

No. 1-10-0755

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).

SIXTH DIVISION
February 4, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAULINE MOORE,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County.
)
 v.)
)
 ILLINOIS DEPARTMENT OF EMPLOYMENT) No. 09 L 51509
 SECURITY; DIRECTOR, ILLINOIS)
 DEPARTMENT OF EMPLOYMENT SECURITY;)
 BOARD OF REVIEW; and FEDEX KINKO'S)
 OFFICE AND PRINT SERVICES, INC.,) Honorable
) Elmer James Tolmaire, III,
 Defendants-Appellees.) Judge Presiding.

PRESIDING JUSTICE GARCIA delivered the judgment of the court.

Justices McBride and R.E. Gordon concurred in the judgment.

O R D E R

HELD: Plaintiff's willful violation of known company policy constituted misconduct in connection with her work and disqualified her from unemployment benefits; judgment affirmed.

Plaintiff Pauline Moore filed a complaint for administrative review seeking to reverse a decision by the Board of Review of the Department of Employment Security (Board) that she was ineligible for unemployment benefits because she was discharged for misconduct in connection with her work pursuant to section 602A of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/602A (West 2008)). The circuit court affirmed the Board's decision, and Moore, *pro se*, now challenges the propriety of that order on appeal.

As a preliminary matter, we note that it is within our discretion to dismiss this appeal based on Moore's failure to comply with the supreme court rules governing appellate procedure. Ill. S. Ct. R. 341(h) (eff. July 1, 2008); R. 342(a) (eff. Jan. 1, 2005); *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 440-41 (2009). However, we will not do so because we have the benefit of the record before us and the appellees' cogent briefs. *Budzileni*, 392 Ill. App. 3d at 440-41.

The record shows that Moore worked as a customer service coordinator for FedEx and was discharged for misconduct after she brought a stool onto the production floor to sit, which is prohibited by the employees' handbook. Following her discharge, Moore applied for unemployment benefits and a claims adjuster found her ineligible. Moore asked for reconsideration, and a telephone hearing was conducted by a Department referee.

At the hearing, Moore acknowledged that she was aware of FedEx's policy prohibiting a stool on the production floor, but "made a decision to sit down" because her back was hurting. Moore added that she had a medical condition that prevented her from standing for long periods, but admitted that her medical release only restricted her from lifting more than 15 pounds.

According to Monica Abernathy, a FedEx general manager, Moore did not inform management that her medical condition required her to sit. Abernathy also recounted prior warnings to Moore about her performance and improper computer usage.

The Department referee subsequently affirmed the denial of unemployment benefits under section 602A of the Act (820 ILCS 405/602A (West 2008)). The referee found that the facts showing that Moore brought a stool onto the production floor to sit, without notifying FedEx of a medical condition that prevented her from standing for long periods, and that she had been warned about her customer service skills and following company policies, was sufficient to establish that Moore engaged in a deliberate and willful violation of FedEx policy, which rose to the level of misconduct in connection with her work.

The Board affirmed the referee's findings that Moore's action amounted to misconduct in connection with her work that is contemplated by section 602A of the Act (820 ILCS 405/602A (West

2008)), and disqualified her from receiving unemployment benefits.

In this challenge to that ruling, we observe that our review is limited to the propriety of the Board's decision. *Oleszczuk v. Department of Employment Security*, 336 Ill. App. 3d 46, 50 (2002). The question of whether an employee was properly terminated for misconduct involves a mixed question of law and fact to which we apply the "clearly erroneous" standard of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001); *Oleszczuk*, 336 Ill. App. 3d at 50. An agency decision may be deemed clearly erroneous only where a review of the record leaves the reviewing court with a definite and firm conviction that a mistake has been committed. *AFM Messenger, Inc.*, 198 Ill. 2d at 395. For the reasons that follow, we find this is not such a case.

Under the Act, misconduct is defined as a deliberate and willful violation of a reasonable rule or policy that harms the employer or has been repeated by the employee despite previous warnings. 820 ILCS 405/602A (West 2008); *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). Standards of behavior that an employer has a right to expect from its employees constitute reasonable rules and policies. *Caterpillar v. Department of Employment Security*, 313 Ill. App. 3d 645, 654 (2000).

Moore and her general manager presented conflicting testimony during the telephone hearing about the facts leading to Moore's discharge. The Board affirmed the referee's decision regarding those facts and incorporated it into its own, finding that the denial of Moore's claim for unemployment benefits was supported by the record and the law. It is not our prerogative to reevaluate the credibility of the witnesses or substitute our judgment for that of the Board (*Caterpillar v. Doherty*, 299 Ill. App. 3d 338, 344 (1998)); and where, as here, the issue is merely one of conflicting testimony and the credibility of the witnesses, the agency's determination should be sustained (*Carroll v. Board of Review*, 132 Ill. App. 3d 686, 691 (1985)).

Applying these principles, we find that the Board's decision that Moore was disqualified from receiving benefits under section 602A of the Act was not clearly erroneous. The evidence adduced at the telephone hearing established that Moore was aware of FedEx's policy prohibiting a stool on the production floor and, nonetheless, made a decision to bring it in and sit down. Both Moore and her general manager testified to the existence of this policy (*Hurst*, 393 Ill. App. 3d at 329), and there is no indication in the record that Moore informed management of a physical or medical condition requiring her to be seated. The conflict in the testimony regarding Moore's customer service skills and prior warnings were resolved in favor of the employer,

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and we have no basis for disturbing the Board's credibility determination in this matter. *Carroll*, 132 Ill. App. 3d at 682.

Moreover, the weight of authority recognizes that the requisite harm to FedEx can be established by potential harm, and is not just limited to actual harm. *Hurst*, 393 Ill. App. 3d at 329, and cases cited therein. By failing to notify management of a medical condition that required her to sit, Moore engaged in insubordinate behavior that was harmful to FedEx's interest in maintaining a professional and orderly workplace. *Hurst*, 393 Ill. App. 3d at 329. This incident and the prior infractions for which Moore was reprimanded, had the potential to affect employee morale and customer satisfaction and ultimately harm FedEx. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 558 (2006).

Accordingly, we find that the Board's decision that Moore was disqualified from receiving unemployment benefits due to misconduct in connection with her work was not clearly erroneous, and we affirm the order of the circuit court of Cook County to that effect.

Affirmed.