

No. 1-09-2879

**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  
March 31, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--|---|------------------|
| MARQUI O. COLE,                          | ) | Appeal from the  |
|  | ) | Circuit Court of |
| Plaintiff-Appellee,                      | ) | Cook County.     |
|  | ) |                  |
| v.                                       | ) |                  |
|  | ) | No. 09 L 50736   |
| ILLINOIS DEPARTMENT OF EMPLOYMENT        | ) |                  |
| SECURITY; DIRECTOR, ILLINOIS DEPARTMENT  | ) |                  |
| OF EMPLOYMENT SECURITY; BOARD OF REVIEW; | ) |                  |
| and AMERICASH LOANS, LLC,                | ) | Honorable        |
|  | ) | Lawrence O'Gara, |
| Defendants-Appellants.                   | ) | Judge Presiding. |

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JUSTICE SALONE delivered the judgment of the court.  
Presiding Justice Gallagher and Justice Lavin concurred in  
the judgment.

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**O R D E R**

**HELD:** When an employee was terminated for using customers' personal information to process loans that the customers did not authorize, he was properly deemed ineligible for unemployment benefits based upon work related misconduct.

Defendants, the Department of Employment Security (Department), the Director of the Department, the Department's Board of Review (Board), and AmeriCash Loans, LLC (AmeriCash), appeal from an order of the circuit court reversing the ruling of the Board that plaintiff, Marqui Cole, was ineligible for unemployment benefits from AmeriCash under Section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2008)), because he was terminated for work related misconduct. On appeal, defendants contend that Cole committed misconduct when he used customers' personal information to process loans for which they did not apply. We reverse the circuit court's ruling.

The record reveals that Cole was employed by AmeriCash from December 2007 until December 2008. Cole then applied for unemployment benefits, and AmeriCash objected. Cole was deemed ineligible for benefits because he was terminated for misconduct connected with his work, *i.e.*, the submitting of false information.

Cole then filed an administrative appeal, and a Department referee conducted a telephone hearing during which both Cole and AmeriCash District Manager Nakia Martin, Cole's supervisor, testified. Martin testified that Cole was a full-time customer service representative until his termination. She terminated Cole after it was discovered that Cole had used the personal information of several customers to obtain cash loans in

violation of company policy. Martin testified that when she spoke to Cole regarding these loans, he denied processing them. However, she did not believe him because computer identification details indicated that the loans were processed at the location where Cole worked during working hours, he was the only employee in that store on a daily basis, and he did not indicate that he gave his security codes to another person.

Although Martin reviewed the store's surveillance videotapes, the tapes from the days on which the loans were processed and payments were made to them were "snowed out." Cole had access to these tapes.

Cole testified that although he was the sole employee in the store, sometimes "substitutes" would work at the location. He denied taking out loans in the customers' names and noted that the loans at issue were paid off. He then admitted that he processed the loans, but did not understand how they were fraudulent if the required documentation was in each file.

In rebuttal, Martin testified that some of the loan files contained the required documentation, but that a couple of files did not contain any documents. She explained that once AmeriCash had a customer's documents, those documents could be used to process an additional, fraudulent loan.

When one of the customers at issue called to inquire as to an installment loan balance, the customer was given both the

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requested balance and the balance on a second, cash loan. The customer then came to the store and disputed the second loan. Martin described the customer as irate. When the customer reviewed the documents relating to the second loan, the customer indicated that the signature on the documents was not hers. Martin then compared the signatures and discovered they were "not alike in any way."

The files for all signature cash loans were then examined. Discrepancies were discovered in the signatures of five customers. When those customers were contacted, they denied purchasing this type of loan product. The costumers then came to the store and verified that the signatures in the files were not theirs.

The Referee found that Cole had used customers' personal information to apply for loans that he processed, and that it had been proved by a preponderance of the evidence that Cole's actions were a wilful and deliberate violation of AmeriCash's policies. Accordingly, Cole's actions constituted misconduct connected with work and he was subject to the disqualification provisions of section 602(A) of the Act. See 820 ILCS 405/602(A) (West 2008). Cole then appealed to the Board.

