

No. 1-10-0204

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID A. ADAMS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; an administrative agency of)	No. 09 L 51470
the State of Illinois; DIRECTOR OF THE)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; BOARD OF REVIEW, an)	
administrative agency of the State of)	
Illinois and DEPARTMENT OF EMPLOYMENT)	
SECURITY/HRM, as the employer,)	Honorable
)	Lawrence O'Gara,
Defendants-Appellees.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Salone concurred in the judgment.

ORDER

HELD: Where plaintiff's willful violation of a known company policy constituted misconduct in connection with his work and disqualified him from unemployment benefits, the circuit court's judgment was affirmed.

Plaintiff David Adams appeals from the circuit court's order that affirmed the decision of the Board of Review of the Illinois Department of Employment Security (Board), finding that he was discharged for misconduct and thus ineligible to receive unemployment benefits under section 602A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602A (West 2008). On appeal, plaintiff contends that the decision to deny him unemployment benefits was against the manifest weight of the evidence because his separation from employment should be premised on a subsequent settlement agreement, which mandated his resignation, not any termination for misconduct or voluntary leaving. We affirm.

The record shows that on June 12, 2009, plaintiff was terminated from his position as a public service administrator with his employer, the Illinois Department of Employment Security (Department). Plaintiff applied for unemployment benefits with the Department, which was not only his former employer but also the state agency that oversees and administers the unemployment insurance benefits program. As plaintiff's employer, the Department objected claiming that plaintiff was discharged for employment-related misconduct, *i.e.*, falsifying documents. The Department submitted a termination report, a discharge notification letter, and plaintiff's job applications with the Department for the positions of revenue analyst and public service administrator, which showed that plaintiff indicated he had never been fired from a job.

Plaintiff submitted a "Settlement Agreement and General Release" between him and the Department. The agreement noted that there was a matter pending before the State of Illinois Civil Service Commission (Commission) between the Department and plaintiff, and that the parties desired to resolve all claims relating to the Commission proceedings. Under the settlement agreement, the Department agreed to give plaintiff four months of back pay (\$16,092), withdraw its pending charges against him, and accept his voluntary resignation effective June 12, 2009. In return, plaintiff agreed to never seek or accept employment with the Department in the

future, and to release all potential claims against the Department that relate to his employment with it, except for claims for unemployment insurance benefits. Plaintiff's resignation from his position with the Department was attached to the settlement agreement.

On July 10, 2009, a claims adjudicator found plaintiff ineligible for benefits because he was discharged for falsification of job applications, which constituted misconduct connected with his work under the Act.

Plaintiff appealed, and on August 28, 2009, a telephone hearing was conducted by a Department referee. At this hearing, Tom Conway, the labor relations manager for the Department, testified that plaintiff was hired as an accountant or auditor in the revenue division. After about one year, plaintiff was promoted to a supervisory position. On May 8, 2009, plaintiff was placed on administrative leave, and then was suspended on May 22, 2009, pending discharge. He was ultimately discharged on June 12, 2009, for falsifying his original employment application and the employment application he completed when he applied for the promotion.

On both applications, plaintiff indicated that he had never been fired from a job before, and that he resigned from his position with the City of Chicago (City) in order to pursue other opportunities. About four weeks before plaintiff was discharged, the Department learned that these statements were false because plaintiff had an active lawsuit pending against the City for wrongful termination. Conway met with plaintiff and asked him to explain why he indicated on his applications that he had never been fired. Plaintiff responded that because the City did not discharge him fairly, he had no obligation to state that he had been fired. Conway testified that plaintiff acknowledged, through his signature, that he received and understood the Department's code of ethics, which included a section on falsification of documents.

Conway further testified that he was aware of a settlement agreement between the Department and Adams. According to Conway, the agreement stated that the Department agreed to withdraw any pending charges against plaintiff, and required him to release all claims against the Department, except any claim for unemployment insurance. The agreement also stated that the Department accepted plaintiff's resignation, thereby reversing his discharge.

