by the T4th [sic] Amendment of the U.S. Constitution & the T4th [sic] Amendment of the Indiana Constitution.” Appellant’s Brief at 2. In this regard, he asserts that he became homeless and was deprived of his livelihood guaranteed by the 14th Amendment. Otherwise, he fails to develop an argument supported by cogent reasoning and citation to relevant authority. He has thus waived this issue for appellate review. Ind. Appellate Rule 46(A)(8)(a). *See also Ramsey v. Review Bd. of Indiana Dep’t of Workforce Dev.*, 789 N.E.2d 486, 490 (Ind. Ct. App. 2003).

Williams also articulates issues with respect to his availability for work and whether he was involuntarily unemployed. The ALJ, whose decision was affirmed by the Review Board, did not make findings upon either of these bases.

employment agency, and also filed claims for unemployment benefits. After an initial denial, Williams was eventually awarded unemployment benefits for some weeks. Contending that the award was inadequate, Williams filed four statements of request to appeal, pertaining to four separate weeks in May of 2020. The instant matter concerns Case Number 1458862, pertaining to benefits eligibility for the week ending May 30, 2020.

- [3] On June 23, 2020, a claims investigator for the Indiana Department of Workforce Development determined that Williams was not entitled to unemployment benefits because he “was not able, available and actively seeking full-time work during the week ending 05/30/2020.” (Exhibits, pg. 3.) The investigator found, as to the circumstances of the case, that the claimant had self-reported having “medical restrictions” at the relevant time. (*Id.*) The stated “legal result of the case” was that Williams’s “benefits right[s] are suspended during the week ending 05/30/2020.” (*Id.*) Williams was notified of his right of appeal as follows:

This determination will become final on 7/6/2020 if not appealed. Either party may appeal this determination and request a hearing before an administrative law judge within ten days of the date this determination was sent.

(*Id.*)

- [4] Approximately one year later, on June 16, 2021, Williams pursued an appeal of the decision and requested a hearing before an ALJ. On August 25, the ALJ conducted a hearing at which Williams acknowledged that the issues before the

ALJ were his availability for work and the timeliness of his appeal. Williams testified, relating several challenges that he experienced in perfecting his appeal of the determination of the claims investigator.

- [5] On September 2, 2021, the ALJ issued a decision, affirming the denial of benefits for the week ending May 30, 2020, on grounds that Williams had failed to timely initiate his appeal. Williams then appealed to the Review Board. On November 4, 2021, the Review Board affirmed the decision of the ALJ without conducting an additional hearing. Williams now appeals.

Discussion and Decision

- [6] When an individual has filed an initial claim for unemployment benefits, Indiana Code Section 22-4-17-2(a) requires a “prompt determination of the individual’s status as an insured worker.” Subsection (d) requires that, in addition to the determination of insured status, a deputy must “determine the claimant’s eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant’s claim, and the cause for which the claimant left the claimant’s work[.]” Subsection (e) provides that, in disputed cases, the claimant and the employer must be promptly notified of the departmental determination and reasons therefor. In turn, subsection (f) provides that a party has ten days to appeal a determination of eligibility; otherwise, the order becomes final. If notice is served by United States mail, the party has an additional three days added to the time for appeal. Ind. Code § 22-4-17-14(c).

[7] When notice has been given by postal mail or electronic means, as permitted by 646 Ind. Admin. Code 5-10-19(a), it is presumed that the notice has been delivered unless there is tangible evidence of non-delivery (such as a return to the United States Post Office) or credible and persuasive evidence is submitted to establish non-delivery, delayed delivery, or mis-delivery. 646 I.A.C. 5-10-19(d). Although a decision of the review board is conclusive and binding as to all questions of fact, we review conclusions of law de novo, “assessing whether the Review Board correctly interpreted and applied the law.” *S.S. v. Review Bd. of Indiana Dep’t of Workforce Dev.*, 941 N.E.2d 550, 554 (Ind. Ct. App. 2011). The determination of a Review Board that an appeal was untimely under the governing statute is a legal conclusion.

[8] Here, the claims investigator’s determination of eligibility was sent on June 23, 2020. The notice indicated that the determination would become final on July 6, 2020, if not appealed. The determination was not appealed prior to July 6, 2020. Williams later testified that he had communication-related challenges (such as closure of the public library due to Covid and his lack of a personal smartphone or – at times – access to any personal phone) and he was uncertain of when he first learned of the adverse determination. He acknowledged that, by March of 2021, he knew about the determination. Even so, Williams did not appeal until June 16, 2021.

[9] Williams now contends that “the administrative law Judge misunderstood the claimant as to when he was told to appeal the weeks in May.” Appellant’s Brief at 6. According to Williams, the day he initiated his appeal – June 16,

2021 – was the first day that he was in a position to do so because it was the first day that he had all the relevant documents in his possession and the day he was first advised by a Workforce Development employee “how to appeal the weeks of May.” *Id.* But this assertion is inconsistent with Williams’s hearing testimony. Williams testified that he met with a claim adjuster’s supervisor in March of 2021 and the supervisor “was kind of advising [him] of how to correctly go about filing an appeal for those cases you named.” (Tr. Vol. II, pg. 9.) There was no evidence before the ALJ to indicate that the appeal was timely, and Williams has shown no error of law.

Conclusion

[10] The Review Board correctly determined that Williams’s appeal was untimely.

[11] Affirmed.

Najam, J., and Bradford, C.J., concur.