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.

ATTORNEYS FOR APPELLANT

Andrew Dutkaynch, III
Ryan Sullivan
Biesecker Dutkaynch & Macer, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika Prekopa Talbott
Deputy Attorney General
Indianapolis, Indiana

IN THE

COURT OF APPEALS OF INDIANA

M.R.,

Appellant-Petitioner,

v.

Review Board of the Indiana Department of Workforce Development,

Appellee-Respondent.

April 6, 2022

Court of Appeals Case No. 21A-EX-2373

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

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

No. 21-R-4685

Bradford, Chief Judge.

Case Summary

[1] In 2019, M.R. began working for PEO Landrum Professional Employer Services, Inc. ("Landrum") in a position at the Pensacola International Airport in Florida ("the Airport"), owned and operated by Pensacola, Florida ("the City").[1] After approximately thirteen weeks, M.R., who desired a full-time position with the City, was told by a City employee that the question of a full-time position was up to M.R.'s immediate supervisor. When M.R. inquired further, he was informed that he did not have the experience necessary for the position sought. M.R. left the position, and applied for unemployment benefits from Landrum. After a hearing before an administrative law judge ("ALJ"), M.R.'s request for benefits was denied, a decision affirmed by the Review Board of the Indiana Department of Workforce Development ("the Review Board"). M.R. contends that the evidence does not support some of the Review Board's findings and that its findings do not support its decision. Because we disagree, we affirm.

Facts and Procedural History

[1] M.R. is seeking unemployment benefits in Indiana related to employment that took place entirely within the State of Florida. M.R. notes in a November 11, 2020, "Appeal Letter" to the Department that he initially sought benefits in Florida before being denied on the basis that he "made more in wages in Indiana than here in Florida for 2019." Appellant's App. Vol. II p. 6. The Department does not claim that this is incorrect or argue that M.R. is ineligible for benefits on any basis other than the merits of his claim. In any event, any argument that the Department may have had related to the fact that the work in question was performed entirely within the State of Florida has been waived for failure to raise it in its Brief of Appellee. *See Briesacher v. Specialized Restoration & Const., Inc.*, 888 N.E.2d 188, 196 (Ind. Ct. App. 2008) ("[A]ny argument an appellant fails to raise in his initial brief is waived for appeal.") (citation omitted).

[2] In mid-September of 2019, M.R. accepted a temporary position with Landrum, working at the Airport. M.R.'s duties included patching holes in the streets after the installation of gas lines, and his understanding was that he could be offered a full-time position with the City after fifteen weeks. After M.R. had worked at the airport for approximately thirteen weeks, the "second-in-charge" with the City told him that the question of a permanent position was up to his immediate supervisor. Tr. Vol. II. p. 8. As it happens, the written job description for the full-time position M.R. sought with the City required one year of digging experience, which M.R. did not have, so when M.R. spoke with his supervisor's manager about the full-time position, the manager questioned him about his lack of required experience. The manager told M.R. that he needed to work for an additional thirty-nine weeks in a temporary position to meet the one-year requirement and even then, there would be no guarantee of a full-time position. On December 13, 2019, M.R. quit.

[3] M.R. applied for unemployment benefits from Landrum, and, on November 2, 2020, a claims investigator determined that he was ineligible for unemployment benefits. M.R. appealed, and on July 14, 2021, ALJ Conny Franken held an evidentiary hearing. Two days later, ALJ Franken affirmed the denial of M.R.'s application for benefits, and on September 24, 2021, the Review Board, incorporating by reference ALJ Franken's findings of fact and conclusions of law, affirmed.

Discussion and Decision

[4] The Indiana Unemployment Compensation Act ("the Act") provides benefits to those who are out of work through no fault of their own. *Giovanoni v. Review Bd. of Ind. Dep't of Workforce Dev.*, 927 N.E.2d 906, 908–09 (Ind. 2010). While one who voluntarily leaves employment without good cause is generally subject to disqualification for unemployment benefits, there are circumstances under which no disqualification results. *Brown v. Ind. Dep't of Workforce Dev.*, 919 N.E.2d 1147, 1151 (Ind. Ct. App. 2009). If an employer unilaterally changes agreed-upon employment terms, the employee may either accept the changes and continue working pursuant to the new terms or reject the changes and quit. An employee terminating employment under these circumstances may do so with good cause, but only if "the circumstances [are also] so unfair or unjust as to compel a reasonably prudent person to quit work." *Foley v. Review Bd. of Ind. Dep't of Workforce Dev.*, 167 N.E.3d 344, 348 (Ind. Ct. App. 2021) (citation omitted).

[5] We review decisions of the Review Board for legal error only; they are conclusive and binding as to all questions of fact. Ind. Code § 22-4-17-12(a); *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1316–17 (Ind. 1998). Judicial review of a Review Board decision is limited to "the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact." Ind. Code § 22-4-17-12(f); *see McClain*, 693 N.E.2d at 1317. Pursuant to this standard, (1) the Review Board's findings of basic fact are reviewed for substantial evidence; (2) its findings of ultimate fact—mixed questions of law and fact—are reviewed for reasonableness; and

(3) its legal propositions are reviewed de novo. *Chrysler Grp. v. Review Bd. of Ind. Dep't of Workforce Dev.*, 960 N.E.2d 118, 122–23 (Ind. 2012). This Court neither reweighs the evidence nor assesses witness credibility, and it considers "only the evidence most favorable to the [Review] Board's findings and, absent limited exceptions, treat[s] those findings as conclusive and binding." *Id.* at 122.

[6] Under the circumstances, M.R. has not established that the Review Board erred in denying him benefits. The Review Board found that the "second-in-charge" with the City told him that he *could* be offered a permanent job after fifteen weeks but that, when M.R. inquired further, he was told that he did not yet have the required one year of digging experience. M.R. seems to challenge the first finding, suggesting that the statement by the "second-in-charge" was equivalent to a promise of full-time employment. We conclude that the record supports the Review Board's finding. First, the only evidence heard in the case was M.R.'s testimony, and the ALJ and Review Board were under no obligation to credit any of it. In any event, M.R. himself testified that he was told that the question of him being offered a full-time position was up to his immediate supervisor. This testimony falls short of establishing a promise of future employment, as his immediate supervisor could have always changed his mind.

[7] We also agree with the Review Board's conclusion that the circumstances were not so unfair or unjust as to compel a reasonably prudent person to quit work. The Review Board found that because nobody with the City had promised M.R. a full-time position, he was not justified in believing that he had been

misled. Based on this finding, the Review Board concluded that a reasonably prudent person would not have quit simply because he was told that he did not yet have the required experience for the position sought. The Review Board concluded that M.R.'s reason for quitting was his personal desire not to work an additional thirty-nine weeks before becoming eligible for a full-time position with the City, not for "reasons or causes [that] are objectively related to the employment." *Brown*, 919 N.E.2d at 1151 (citation omitted). We agree that without proving (at the very least) that he was given a promise of full-time employment that was later broken, M.R. has failed to establish that the Review Board's conclusion is unreasonable. The facts are sufficient to sustain the Review Board's denial of M.R.'s application for unemployment benefits.

[8] The decision of the Review Board is affirmed.

Crone, J., and Tavitas, J., concur.