Plaintiff testified that when he indicated on his applications that he was never fired from the City, there was no intent to defraud the Department. Plaintiff had litigation pending against the City, and his termination from the City was not final. The pending litigation did not involve wrongful termination, but was based on discrimination involving "health matters." Although plaintiff could have given the Department a different reason for why he left his employment with the City, the Department had no evidence showing that he had been fired. Plaintiff never filled out a resignation form with the City, and did not have the option to stay employed. Plaintiff admitted that he made a false statement when he indicated on his applications that he left the City to pursue other opportunities.

In reversing the local office determination that plaintiff was ineligible for benefits, the referee found that section 602A of the Act (820 ILCS 405/602A (West 2008)), was inapplicable because plaintiff voluntarily left his employment. The referee also found that plaintiff was given an opportunity to settle a dispute with the Department, and his position became unsuitable for him when the Department placed him on administrative leave due to the allegations of falsification. The referee concluded that plaintiff voluntarily left work with good cause attributable to the Department and was not subject to disqualification of benefits under section 601A of the Act (820 ILCS 405/601A (West 2008)).

The Department appealed the referee's decision to the Board. The Board reversed the referee's decision, finding that the employer discharged plaintiff for falsifying his employment

applications. The Board further found that the evidence showed that plaintiff made false statements concerning his separation from a prior employer. His actions injured the interests of the employer in that the Department did not have the ability to determine the best prospective employee. The Board concluded that plaintiff was discharged for misconduct connected with work and was thus subject to disqualification of benefits under section 602A of the Act. Plaintiff filed a complaint for administrative review of the Board's decision in the circuit court. On January 14, 2010, the circuit court affirmed the Board's decision. This appeal follows.

We review the final decision of the administrative agency and not the decision of the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). The applicable standard of review depends on the issue raised. This court reviews pure questions of law *de novo* (*Village Discount Outlet*, 384 Ill. App. 3d at 525), but the Board's findings of fact are governed by a different standard of review, *i.e.*, they are entitled to great deference and will be affirmed unless they are against the manifest weight of the evidence (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)).

The question of whether an employee was disqualified from unemployment benefits for misconduct presents a mixed question of law and fact and is subject to the "clearly erroneous" standard of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). An agency's decision may be deemed clearly erroneous only where the reviewing court is left with the definite and firm conviction that a mistake has been made based on the entire record. *AFM Messenger Service*, 198 Ill. 2d at 395. For the reasons which follow, we find that this is not such a case.

To be ineligible for unemployment benefits under section 602A of the Act, a claimant's cause of discharge must be related to work misconduct, which deliberately and willfully violates a reasonable work rule or policy governing work-related behavior. 820 ILCS 405/602A (West

2008). Further, such violation must harm the employer or other employees, or must be repeated after a warning from the employer. 820 ILCS 405/602A (West 2008).

At the hearing, Conway testified that plaintiff was discharged from his employment with the Department for falsifying his employment applications. On both applications, plaintiff indicated that he had never been fired from a job before, and that he resigned from his position with the City in order to pursue other opportunities. The Department subsequently learned that plaintiff had an active lawsuit pending against the City for wrongful termination. The Department advised plaintiff by way of a discharge notification that his employment was terminated because he violated its code of ethics, which plaintiff had previously accepted. Plaintiff initially testified at the hearing that when he indicated on his applications that he was never fired from the City, there was no intent to defraud the Department because he had litigation pending against the City and his termination was not final. Plaintiff later admitted, however, that he never filled out a resignation form with the City, and did not have the option to stay employed. Plaintiff also conceded that he made a false statement when he indicated that he left the City to pursue other opportunities.

