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IN THE COURT OF APPEALS OF INDIANA

Merrillville Apartments, LLC,
Appellant

v.

Review Board of the Indiana Department of Workforce Development, and D.W.,
Appellees.

January 30, 2023

Court of Appeals Case No. 22A-EX-780

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

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

Trial Court Cause No. 21-R-7243

Pyle, Judge.

Statement of the Case

[1] Merrillville Apartments ("Company") appeals the decision by the Review Board of the Indiana Department of Workforce Development ("the Review

Board") granting D.W.'s ("D.W.") unemployment benefits. Company argues that the Review Board erred when it granted D.W. unemployment benefits. Concluding that the Review Board did not err, we affirm its decision.

[2] We affirm.

Issue

Whether the Review Board erred when it granted D.W. unemployment benefits.

Facts

[3] D.W. worked as a leasing consultant for Company from August 2018 until March 2021. D.W.'s supervisor was Property Manager Sabrina Hill ("Manager Hill"). Company had trouble making purchases with credit. As a result, Manager Hill implemented a policy where employees would take payments addressed to Company from tenants and replace Company's name with their own, cash out the payment, and place the money in Manager Hill's desk for office use. In late 2019, while this policy was still in effect, D.W. received two money orders from tenant Sheila Dunnan ("Tenant Dunnan"). These money orders were addressed to Company. Pursuant to the policy, D.W. changed one of the money orders to her own name, cashed the money order at the bank, and placed the funds in Manager Hill's desk for use by the office.

[4] In early 2020, Company fired Manager Hill. Company's owner Dennis Sullivan ("Sullivan"), explained to D.W. that the prior policy should no longer be followed. D.W. did not cash any payments in her own name after she had

been told that the policy had changed. In January 2021, Tenant Dunnan, while reviewing her bank statements from October and November of 2019, noticed that one of her money orders to Company had been cashed out in D.W.'s name. Tenant Dunnan informed Company of this fact, and Company fired D.W. for theft in February 2021.

[5] In May 2021, D.W. filed a claim for unemployment benefits. In December 2021, Administrative Law Judge Cassandra Clark ("ALJ Clark") held a hearing to determine whether D.W. was entitled to unemployment benefits. Specifically, ALJ Clark held a hearing to determine whether D.W. had committed gross misconduct and if Company had fired D.W. for just cause. At the hearing, ALJ Clark heard the facts as set forth above.

[6] Additionally, Company's current manager Deahn Hicks-Smith ("Manager Hicks-Smith"), testified that Tenant Dunnan had reported that there was some suspicious activity involving her rent payments in 2019. Manager Hicks-Smith also testified that he had not worked at Company at the time of D.W.'s alleged offense and could not say what had happened. Manager Hicks-Smith also testified that D.W. had been fired for misappropriation of funds.

[7] D.W. also testified at the hearing. D.W. testified that Manager Hill had created the policy of cashing payments from tenants because Company's credit cards were regularly declined. D.W. further testified that Manager Hill had instructed her employees to cash payments from tenants that were addressed in Company's name in their own and place the funds in her office. D.W. testified

that the funds placed in Manager Hill's office had been used to pay venders, make copies, and purchase goods for events hosted by Company for its tenants. D.W. further testified that she had always placed the money and receipt in Manager Hill's office after cashing a payment from a tenant and had never stolen any money. Further, D.W. admitted to signing her name on one of Tenant Dunnan's payments but she explained that she had not kept any of the money that had been cashed out. D.W. also testified that after Manager Hill had been fired by Company, D.W. had spoken with Sullivan. In this discussion, Sullivan had instructed D.W. to no longer cash tenant payments in her name. D.W. testified that she had complied with the new policy change.

[8] Lorraine Wheeler ("Wheeler"), another employee of Company, also testified at the hearing. Wheeler testified that she had also worked at Company and had left in early 2020. Wheeler also testified that Manager Hill's policy was that employees were to cash payments from tenants addressed to Company in their own names and place the funds in Manager Hill's office. Wheeler also testified that D.W. had followed this policy. At the conclusion of the hearing, ALJ Clark found that D.W. had committed theft when she took payments made by Tenant Dunnan to Company and cashed them in her own name. ALJ Clark further found that D.W.'s claims that she had been directed to change the payments from Company to her own name "strained credulity." (App. Vol. 2 at 92). ALJ Clark found that D.W. was not entitled to unemployment benefits because Company had discharged D.W. for gross misconduct as defined by INDIANA CODE § 22-4-15-6.1(b). D.W. appealed to the Review Board.