On review, the Board first noted that in response to Cole's appeal, AmeriCash had submitted additional materials in the form of computer screen captures and customer affidavits. However,

the Board declined to consider these documents as AmeriCash failed to explain why these materials were not produced before the Referee. The Board determined that the Referee's decision was supported by the record and law, incorporated it as part of the Board's decision, and affirmed the denial of benefits.

Cole subsequently filed a complaint for administrative review in the circuit court. The court reversed the Board, finding that the Board's decision was contrary to the manifest weight of the evidence.

Defendants now appeal, contending the Board's finding that Cole falsified customer loan documentation was not against the manifest weight of the evidence and the Board's decision that Cole was ineligible for unemployment benefits under the Act based on work related misconduct was not clearly erroneous.

Although Cole has not filed a brief in response, we may proceed under the principles set forth in *First Capitol Mortgage Corp., v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

This court reviews the decision of the Board, rather than that of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Whether an employee was terminated for misconduct under the Act is a mixed question of law and fact (*Sudzus*, 393 Ill. App. 3d at 826), to which a reviewing court applies a "clearly erroneous" standard of review (*AFM Messenger Service, Inc., v. Department of Employment*

*Security*, 198 Ill. 2d 380, 395 (2001)). An agency's decision is clearly erroneous when this court's review of the record leaves us with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395; see also *Randolph Street Gallery v. Zehnder*, 315 Ill. App. 3d 1060, 1064 (2000) (reviewing court should reverse only when "firmly convinced the agency has made a mistake").

Pursuant to section 602(A) of the Act (820 ILCS 405/602(A) (West 2008)), an employee who was discharged for misconduct connected to his work cannot receive unemployment benefits. An employee commits misconduct when he (1) deliberately and willfully violates, (2) an employer's reasonable rule or policy, (3) and the violation harms the employer, or other employees, or has been repeated by the former employee despite a warning or other explicit instructions from the employer. See 820 ILCS 405/602(A) (West 2008).

"Standards of behavior that an employer has a right to expect constitute reasonable rules and policies." *Caterpillar, Inc., v. Department of Employment Security*, 313 Ill. App. 3d 645, 654 (2000). A company rule does not need to be reduced to writing (*Caterpillar*, 313 Ill. App. 3d at 654), and this court does not need direct evidence of a rule in every case; rather, this court may make a commonsense determination that a defendant's conduct intentionally and substantially disregarded

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his employer's interest. *Phistry v. Department of Employment Security*, No. 1-09-2781, slip op. at 6 (Nov. 18, 2010); see also *Ray v. Department of Employment Security Board of Review*, 244 Ill. App. 3d 233, 236 (1993) (finding it is implicit in the employee-employer relationship that an employee does not steal from his employer). Conduct is willful when it is a conscious act that knowingly disregards an employer's rules. *Phistry*, No. 1-09-2781, slip op. at 6.

Although the record is unclear whether AmeriCash promulgated an explicit rule prohibiting an employee from using the personal information submitted by a customer to process additional, unauthorized loans, the record does contain Cole's acknowledgment that he had received the AmeriCash employee handbook. The portion of the handbook included in the record indicates that an employee could be disciplined or terminated for falsification or alteration of AmeriCash or customer records and documents.

Here, the record shows that Cole's conduct was willful in that he used his position to process additional loans for customers without those customers' consent in violation of a company policy forbidding the falsification of customer documents. *Sudzus*, 393 Ill. App. 3d at 826. Before the referee, Cole acknowledged that he processed the loans, but asserted they were not fraudulent because the loan files contained the required paperwork. Martin, on the other hand, testified that several of

the loan files did not contain any paperwork, and that those files with paperwork contained documents with signatures that did not match the signatures in the customers' other files. The evidence further showed that AmeriCash was harmed by Cole's actions. *Sudzus*, 393 Ill. App. 3d at 826. Martin described one customer as irate when she learned that a second loan was taken out in her name. It is reasonable to infer that AmeriCash's reputation was harmed when the other customers were notified their personal information was used to process unauthorized loans.

This court's review of the record has not left us with the conviction that the Board made a mistake when it deemed Cole ineligible for benefits based upon work related misconduct. *Randolph Street Gallery*, 315 Ill. App. 3d at 1064. As the Board's decision was not clearly erroneous (*AFM Messenger Service, Inc.*, 198 Ill. 2d at 395), we reverse the circuit court's ruling.

Reversed.