

No. 1-10-1514

**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).

FOURTH DIVISION  
June 23, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NORA JONES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR OF ILLINOIS	)	
DEPARTMENT OF EMPLOYMENT SECURITY;	)	
BOARD OF REVIEW,	)	No. 10 L 50108
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
UHLICH CHILDREN'S ADVANTAGE NETWORK	)	
c/o VANTAGE LEGAL SERVICES,	)	Honorable
	)	James C. Murray,
Defendant.	)	Judge Presiding.

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PRESIDING JUSTICE LAVIN delivered the judgment of the court.  
Justices Pucinski and Sterba concurred in the judgment.

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**O R D E R**

*HELD:* Board's ruling that plaintiff was ineligible for unemployment benefits based on misconduct in connection with her work was not clearly erroneous; circuit court's order finding otherwise is reversed.

Defendants Illinois Department of Employment Security (Department), Director of Illinois Department of Employment Security, and Board of Review (Board) appeal from an order of the circuit court of Cook County reversing the Board's ruling that plaintiff Nora Jones is ineligible for unemployment benefits pursuant to section 602A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2008). On appeal, defendants contend that the Board's determination that Jones committed misconduct within the meaning of section 602A was not clearly erroneous, and should be upheld. Jones has not filed a brief in response; however, we may consider the issues raised under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

The record establishes, in relevant part, that Jones was employed by Uhlich Children's Advantage Network (Uhlich) as a mentor from October 27, 2008, until her discharge on June 29, 2009. She applied for unemployment benefits, and claimed in her interview that the reason given for her discharge was her "failure to communicate," and that she was terminated the day before she was scheduled to be laid off after arriving late to a

meeting. She maintained that her supervisor, Dwonna Thompson<sup>1</sup>, had called and left a message on her phone about the meeting, but that she had left her phone on the bed and did not learn of the call until an hour later, at which point she called Thompson's supervisor, Nicole Millbrook. Although she acknowledged that Uhlich had a policy requiring that calls from management be returned within one hour, she claimed that she had never been warned for violating that policy and did not know such a violation could lead to her discharge. She also stated that she had told Millbrook she could not "deal" with Thompson because "she has a way of manipulating my words and turning them around."

Uhlich protested the claim, contending that Jones was discharged for misconduct in connection with her work. Uhlich asserted that it has a rule requiring employees to attend all meetings in a timely manner and to notify a supervisor of the need to be absent, and that Jones violated that rule when she failed to attend a mandatory meeting. Uhlich further asserted that Jones did not provide an explanation for her absence when confronted about it, and that her failure to communicate with her supervisor amounted to further misconduct.

Uhlich also provided Jones' disciplinary history. On April 21, 2009, she received a verbal warning regarding her attendance.

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<sup>1</sup> Dwonna Thompson is also spelled as Towanna and Dwanna in the record.

1-10-1514

On June 11, 2009, she received and signed a formal written warning regarding her attendance and failure to meet job expectations which included a plan for corrective action stating, *i.e.*, that Jones would attend all meetings in a timely manner and communicate when she could not, and that she was no longer eligible to work from home. She was also warned that the signature of the Human Resources (HR) Director or Vice President was required and subsequent violations would result in termination, and the latter did, in fact, sign the form.

Finally, the written disciplinary notice from June 29, 2009, showed that Jones was terminated for attendance/tardiness, failure to meet job expectations, reckless or willful violation of a Uhlich policy, and insubordination. The report reflected, *inter alia*, that Jones had missed a mandatory meeting in violation of her corrective action plan, was "non-responsive" about her whereabouts, and had not directly spoken with her supervisor over the phone or in person since June 11. There was a further indication in the notice that Jones declined to read or take a copy of it, and had stated, "it doesn't matter." The claims administrator found that Jones was discharged because she was absent from a mandatory meeting, but that she was, nonetheless, eligible for benefits because her actions were not deliberate and willful.

Uhlich appealed and a telephonic hearing was held by a Department referee on September 17, 2009. During that hearing, Thompson testified that Jones missed a mandatory all-staff meeting scheduled for about 12 or 1 p.m., on June 29, 2009, at the company office at 3737 North Mozart, in Chicago. Although it was an unexpected, emergency meeting, the entire staff, including Jones, had been notified of the meeting by e-mail about 10 or 11 a.m. that morning, and Jones was scheduled to be in the office that day from 9 to 5. The entire staff attended the meeting with the exception of Jones, who arrived when the meeting was over and was then terminated by Thompson and the HR manager for, *inter alia*, attendance and tardiness.

Although Thompson did not recall asking Jones why she had missed the meeting, she noted that missing meetings was an on-going issue with Jones, that she had received a verbal warning regarding her attendance on April 21, 2009, and signed a written warning regarding her attendance and failure to meet job expectations on June 11, 2009. When Jones was warned that her job was in jeopardy, she claimed that family issues were preventing her from being at work and doing her job. Nevertheless, Thompson testified that Jones' dismissal was warranted under the Uhlich attendance policy in light of her previous warnings. She could not provide the details of the

1-10-1514

attendance rules, but stated that Jones had been made aware of them during her new employee orientation and training.

Thompson further testified that she had been trying to reach Jones by phone and e-mail all week, but that Jones had completely stopped communicating with her and would not return her e-mails and phone calls. Company policy, however, required that her calls be returned within two hours, and she knew from the e-mail system that Jones had read and received the e-mails she had sent. Despite a policy in the company handbook requiring employees to address any issues or concerns with their immediate supervisor, Jones was communicating with Thompson's supervisor.

