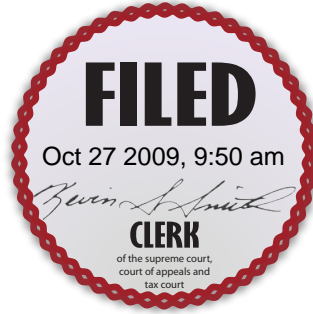


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

ATTORNEYS FOR APPELLEE:

LENELL BURSE
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

ELIZABETH ROGERS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LENELL BURSE,)

Appellant,)

vs.)

No. 93A02-0906-EX-522

REVIEW BOARD OF THE INDIANA)
DEPARTMENT OF WORKFORCE)
DEVELOPMENT and)
LYNNCO MANAGEMENT, LLC,)

Appellee.)

APPEAL FROM THE REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 09-R-02366

October 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Lenell Burse appeals the decision of the Unemployment Insurance Review Board (“Review Board”) dismissing, as untimely, his appeal from an adverse determination of eligibility by the Indiana Department of Workforce Development (“IDWD”).

We affirm.

ISSUE

Whether the trial court erred in dismissing Burse’s appeal.

FACTS

Burse was discharged from his employment with Lynnco Management LLC for a “work-related breach of duty,” and submitted a claim for unemployment benefits. (Review Board’s App. 1). On April 14, 2009, an IDWD claims deputy issued an adverse determination of eligibility finding that Burse was ineligible for unemployment insurance benefits because he had been discharged for just cause. By statute, Burse was required to file his appeal within thirteen days of the IDWD’s adverse determination.¹

Twenty-one days later, on May 5, 2009, he attempted to file an appeal of the adverse determination to an administrative law judge (“ALJ”) in the Appellate Division of the IDWD. In a Notice of Dismissal (the “Notice”) mailed on May 7, 2009, the ALJ dismissed Burse’s appeal as untimely. In addition, the Notice provided, in pertinent part, “This decision will become final unless the party receiving the adverse Decision appeals to the Review Board within eighteen (18) calendar days after the mailing date of this

¹ Pursuant to Indiana Code section 22-4-17-2(e) and 22-4-17-14(c), when a determination is served through the United States mail, which occurred here, a party has thirteen days to appeal. *Ritcheson-Dick v. Unemployment Ins. Review Bd.*, 881 N.E.2d 54, 57 (Ind. Ct. App. 2008).

decision.” (Burse’s App. 5). Almost one month later, on June 2, 2009, Burse appealed the ALJ’s decision with the Review Board. On June 4, 2009, the Review Board dismissed Burse’s appeal as untimely, from which order he now appeals.

DECISION

Burse argues that the Review Board erred in dismissing his appeal as untimely. We disagree and note, initially, that he has failed to provide a cogent argument in support of his contention that his appeal was denied in error. The entire Argument section of his brief consists of the following five self-serving statements:

- The original decision was not received in a timely manner, neither the Review Board nor I can prove that it was or was not.

-In the absence of the notification, I acted in a timely way, attempting to procure regular, full-time employment. After my attempts failed, I again went to the [I]DWD for benefits. They told me of the appeal process, and the appeal process then began. I turned in my wage history statement and still no reply.

Burse’s Br. at 7.

“A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” *Davis v. State*, 835 1102, 1113 (Ind. Ct. App. 2005), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8) (requiring that contentions in appellant’s briefs be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Thus, this issue is waived.

Further, in *Syzmanski v. Review Bd. of Dept. of Workforce Development*, 656 N.E.2d 290, 293 (Ind. Ct. App. 1995), we held that Syzmanski’s untimely appeal to the

Review Board was properly dismissed because the Review Board had not obtained jurisdiction over the appeal. In our analysis, we noted that “[t]he time period for perfecting an appeal from an ALJ’s determination is statutorily defined.” *Id.* at 292. Specifically, Indiana Code section 22-4-17-3, which governs appeals from ALJ’s denials of unemployment benefits, provides as follows:

Unless such request for hearing is withdrawn, an administrative law judge, after affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy. The parties shall be duly notified of such decision and the reasons therefor, which *shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken by the director or by any party adversely affected by such decision to the review board.*

I.C. § 22-4-17-3 (emphasis added). Subsection (c) further provides that an additional three days is added to the prescribed time period where notice is served by mail; thus, an aggrieved party seeking review of an ALJ’s determination must file an appeal within a maximum of eighteen days. I.C. § 22-4-17-3(c); *Syzmanski*, 656 N.E.2d at 292.

In *Quakenbush v. Review Bd. of the Dept. of Workforce Development*, we held,

“[W]hen a statute contains a requirement that an appeal or notice of the intention to appeal shall be filed within a certain time, strict compliance with the requirement is a condition precedent to the acquiring of jurisdiction, and non-compliance with the requirement results in dismissal of the appeal.

891 N.E.2d 1051, 1053 (Ind. Ct. App. 2008) (citing *Syzmanski*, 656 N.E.2d 290).

Here, the ALJ’s Notice was issued on May 5, 2005 and bears a mailing date of May 7, 2009. The record reveals that Burse filed his appeal nearly one month later on

June 2, 2009. By his failure to comply with the statutory time requirements established for filing appeals under Indiana Code section 22-4-17-3, Burse prevented the Review Board from acquiring jurisdiction to review the ALJ's ruling. We conclude that the Review Board did not err in dismissing Burse's appeal as untimely.

Affirmed.

ROBB, J., and MATHIAS, J., concur.