

No. 1-09-2304

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TRACY McGEE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 50209
	)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR, THE ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT SECURITY;	)	
BOARD OF REVIEW and OAK FOREST HOSPITAL,	)	Honorable
	)	Sanjay T. Tailor,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hall and Justice Lampkin concurred in  
judgement

O R D E R

*HELD:* The denial of unemployment benefits was not clearly erroneous where the claimant's failure to maintain a driver's license required for employment amounted to a constructive voluntary leaving without good cause attributable to the employer.

Plaintiff, Tracy McGee, filed a complaint for administrative review seeking to reverse a decision by the board of review of the Illinois Department of Employment Security (Board) that he was ineligible to receive unemployment benefits because he voluntarily left work without good cause attributable to his employer. The circuit court affirmed the Board's decision. On appeal, plaintiff

1-09-2304

contends the Board's decision is clearly erroneous because: (1) he promptly notified his employer of his suspended driver's license; (2) he was allowed to continue his employment without a license for almost two years; and (3) his assignment to non-driving duties during that time establishes that his employment was not contingent on maintaining a driver's license.

Plaintiff began employment with Oak Forest Hospital (Hospital) in 2000. Effective October 9, 2008, he was discharged from his position as "Motor Vehicle Driver I." Plaintiff filed a claim for unemployment benefits. The Hospital filed a protest to his claim, asserting he was discharged for failing to maintain a current driver's license and for operating Hospital vehicles on a suspended license. A claims adjudicator for the Board found plaintiff was discharged because his driver's license was suspended and the reason for his discharge was within his control to avoid. Accordingly, the claims adjudicator determined plaintiff was ineligible for unemployment benefits.

Plaintiff appealed, and a telephone hearing was held before a referee. At the hearing, Orlando Brown, the director of labor relations at the Hospital, testified that plaintiff was discharged because he lost his driver's license and did not inform the hospital that he no longer had a license. Brown stated that as a "Motor Vehicle Driver I," plaintiff was required to maintain a valid driver's license, and plaintiff knew of this requirement because he received employee orientation at the time he was hired.

1-09-2304

According to Brown, the Hospital first learned plaintiff lacked a valid license on September 17, 2008. Subsequent research revealed his license had been suspended for over a year.

Brown testified that approximately two weeks later, the Hospital and plaintiff had a meeting regarding the matter. At the meeting, plaintiff admitted he did not have a license and did not tell his employer. Brown, who had been at the meeting, related that plaintiff's explanation was he thought he had "some type of appeal rights still ongoing." However, Brown stated that the Hospital had received a disposition from the secretary of state indicating that several months before, plaintiff had been denied an appeal and had been made aware of that fact. Brown testified that plaintiff was never guaranteed other employment in the event he lost his driver's license.

Plaintiff testified that he was terminated from employment by Brown and Clarence Huisenga, the assistant director of environmental services for grounds and motor pool, who told him he was being let go because he was driving without a license. When asked whether he was required to maintain a valid driver's license by his employer, plaintiff stated "[t]hey didn't say maintain." Plaintiff did acknowledge that he was required to have a driver's license to get the job. Plaintiff acknowledged that he operated a motor vehicle during the course of his employment and he did not have a valid driver's license at the time he was discharged. He also acknowledged that he was not guaranteed other duties if he did

1-09-2304

not meet the requirements for his job.

Plaintiff testified that in May 2007, he told his supervisor he had received a ticket. The referee asked whether a ticket was the same thing as losing his license, and plaintiff answered, "This is what has my license suspended." Plaintiff stated that he informed his employer he did not have a driver's license, but "they condoned it" by having him work around the grounds department. When the referee asked plaintiff who told him "to violate state law and operate a motor vehicle without a driver's license," plaintiff responded that it was his supervisor. He also stated that one of his supervisors told him, "We'll get through this," and Huisenga assigned him "other duties." Plaintiff stated that he explained to his supervisors he had a drinking problem, however, according to plaintiff, they did not want him to get assistance and "expose this thing to the Department."

