

No. 1-10-0619

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).

THIRD DIVISION
March 2, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GLORIA HALL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 09 L 51469
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF)	
REVIEW; and LARGE APPAREL OF ILLINOIS,)	
INC.,)	Honorable
)	Sanjay T. Tailor,
Defendants-Appellees.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

O R D E R

HELD: The Board's finding, that plaintiff's actions constituted misconduct in connection with her work, and thus disqualified her from unemployment benefits, was not clearly erroneous and the circuit court's judgment is affirmed.

Plaintiff, Gloria Hall, appeals *pro se* from an order of the circuit court affirming the decision of the Board of Review of the Illinois Department of Employment Security (Board) which denied her claim for unemployment benefits under section 602(A) of the Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2008). On appeal, plaintiff challenges the Board's determination that she deliberately violated the regulations of her employer, Large Apparel, and was disqualified from receiving benefits due to misconduct connected with her work.

The record shows that plaintiff was employed as a store manager for Large Apparel and was discharged on July 2, 2009, after she encouraged a sales associate to purchase items from the store in order to meet sales goals with the understanding that he could return the items the next day. Plaintiff applied for unemployment benefits with the Illinois Department of Employment Security (Department), and Large Apparel challenged the claim.

In an interview with the claims adjudicator, plaintiff admitted her actions, but explained that she was never told that this practice was not allowed. The claims adjudicator found that she was discharged for submitting false information, which constituted misconduct in connection with her work and made her ineligible for benefits.

Plaintiff timely appealed and a telephone hearing was conducted by a referee. Plaintiff testified that it was common for

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store managers to encourage sales associates to make purchases in order to meet sales goals, but that this was not the case with the purchase that had resulted in her discharge. She testified that the sales associate in her case purchased some items for his girlfriend at the end of the day that "just so happened" to allow the store to reach its goal. The sales associate corroborated plaintiff's version of events, and plaintiff declined to question the other sales associate who was also participating in the hearing.

The referee affirmed the disqualification for benefits entered by the claims adjudicator. In doing so, the referee found that plaintiff's testimony at the hearing contradicted the statement she provided to the claims adjudicator, and that the testimony of plaintiff and the sales associate did not amount to the preponderance of evidence needed to overcome the decision of the claims adjudicator.

Plaintiff then appealed to the Board and appended affidavits from two former employees of Large Apparel, one of whom had been present for the hearing, but plaintiff declined to interview. The Board excluded these affidavits from its review because there was no explanation as to why the evidence was not presented at the hearing. The Board then affirmed the referee's decision, noting plaintiff's contradictory and incredible testimony. Thereafter,

plaintiff filed a complaint for administrative review and the circuit court affirmed the Board's decision.

In this appeal from that judgment, plaintiff contends that the circuit court erred in finding that her actions constituted misconduct, and that she deliberately violated a company policy which had never been explicitly explained to her. We initially observe that our review of this administrative proceeding is limited to the final decision of the administrative agency and not that of the circuit court. 735 ILCS 5/3-101 *et seq.* (West 2008); 820 ILCS 405/1100 (West 2008); *Anderson v. Illinois Department of Professional Regulation*, 348 Ill. App. 3d 554, 560 (2004).

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). Since judicial review is limited to evidence in the administrative record, we will not consider the affidavits of the two employees which were not introduced at the hearing and which the Board declined to admit into evidence. *Philpott v. Board of Trustees of*

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City of Charleston Firefighters' Pension Fund, 397 Ill. App. 3d 369, 370 (2010).

The individual claiming unemployment insurance benefits has the burden of proving her eligibility; and if she was discharged for misconduct, she is deemed ineligible to receive those benefits. *Hurst*, 393 Ill. App. 3d at 327. Misconduct is defined under section 602(A) of the Act as 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. 820 ILCS 405/602(A) (West 2008); *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

Here, the Board found that plaintiff deliberately disregarded a rule setting a standard of behavior that Large Apparel had a right to expect from her as an employee. The Board found that her deliberate falsification of the records was dishonesty which constituted misconduct and disqualified her from obtaining benefits.

Plaintiff admitted to the claims adjudicator that she encouraged the sales associate to purchase the items and later return them, but maintained that she was not aware of a rule prohibiting her actions. Although Large Apparel did not provide direct evidence of a rule prohibiting plaintiff's behavior, it was not required to do so because the existence of a reasonable rule may be found by a commonsense realization that certain conduct

intentionally and substantially disregards an employer's interest. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 827 (2009), quoting *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998). A reasonable rule concerns standards of behavior which an employer has a right to expect from its employees. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 716 (2007).

In this case, the evidence supports the Board's finding that plaintiff knew of, and allowed, a sales associate to purchase items with the intent at the time of purchase to return them in order to falsely represent her store's sales figures. This deliberate falsification violated a reasonable rule, or standard of behavior, that an employer has a right to expect from an employee and constituted misconduct under section 602A of the Act. *Sudzus*, 393 Ill. App. 3d at 827. In addition, the Board found that plaintiff's protestations of innocence were not credible and that conclusion is supported by the testimony that she gave to the referee that conflicted with statements made to the claims adjudicator. The Agency's findings are held to be *prima facie* true and correct, and a reviewing court will only reverse an agency's decision if it is against the manifest weight of the evidence. *Jackson*, 105 Ill. 2d 501, 513 (1985). Here we find the findings are not against the manifest weight of the evidence, therefore, we have no basis for disturbing the credibility determination made by the Board.

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Jackson, 105 Ill. 2d at 513; *Carroll v. Board of Review*, 132 Ill. App. 3d 686, 691 (1985).

We finally observe that plaintiff has not disputed that her conduct harmed Large Apparel, and the reason therefor is evident from the record. Harm, for purposes of the Act, need not be actual harm, and can consist of potential harm. *Livingston*, 375 Ill. App. 3d at 716. Here, in addition to the dishonesty of a store manager, falsification of records could potentially harm Large Apparel by misleading the company about its actual sales figures in that store and distorting the output of the chain.

In this case, after reviewing the record, we hold that the Board's findings, that plaintiff's actions constituted misconduct in connection with her work and that plaintiff's misconduct disqualified her from benefits under section 602A of the Act, were not clearly erroneous.

Accordingly, we affirm the judgment of the circuit court of Cook County.

Affirmed.