Jones testified that she was not given a reason for her discharge and declined the written notice offered to her, but acknowledged that she did hear "failure to communicate" discussed. She testified that on June 29, she was not scheduled to work, as her normal office days were Wednesdays and Thursdays, and that she was never told that she needed to be in the office at 9 a.m. However, at 12:30 p.m., that day, she learned of a meeting scheduled for either 1:30 or 2 p.m., when she was about an hour away, in Blue Island. She notified Thompson and Millbrook by e-mail that she could not attend the meeting because she was at home updating her notes. Millbrook responded by asking where she was, and Jones replied that she was at home and

1-10-1514

asked if she should still attend the meeting, stating that she would be late.

When Millbrook did not respond further, Jones tried calling her on the phone, but did not attempt to call Thompson. She had previously informed Millbrook that she would not communicate with Thompson unless Millbrook was present because of prior issues. Jones ultimately arrived for the meeting at 2:45 p.m., explaining that the delay was partly because she was waiting to hear back from Millbrook about whether it was "worth it" to make an effort to attend the meeting, and partly because she had to get dressed.

Jones did not recall receiving a verbal warning on April 21, but acknowledged receiving and signing the written warning of June 11, because she had missed one meeting. However, she stated that an item of her corrective action plan in the written warning, which made her ineligible to work from home, was not part of the warning, and that she was never told of it. Jones further testified that she had returned Thompson's phone calls and e-mails during the period from June 10, to June 29, and that she made it known that she did not want to speak with Thompson further on June 17. She also acknowledged the rule that required her to respond to her supervisor's calls within two hours, and maintained that she did not refuse to call Thompson back.

When Jones was provided an opportunity to present additional evidence, she testified that Thompson never called her work cell

1-10-1514

phone, and would only call her personal cell phone, even when that phone was dead. She also stated that she had brought this issue to the attention of Thompson's supervisor.

Under further questioning by counsel, Thompson testified that on June 29, she never received an e-mail from Jones stating that she would not be attending the meeting. Rather, Jones had been communicating with Millbrook, who had instructed Jones to attend the meeting. She also explained that on June 11, after she had met with Jones regarding the written warning, her supervisor asked her to amend the write-up to state that Jones could not work from home. She called Jones that evening and left a voicemail informing her of that new restriction, and also to tell her that she had spoken with HR and that Jones was ineligible for leave under the Family Medical Leave Act; Jones never returned her call. She clarified that the restriction on working from home was added to the write-up after Jones had signed it.

Lastly, Thompson testified that Jones had a special schedule which required her to work every day of the week except Friday, and acknowledged that she had a field job and was not required to report to the office on certain days. However, she disputed Jones' claim that she was only required to be in the office on Wednesdays and Thursdays.

The referee concluded that Jones was ineligible for benefits under section 602A of the Act because she was discharged for "misconduct" in connection with her work. The referee found that despite the issues between Jones and Thompson, Jones had received sufficient notice of the mandatory meeting and failed to provide a compelling reason for why she could not make the meeting on time. The referee also found that Jones had previously been warned about missing a meeting, and that her actions on June 29, constituted "misconduct."

Jones appealed to the Board, and on December 16, 2009, the Board affirmed the referee's determination that Jones was ineligible for benefits. The Board concluded that the referee's decision was supported by the record and the law, and that taking further evidence was unnecessary.

On January 20, 2010, Jones filed a *pro se* complaint seeking administrative review of the Board's decision. On April 28, 2010, the circuit court reversed the decision of the Board after concluding that the employer had not met its burden of proving misconduct. Defendants now challenge the propriety of that order.

Our review of this administrative proceeding is limited to the decision of the Board, not that of the circuit court. *Kilpatrick v. Department of Employment Security*, 401 Ill. App. 3d 90, 92 (2010). In this case, the Board found Jones ineligible

for unemployment benefits because she was discharged for misconduct in connection with her work. 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), citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001).

Under the Act, an employee is ineligible for unemployment benefits if she was discharged for misconduct in connection with her work. 820 ILCS 405/602(A) (West 2008). 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. *Czajka*, 387 Ill. App. 3d at 174. For an employee to be ineligible for unemployment benefits based on a violation of an employer's attendance policy, there must be a deliberate and willful violation of that policy. *Wrobel v. Department of Employment Security*, 344 Ill. App. 3d 533, 538 (2003).

Here, the evidence adduced at the hearing showed that Uhlich had a company attendance policy in place, and that Jones had previously received verbal and written warnings for violating it. On June 29, 2009, the Uhlich staff, including Jones, was notified by e-mail of an emergency mandatory meeting to be held at 1:30 or 2 p.m. at the office. Jones learned of the meeting about 12:30 p.m., when she was about an hour away, and e-mailed that she would not be attending. When Millbrook responded, Jones asked whether she should still try to attend, and then waited to hear whether it was "worth it" to attend. When she did not hear from Millbrook, Jones decided to come in and arrived late for the meeting at 2:45 p.m. At that point, she was terminated for, *inter alia*, her failure to abide by the company attendance policy.

The record thus supports the Board's finding that Jones willfully and deliberately violated a reasonable rule of the employer and that her conduct on June 29, 2009, was a repeat of prior violations despite prior warnings. Jones did not provide a compelling reason for her tardiness, and instead of departing for the office soon after learning of the meeting, she waited for an extended period of time to hear whether she should make an effort to attend, despite having been instructed to do so from the start. These circumstances show that her tardiness on this date was willful and deliberate (*Wrobel*, 344 Ill. App. 3d at 538), and

1-10-1514

that she clearly had been warned about her attendance problems in the past (*Czajka*, 387 Ill. App. 3d at 174). We thus find that the Board's conclusion that Jones was discharged for misconduct in connection with her work and ineligible for unemployment benefits was not clearly erroneous (*Hurst*, 393 Ill. App. 3d at 327); and, accordingly, we reverse the order of the circuit court of Cook County finding otherwise.

Reversed.