Following the hearing, the referee issued a decision affirming the denial of unemployment benefits. In the course of doing so, the referee found that maintaining a valid driver's license was a requirement for plaintiff's employment as a "Motor Vehicle Driver I." The referee found that, despite plaintiff's knowledge of this requirement, he continued to operate a motor vehicle at work after his license was suspended in May 2007 because his supervisor allowed him to do so. The referee determined that, when management personnel learned of plaintiff's suspended license, he was confronted and separated from employment. The referee also

1-09-2304

determined that continuing employment was available for plaintiff had he maintained a valid driver's license, and that plaintiff was not guaranteed non-driving work in the event he could not perform his driving duties. The referee concluded that plaintiff initiated the separation from employment when he failed to maintain a "tool of his trade," and, thus, left work voluntarily without good cause, rendering him ineligible for benefits under section 601(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/601(A) (West 2008)).

Plaintiff appealed to the Board, attaching to his letter of appeal a performance evaluation from July 2007, with "Meets Standard" marked in 8 of 10 areas of key competencies, and a performance evaluation from July 2008, with "Meets Standard" marked in all 10 areas. The Board affirmed the referee's decision. As part of its decision, the Board found that the record was adequate and that the further taking of evidence was unnecessary. The Board found that the referee's decision was supported by the record and the law, incorporated it as part of its decision, and affirmed the denial of benefits pursuant to section 601(A). 820 ILCS 405/601(A) (West 2008). The circuit court affirmed the Board's decision. This appeal followed.

The purpose of the Act is to benefit individuals who are not at fault for their unemployment. *Jenkins v. Department of Employment Sec.*, 346 Ill. App. 3d 408, 411 (2004). The burden of proving eligibility for unemployment benefits under the Act rests

1-09-2304

with the claimant. *Jenkins*, 346 Ill. App. 3d at 411. Under section 601(A) of the Act, a claimant is ineligible for benefits if "he has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2008). Whether an employee left work voluntarily without good cause is an issue that 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 Sec.*, 198 Ill. 2d 380, 392 (2001); *Horton v. Department of Employment Sec.*, 335 Ill. App. 3d 537, 540 (2002). An administrative decision will be deemed clearly erroneous "only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.'" *AFM Messenger*, 198 Ill. 2d at 395, quoting *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

On appeal, plaintiff argues that the record contains no evidence that he was required to possess a driver's license to work in the grounds department and hold the job title "Motor Vehicle Driver I," or that he drove a motor vehicle at work without a driver's license. Plaintiff notes that during the time he was employed without a license, he performed non-driving job duties with the authorization and permission of his supervisors and received evaluations indicating that he met the performance standards in all areas of key competencies. Based on these circumstances, plaintiff contends the Board's decision was clearly erroneous.

We find that the record supports the Board's conclusion that plaintiff voluntarily left work without good cause attributable to his employer. During the telephone hearing, Brown testified that as a "Motor Vehicle Driver I," plaintiff was required to maintain a valid driver's license. Brown indicated that plaintiff was made aware of this requirement at employee orientation, and plaintiff acknowledged that he was required to have a driver's license to get the job. Thus, evidence exists in the record that having a valid driver's license was a requirement of plaintiff's employment. While the record includes evidence that plaintiff's direct supervisors allowed him to continue working without a license by giving him non-driving job duties, Brown's testimony revealed that management was not aware of plaintiff's license suspension during that time. Moreover, Brown testified that plaintiff was never guaranteed other employment in the event he lost his driver's license, and plaintiff himself testified that he was not guaranteed in writing that he would be given job duties other than driving if he did not have a license.

An employee's failure to maintain a driver's license required for work amounts to a constructive voluntary leaving without good cause attributable to the employer. *Horton*, 335 Ill. App. 3d at 541. Here, plaintiff's failure to maintain a current driver's license rendered him unable to meet a necessary condition of his employment. Thus, he voluntarily left work without good cause and is ineligible for unemployment insurance benefits pursuant to

1-09-2304

section 601(A). *Horton*, 335 Ill. App. 3d at 541, citing *People v. Hawkins*, 268 Ill. App. 3d 927, 930 (1994). Having reviewed the record, we are not left with the definite and firm conviction that the Board committed a mistake in denying plaintiff benefits. See *AFM Messenger*, 198 Ill. 2d at 395. Accordingly, the Board's decision was not clearly erroneous.

For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

Affirmed.