It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicting testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Here, after considering the testimony of Conway and plaintiff during the telephone hearing, the Board settled this issue in favor of the employer and reversed the referee's decision. In doing so, the Board found that plaintiff was discharged for misconduct when he falsified his employment applications. After reviewing the record in this case, and deferring to the Board's assessment, we cannot say that this conclusion was against the manifest weight of the evidence. *Caterpillar, Inc., v. Doherty*, 299 Ill. App. 3d 338, 344 (1998).

Nevertheless, plaintiff maintains that his separation from the Department was compulsory under the terms of the settlement agreement executed on July 30, 2009, which required that he resign. Specifically, plaintiff first contends that the plain language of the agreement demonstrated that the parties intended to retroactively alter the nature of his separation from the Department from discharge to resignation. Plaintiff points to the language in the agreement which states that he agreed to resign effective June 12, 2009, and that the Department would ensure that his personnel records accurately reflected his resignation. We find, however, that the agreement was simply a post-discharge characterization of plaintiff's separation from the Department for purposes of settling the Commission case, and did not substitute the resignation for his discharge for purposes of eligibility for unemployment benefits under the Act.

Second, plaintiff argues that the parties agreed that, despite any prior interactions between them, the agreement supersedes everything else. Plaintiff emphasizes that the agreement stated,

"All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants and warranties, between the parties concerning the subject matter of this settlement agreement are merged into this settlement agreement. This agreement contains the entire agreement between the parties."

This paragraph, however, does not show that the agreement supersedes "everything else" related to the parties. It simply states that all matters relating to the settlement agreement in the Civil Service Commission proceedings for back pay are merged into that agreement. Therefore, it does not include the matter relating to plaintiff's discharge for falsifying his employment applications.

Third, plaintiff noted that because the settlement agreement expressly exempted claims for unemployment insurance benefits from his general release, the Department expressly agreed that obtaining such benefits remained a possibility. Plaintiff then argues that if the settlement agreement had no bearing on his prior separation from the Department, and his separation remained predicated on a discharge for misconduct, then including a provision in the settlement agreement that allows him to attempt to obtain unemployment benefits would be superfluous. We disagree. The settlement agreement only resolved the Commission case, and allowed plaintiff to pursue his action for unemployment benefits. It made no determination with regard to whether or not plaintiff was terminated for misconduct for purposes of obtaining unemployment benefits. Instead, the agreement left that issue for the Board to resolve, and thus the settlement agreement was not superfluous.

Moreover, we find *Chicago Transit Authority v. Didrickson*, 276 Ill. App. 3d 773 (1995), relied on by plaintiff, distinguishable from the case at bar. In *Didrickson*, the claimant held a temporary position with the CTA under the terms of an employment contract, and, prior to her termination date, she inquired about obtaining permanent employment with the CTA. The claimant did not receive a response regarding her inquiry, and was obligated to leave her temporary position when the term of employment ended. The claimant filed a claim for unemployment benefits.

This court affirmed the Board's decision finding that the claimant was not subject to the disqualification of unemployment benefits, thus reversing the circuit court's decision. *Didrickson*, 276 Ill. App. 3d at 779-80. In doing so, this court held that the Act does not necessarily disqualify a claimant from eligibility for benefits whose separation from work was compulsory under an employment contract. *Didrickson*, 276 Ill. App. 3d at 778-79. Here, however, the record is void of any evidence showing that plaintiff held a temporary position with

the Department for a contractually mandated amount of time. Plaintiff's discharge from the Department occurred several weeks before the execution of the settlement agreement. Moreover, plaintiff's separation from the Department was not the result of a contractual agreement, but was instead based on misconduct.

Considering the Board's findings as *prima facie* true and correct (*Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002)), we find that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous (*AFM Messenger Service*, 198 Ill. 2d at 391). Plaintiff knowingly violated a reasonable work rule against falsifying documents by intentionally making false statements on his employment applications that he had never been fired from a previous employer. Furthermore, plaintiff's actions injured the interests of the employer in that they did not allow the Department the ability to determine the best prospective employee.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.