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APPELLANT PRO SE:

SEAN FEENEY
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SEAN FEENEY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0902-EX-190
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and CETANI,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
The Honorable Steven F. Bier, Chairperson
The Honorable George H. Baker, Member
The Honorable Lawrence A. Dailey, Member
Cause No. 08-R-3623

October 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Sean Feeney appeals the denial of his claim for unemployment benefits. We affirm.

Issue

Feeney raises one issue, which we restate as whether the Unemployment Insurance Review Board ("Review Board") properly denied Feeney's request for unemployment benefits.

Facts

In April 2008, Cetani, a web-related software business in Carmel, hired Feeney as a summer intern. Cetani offered to pay Feeney $17 per hour plus an extra $3 per hour toward the cost of summer housing. Feeney could not find suitable housing in Carmel and wanted to telecommute from his home in Terre Haute. Cetani initially agreed, but then it learned that the internship program through which it had hired Feeney and would be reimbursed for a portion of his salary required Feeney to work in a "company environment." Tr. p. 11. Cetani informed Feeney of the requirement, but Feeney did not find suitable housing. Cetani discharged him on June 13, 2008, and the last day Feeney worked for Cetani was June 18, 2008.

Feeney sought unemployment benefits. On July 17, 2008, the Department of Workforce Development determined that Feeney was not eligible for unemployment benefits because he had voluntarily left his employment without good cause. Feeney appealed, and on November 3, 2008, a hearing was held. Following the hearing, the administrative law judge ("ALJ") found that securing housing in the Carmel area was Feeney's responsibility and that Feeney's failure to report to work at the Carmel office was in substantial disregard of his duties and obligations to Cetani. The ALJ concluded that Feeney was discharged for just cause. Feeney appealed that decision, which was affirmed by the Review Board. Feeney now appeals the Review Board's decision.

Analysis

Feeney argues that he is entitled to receive unemployment benefits.[1] The Indiana Unemployment Compensation Act provides that any decision of the Review Board is conclusive and binding as to all questions of fact. Coleman v. Review Bd. of Indiana Dept. of Workforce Dev., 905 N.E.2d 1015, 1019 (Ind. Ct. App. 2009) (citing Ind. Code § 22-4-17-12(a)). "Review Board decisions may be challenged as contrary to law, in which case we examine the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts." Id. (citing I.C. § 22-4-17-12(f)).

[1] Even though Feeney proceed pro se, he is held to the same standard as a licensed attorney. See Novatny v. Novatny, 872 N.E.2d 673, 677 n.3 (Ind. Ct. App. 2007).

"In Indiana, an unemployed claimant is ineligible for unemployment benefits if he or she is discharged for just cause." Id. (citing I.C. § 22-4-15-1). Pursuant to Indiana Code Section 22-4-15-1(d)(9), any breach of duty in connection with work which is reasonably owed an employer by an employee is included as discharge for just cause. Working at Cetani's Carmel office was a condition of Feeney's initial job offer. Cetani even agreed to pay Feeney an extra $3 per hour, or $500 per month, to cover his housing costs. When Feeney's housing fell through, Cetani initially told Feeney he could work remotely from Terre Haute. Cetani then learned that if Feeney did not work at the Carmel office, he would not be eligible for the internship program, which reimbursed Cetani for half of Feeney's salary. Feeney never obtained housing near Carmel. Feeney explained that he was not very familiar with the Carmel area and thought the additional $3 per hour allowance would be adequate, but it was not. The evidence supports the ALJ's and Review Board's conclusion that Feeney's failure to report to Cetani's Carmel office was in substantial disregard of his duties to Cetani.

Feeney claims that he was not subject to disqualification because his labor market was considered to be Terre Haute. In making this argument, Feeney cites only Indiana Code Section 22-4-15-1(b)(6)(a). Because no such subsection exists, we assume that Feeney is relying on Indiana Code Section 22-4-15-1(c)(6), which provides:

> An individual is not subject to disqualification because of separation from the individual's employment if:
>
> (A) the employment was outside the individual's labor market;

> (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
>
> (C) the individual actually became employed with the employer in the individual's labor market.

Feeney argues only that the Centani employment was outside his labor market. See I.C. § 22-4-15-1(c)(6)(A). This subsection uses the term "and" not "or." As such, we read in it the conjunctive. See Bourbon Mini-Mart, Inc., v. Comm'r, Indiana Dept. of Envtl. Mgmt., 806 N.E.2d 14, 20 (Ind. Ct. App. 2004) ("'[T]he words 'and' and 'or' as used in statutes are not interchangeable, being strictly of a conjunctive and disjunctive nature respectively, and their ordinary meaning should be followed if it does not render the sense of the statute dubious.'" (citation omitted) (alteration in original)). Feeney makes no argument regarding Indiana Code Section 22-4-15-1(c)(6)(B) and (C), and there is no evidence that he left to accept previously secured full-time employment in his labor market and that he became employed with the employer in Terre Haute. Thus, Feeney has not established that he was not subject to disqualification under Indiana Code Section 22-4-15-1(c)(6).[2]

Conclusion

[2] For the first time in his reply brief, Feeney argues that he should have been given a higher housing stipend, that the Department of Workforce Development in inherently biased against telecommuting, and that certain offensive emails were written. "The law is well settled that grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived." Monroe Guar. Ins. Co. v. Magwerks Corp., 829 N.E.2d 968, 977 (Ind. 2005). Because Feeney did not raise these issues in his initial brief, they are waived.

Feeney has not established that he was wrongly denied unemployment benefits. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.