

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.W.,
Appellant-Petitioner,

v.

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

June 23, 2022

Court of Appeals Case No.
21A-EX-1639

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

Steven F. Bier, Chairperson
Lawrence A. Dailey, Member
Heather D. Cummings, Member

Review Board No.
21-R-1213

Weissmann, Judge.

[1] J.W. appeals the denial of his pandemic unemployment assistance (PUA) by the Review Board of the Indiana Department of Workforce Development (Review Board). Though J.W. presented credible evidence that he was afraid to work during the pandemic, he fails to show this fear qualified him for PUA funds.

Facts

- [2] J.W. filed for PUA in 2020, claiming he was self-employed and that COVID-19 had severely limited his work. He had been an Instacart driver and worked briefly for a security firm. A claims investigator determined J.W. was ineligible for benefits under the Coronavirus Aid, Relief and Economic Security (CARES) Act and retroactively suspended his benefits.
- [3] J.W. appealed pro se, and an administrative law judge (ALJ) conducted a hearing. The ALJ found that J.W. had limited his work voluntarily “because he was afraid of contracting COVID-19 and of bringing it home to his family.” Exh. Vol. III, p. 28. The ALJ concluded that fear of contracting COVID was not a qualifying reason for PUA under the CARES Act, but the closing of his children’s schools was. Accordingly, she modified J.W.’s suspension to make him eligible for benefits during the schools’ closures in March, April, and May.
- [4] J.W. again appealed pro se, first to the Review Board, which affirmed the ALJ’s decision after adopting and incorporating her findings of fact and conclusions of law, and now to this Court.

Discussion and Decision

[5] J.W. argues that the ALJ, and in turn, the Review Board, erred because they found that fear drove his underemployment, attributed his wife’s employment to him, ignored the effect of executive stay-at-home orders on his ability to work, and arbitrarily determined the days he was eligible to receive PUA.¹ We review the Review Board’s findings of fact for substantial evidence, findings of mixed questions of law and fact for reasonableness, and legal propositions for correctness. *Brown v. Rev. Bd. Ind. Dep’t Workforce Dev.*, 183 N.E.3d 1110, 1113 (Ind. Ct. App. 2022). We give the Board’s legal interpretations great weight unless they are inconsistent with the relevant statute itself. *Id.* (quoting *Chrysler Group, LLC v. Rev. Bd. Ind. Dep’t Workforce Dev.*, 960 N.E.2d 118, 122-23 (Ind. 2012)). We do not reweigh evidence or assess witness credibility. *Id.* We consider only the evidence most favorable to the Board’s findings. *Id.* Applying this standard of review, we find J.W.’s arguments unavailing.

[6] First, J.W. claims that prudence—not fear—drove him to limit his employment. J.W. testified that he “slowed down” his work with Instacart because,

I have kids at home and standing in line with 40 people and then going in the stores where everybody been touched and breathed on and then delivering to people’s houses is really deemed unsafe

¹ J.W. also argues that he lost a substitute teacher position because of the pandemic. Because he raises this issue for the first time on appeal, it is waived. See *Cunningham v. Rev. Bd. Ind. Dept. Workforce Dev.*, 913 N.E.2d 203, 205 (Ind. Ct. App. 2009) (citing *Nat’l Rural Utils. Coop. Fin. Corp. v. Pub. Serv. Comm’n Ind.*, 552 N.E.2d 23, 28 (Ind. 1990)) (“Our Supreme Court has held that a party who fails to raise an issue before an administrative body has waived the issue on appeal.”).

in the form of the pandemic . . . it's sickly out there, it's not safe.

. . .

Tr. Vol. II, p. 10. J.W. also testified that he left the security firm because:

[P]eople [would be] in your face talking at you, yelling at you and stuff, and this was, like I said, again in the middle of a red zone, and the company didn't do nothing to provide for us, not even shelter from the sun, so I left there for the sake of my family again.

Tr. Vol. II, p. 17.

[7] But neither prudence nor fear is a qualifying reason for PUA under the CARES Act. A worker is entitled to PUA only if they are a “covered individual,” meaning they are ineligible for other specified benefits and cannot work due to one of eleven reasons related to COVID-19. CARES Act § 2102(a)(3)(A)(ii)(I) (codified as 15 U.S.C. § 9021(a)(3)). According to guidance issued by the U.S. Department of Labor, “An individual who does not go to work due to general concerns about exposure to COVID-19 . . . is not eligible for PUA because general concerns about exposure to COVID-19 is not one of the reasons listed in section 2102(a)(3)(A)(ii)(I).” UIPL 16-20 Change 1 at I-13 ¶50 (April 27, 2020), available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_1.pdf. Though J.W.’s concerns about bringing COVID home to his family might have been reasonable; these concerns simply did not qualify him to receive PUA. To the extent that he takes issue with which types of pandemic-induced unemployment the CARES Act covers, J.W.’s remedy is with Congress.

- [8] J.W.’s other arguments are similarly unsuccessful. He claims the Review Board erroneously considered his wife’s employment in rendering its decision. This argument appears to be based on a typo—the ALJ’s use of the pronoun “she” to refer to J.W.—rather than an error in interpreting the facts. Exhs. Vol. II, p. 30.
- [9] He also argues that the Review Board ignored the effect of stay-at-home orders on his ability to work. But Indiana’s stay-at-home orders explicitly permitted “Essential Activities,” including “deliver[ing] [necessary] services or supplies to others, such as . . . groceries and food.” Executive Order 20-08, p. 3 (https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf); Executive Order 20-18, p. 4 (<https://www.in.gov/gov/files/Executive-Order-20-18-Cont-Stay-at-Home-Restaurants-Govt-Ops.pdf>); Executive Order 20-22, p. 4 (<https://www.in.gov/gov/files/Executive-Order-20-22-Extension-of-Stay-at-Home.pdf>). The orders also classified “businesses that ship or deliver groceries” as “Essential.” Executive Order 20-08, p. 6; Executive Order 20-18, p. 8; Executive Order 20-22, p. 8. The executive orders therefore allowed J.W. to continue his work as an Instacart driver.
- [10] Finally, J.W. argues that the Board arbitrarily determined the days he was eligible to receive PUA. In making this argument, he overlooks the ALJ’s stated basis for selecting those days: “Claimant’s not working from mid-March 2020 through the end of May 2020 because his children were attending school virtually from home was a direct result of COVID-19, however. Therefore, Claimant is eligible for benefits for this period.” Exhs. Vol. III, p. 29.

[11] J.W. has failed to show that the Review Board's decision was in error. The modification of J.W.'s benefits is affirmed.

Robb, J., and Pyle, J., concur.