[9] The Review Board, after reviewing the record, reversed ALJ Clark's decision and found that D.W. was entitled to unemployment benefits. Specifically, the Review Board first found that:

> The evidence on the record does not support a finding that [D.W.] committed theft when she cashed the money orders in question. [D.W.] did not exert unauthorized control over [Company]'s property with an intent to deprive [Company] of its value or use. [D.W.] cashed the money orders per the policy instituted by her supervisor. She then placed the money in [Company's] petty cash drawer to be used to purchase supplies needed by [Company]. [D.W.] did not commit theft. [Company] did not discharge [D.W.] for proven gross misconduct.

(App. Vol. 2 at 3). The Review Board also found that Company had not discharged D.W. for just cause because D.W. had not breached a duty reasonably expected of an employee to her employer. The Review Board explained that D.W. had followed a policy instituted by her supervisor, and when Company told D.W. to no longer follow said policy, she had complied.

[10] Company now appeals.

Decision

[11] Company argues that the Review Board erred when it found that D.W. was entitled to unemployment benefits. The Indiana Unemployment Compensation Act ("the Act") provides that any decision of the Review Board shall be conclusive and binding as to all questions of fact. IND. CODE § 22-4-17-12(a). When the Review Board's decision is challenged as contrary to law, the

reviewing court is limited to a two-part inquiry into: (1) the sufficiency of the facts found to sustain the decision; and (2) the sufficiency of the evidence to sustain the findings of fact. I.C. § 22-4-17-12(f). Under this standard, courts are called upon to review: (1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law. *Chrysler Group, LLC v. Review Bd. of Ind. Dep't of Workforce Dev.*, 960 N.E.2d 118, 122 (Ind. 2012). The Review Board's findings of basic fact are subject to a "substantial evidence" standard of review. *Id.* We neither reweigh the evidence nor do we assess the credibility of witnesses, and we consider only the evidence most favorable to the Review Board's findings. *Id.* The Review Board's conclusions as to ultimate facts involve an inference or deduction based on the findings of basic fact. *Id.* Accordingly, they are typically reviewed to ensure the Review Board's inference is "reasonable" or "reasonable in light of [the Review Board's] findings." *McClain v. Review Bd. of Ind. Dep't of Workforce Dev.*, 693 N.E.2d 1314, 1318 (Ind. 1998). Legal propositions are reviewed for their correctness. *Id.* An individual is disqualified from unemployment benefits if she is discharged for "just cause." I.C. § 22-4-15-1. An individual who is discharged for "gross misconduct" is also disqualified from collecting unemployment benefits. I.C. § 22-4-15-6.1.

[12] Company first argues that the Review Board erred when it found that Company had not discharged D.W. for gross misconduct. We disagree.

[13] INDIANA CODE § 22-4-15-6.1 provides:

> (b) As used in this section, "gross misconduct" means any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:
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> * * * * *
>
> (5) theft or embezzlement.
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> * * * * *
>
> (c) If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the employee's discharge, the conduct is not gross misconduct under this section.

[14] Company specifically argues that the Review Board erred when it found that D.W. had not committed gross misconduct because D.W. had committed theft. However, our review of the record and the Review Board's findings reveals that there was no evidence presented that D.W. had kept any of the money cashed from Tenant Dunnan's money order. Instead, the record shows that D.W., pursuant to an office policy instituted by Manager Hill, had cashed money orders in her own name, taken the funds to Manager Hill's office, and placed the money there for office use. Wheeler, another employee at Company, also testified that D.W. had always placed the money in Manager Hill's office after cashing payments from tenants. Further, D.W. testified that when Manager Hill had been fired, Sullivan had told D.W. that she was to no longer cash tenant payments out in her own name. D.W. testified that she had complied with this policy change, and the record does not contain any evidence showing that she had continued to cash payments out in her own name. Thus, we hold

that the Review Board did not err when it found that Company had not discharged D.W. for gross misconduct.

[15] Affirmed.[1]

Bradford, J., and Brown, J., concur.

[1] Company also argues that the Review Board erred when it found that Company had not discharged D.W. for just cause because D.W.'s act of cashing payments from tenants in her own name "are actions of such a nature that a reasonable employee of the employer would have known that such actions are in direct violation of the employer's interests." (Company's Br. 8). However, Company provides no cogent argument pointing to any cases or authorities that support this claim. Thus, it has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).