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FIRST DIVISION  
FILED: August 15, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NONA T. RAY,	)	Appeal from the Circuit
	)	Court of Cook County
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
THE ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY, an	)	
administrative agency of the State of	)	No. 10 L 50424
Illinois; DIRECTOR OF THE ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT	)	
SECURITY; and THE BOARD OF	)	
REVIEW, an administrative agency of the	)	
State of Illinois,	)	
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
CHICAGO TRANSIT AUTHORITY,	)	Honorable
	)	James Tolmaire, III,
Defendant.	)	Judge Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**ORDER**

*HELD:* The Board of Review’s decision finding that the plaintiff was not entitled to

unemployment benefits because she was terminated for misconduct was not against the manifest weight of the evidence.

¶ 1 The plaintiff appeals from an order of the circuit court confirming a decision of the Board of Review, which found that she was not entitled to unemployment benefits because she had been terminated from the Chicago Transit Authority (CTA) for misconduct. On appeal, the plaintiff contends that the Board's decision was against the manifest weight of the evidence and that new evidence shows she was not fired for misconduct. For the following reasons, we affirm.

¶ 2 The record demonstrates that the plaintiff was fired from her job as a switchman/rail operator for the CTA on February 12, 2009, for misappropriating an employee-identification badge after it was shown that she had been issued two badges and that one of them had been used by someone other than the plaintiff. The plaintiff filed a claim for unemployment benefits, and a claims adjudicator awarded her benefits. The CTA appealed that decision to a Department hearing referee, who concluded that the plaintiff was fired for actions constituting misconduct under section 602(A) of the Illinois Unemployment Insurance Act (820 ILCS 405/602(A) (West 2008)), thus making her ineligible for benefits. The Board agreed with the conclusion of the referee and denied the plaintiff's claim for benefits.

¶ 3 The plaintiff sought judicial review of the Board's decision, and the circuit court remanded the cause to the Board for a determination of whether the CTA had timely appealed the claims adjudicator's grant of benefits. On remand, the referee found that the appeal was timely and that the original decision denying benefits should be upheld. Again, the Board agreed with the conclusion of the referee, and the plaintiff requested review by the circuit court, which confirmed the Board's finding of misconduct and the denial of unemployment benefits. This

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appeal followed.

¶ 4 First, the plaintiff argues that the decision of the Board was against the manifest weight of the evidence. When a reviewing court examines an administrative decision, it is not the function of the a court to reweigh evidence or to make an independent determination of the facts.

*Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 386, 925 N.E.2d 1131 (2010). Rather, the court's review is limited to ascertaining whether the agency's findings of fact are against the manifest weight of the evidence. *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849, 855, 910 N.E.2d 1223 (2009).

¶ 5 In this case, the Board's decision to deny the plaintiff unemployment benefits was based on section 602(A) of the Act in which misconduct is defined as

the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit. 820 ILCS 405/602(A)(West 2008).

At the administrative hearing, the plaintiff admitted that she had possession of two active employee-identification badges in February 2009, and she conceded she was aware that possessing multiple identification badges was contrary to the CTA's rules. According to the plaintiff, she was issued a duplicate badge as a replacement for a badge she believed had been lost, and, because she unknowingly had both badges in her bag at the same time, she used them interchangeably without realizing that she was doing so. However, the CTA presented tracking records establishing that the badges had been used simultaneously in two distant locations in the city. These documents indicated that the badges must have been used by two different people

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and refuted the plaintiff's explanation that she was unaware that she had both badges in her possession and was using them interchangeably. This evidence supported the Board's factual determination that the plaintiff knowingly violated reasonable work rules governing her conduct, which harmed her employer's interest. Such actions constituted misconduct under the meaning of the Act. Consequently, we find that the decision of the Board was not against the manifest weight of the evidence.

¶ 6 The plaintiff also argues that new evidence shows that she did not engage in misconduct and, therefore, should be entitled to the unemployment benefits. In support of this argument, she first contends that her reinstatement to her former position with the CTA on June 10, 2010, establishes that she did not commit any act of misconduct. Second, the plaintiff asserts that a "Release of Claims" agreement executed by herself and the CTA entitles her to the unemployment benefits. In particular, the plaintiff relies on a portion of that contract that specifically excludes from the release her claim for unemployment compensation. The plaintiff maintains that this provision can be interpreted to mean the CTA would not challenge her claim for benefits. The plaintiff's assertions are unavailing.

¶ 7 Pursuant to section 110 of the Administrative Review Law, "[n]o new or additional evidence in support of or in opposition to any finding, order, determination, or decision of the administrative agency shall be heard by the court." 735 ILCS 5/3-110 (West 2008). Because the referee was not presented with this evidence at the administrative hearing, this court is prohibited from taking it into consideration. See *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271, 807 N.E.2d 423 (2004); *Zbiegien v. Department of Labor*, 156 Ill. App. 3d 395,

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398-99, 510 N.E.2d 422 (1987); *Popoff v. Department of Labor*, 144 Ill. App. 3d 575, 579-80, 494 N.E.2d 1266 (1986).

¶ 8 For all of the reasons set forth above, we conclude that the Board's decision denying the plaintiff's application for unemployment benefits was not against the manifest weight of the evidence.

¶ 9 Affirmed.