

No. 1-10-1072

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION
APRIL 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DORIS SMITH,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County.
)
 v.)
)
 ILLINOIS DEPARTMENT OF EMPLOYMENT) No. 09 L 50306
 SECURITY; DIRECTOR OF THE ILLINOIS)
 DEPARTMENT OF EMPLOYMENT SECURITY;)
 BOARD OF REVIEW; and U.S. POSTAL)
 SERVICE,) Honorable
) Elmer James Tolmaire, III,
 Defendants-Appellees.) Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse
concur in the judgment.

O R D E R

HELD: Judgment affirmed where the Board's finding that plaintiff was disqualified from receiving unemployment benefits based on her guilty plea to embezzlement of federal funds which constituted misconduct in connection with her work was not clearly erroneous.

Plaintiff Doris Smith appeals *pro se* from an order of the circuit court affirming the decision of the Board of Review of the Illinois Department of Employment Security (Board) which denied her claim for unemployment benefits under section 602(A) of the Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2008). In this court, plaintiff challenges the Board's determination that she deliberately violated the regulations of her employer, the United States Postal Service (USPS), and was disqualified from receiving benefits due to misconduct connected with her work.

The record shows that plaintiff was employed as a postal clerk for USPS starting in 1998. The record further shows that from 2003 through 2007, plaintiff lived in housing owned by the Chicago Housing Authority (CHA). Although she was employed by the USPS, she attested in annual applications with the CHA that she was unemployed with no income. On March 16, 2009, plaintiff pleaded guilty to one count of embezzlement of federal funds in violation of §641 of the United States Code (18 U.S.C. §641 (2008)), and was discharged from her employment on June 30, 2009. Plaintiff applied for unemployment benefits with the Illinois Department of Employment Security (Department), and USPS protested the claim.

In an interview with the claims adjudicator, plaintiff denied that she had falsified records in order to receive federal

housing assistance, and explained that she was not aware of, nor told, that USPS had a policy prohibiting her actions. The record does not indicate whether USPS had a representative present at this interview. The claims adjudicator found her eligible for benefits and USPS appealed.

On October 23, 2009, a telephone hearing was conducted by a referee. Plaintiff was present for most of the hearing, but the telephone connection was lost. The referee then left her a voicemail message telling her what happened, and although a decision would be made that day, plaintiff had a right to request the hearing be reopened. The record indicates that plaintiff did not return the voicemail message and she did not testify.

Testimony was presented from a representative from USPS that plaintiff had been discharged after pleading guilty to theft of government money. A USPS manual indicated that USPS had a loyalty and ethics policy, which stated that employees are expected to be loyal to the United States government, during and outside of working hours. The manual also specifically stated that USPS employees are prohibited from violating §641. Evidence was also received that plaintiff pleaded guilty to charges of falsifying records in order to receive federal housing assistance and admitting to this during an investigation by the USPS inspector general.

The referee reversed the eligibility for benefits entered by the claims adjudicator. In doing so, the referee found that plaintiff admitted to USPS that she had misrepresented her earnings in order to receive federal housing assistance and also pleaded guilty to a federal offense. The referee noted that USPS had a written policy prohibiting fraud with regard to federal funds, and found that the evidence showed that plaintiff engaged in fraud. The referee concluded that plaintiff's actions constituted a deliberate and willful violation of USPS policy, which harmed USPS in the lost trust of the employment relationship, and that plaintiff was disqualified from benefits under section 602A.

Plaintiff appealed to the Board and appended a written argument in which she claimed that her fraud against the federal government "had no impact on" USPS or any of its employees. The Board excluded this argument from its review because plaintiff failed to serve it on the other parties. The Board then affirmed the referee's decision and the denial of benefits. Thereafter, plaintiff filed a complaint for administrative review, and the circuit court affirmed the Board's ruling, noting that it was neither against the manifest weight of the evidence nor contrary to law.

In this appeal from that judgment, plaintiff contends that USPS and the Department failed to show that she was ineligible

for benefits because USPS did not timely remove her under her collective bargaining unit, that she was not willfully and deliberately violating the rules of USPS where she no longer lived in the CHA housing unit, and that her conduct did not harm USPS because it did not impair her ability to perform her job.

We initially observe that plaintiff has failed to adhere to the supreme court rules governing appellate review. Plaintiff has failed to include in her *pro se* brief citation to the record or a cogent argument with appropriate citation to authority. Ill. Sup. Ct. R. 341(h) (eff. July 1, 2008). Notwithstanding these deficiencies, we choose to reach the merits of the case because the issues may be ascertained from the record and we are aided by the cogent brief filed by defendants. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

Our review of this administrative proceeding is limited to the final decision of the administrative agency and not that of the circuit court. 735 ILCS 5/3-101 *et seq.* (West 2008); 820 ILCS 405/1100 (West 2008); *Anderson v. Illinois Department of Professional Regulation*, 348 Ill. App. 3d 554, 560 (2004). The question of whether an employee was properly discharged for misconduct under the Act is a mixed question of law and fact, to which we apply the clearly erroneous standard of review. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327

(2009). An agency's decision will only be deemed clearly erroneous where the record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173 (2008).

The individual claiming unemployment insurance benefits has the burden of proving her eligibility; and if she was discharged for misconduct, she is deemed ineligible to receive those benefits. *Hurst*, 393 Ill. App. 3d at 327. Misconduct in this sense refers to the deliberate and willful violation of an employer's reasonable rule or policy that harms the employer or was repeated by the employee despite previous warnings. 820 ILCS 405/602(A) (West 2008); *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

Here, the Board affirmed the referee's determination that plaintiff willfully and deliberately violated a known USPS ethics policy. The Board agreed that plaintiff's deliberate falsification of government records and embezzlement of federal funds constituted misconduct and disqualified her from obtaining unemployment benefits.

Although plaintiff denied the actions attributed to her, the record belies her protests. The record clearly shows that plaintiff pleaded guilty to a violation of §641 of the U.S. Code based on evidence showing that she signed CHA applications for

housing in which she indicated that she was unemployed and receiving no income in the years 2003 through 2007. These attestations were directly rebutted by copies of tax forms detailing her salary from USPS for those same years.

Plaintiff also maintained that she was not aware of a rule prohibiting her actions. However, the USPS employment manual states that "conviction for a violation of any criminal statute may be grounds for *** removal of the employee," requires USPS employees "to be loyal to the United States government," and specifically prohibits employees from violating §641 of the U.S. Code. This evidence thus supports the Board's finding that plaintiff knew of, and willfully violated, a standard of behavior, or reasonable rule, that an employer has a right to expect from an employee and constituted misconduct under section 602A. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 827 (2009).

Finally, plaintiff disputes the finding that her conduct harmed USPS because her actions outside of work did not materially impact her ability to work with fellow employees or perform basic job functions. The acts for which an employee is terminated need not have a direct relation to the work performed in order to constitute misconduct. *Winklmeier v. Board of Review of Department of Labor*, 115 Ill. App. 3d 154, 156 (1983). Here, the USPS suffered potential harm in reduced public perception and

1-10-1072

actual harm in the loss of trustworthiness in an employee and resources expended during its investigation of her.

Based on this record, we conclude that the Board's findings that plaintiff's actions constituted misconduct in connection with her work and disqualified her from benefits under section 602A of the Act were not clearly erroneous. We, thus, affirm the judgment of the circuit court of Cook County to that effect.

Affirmed.