

No. 1-10-0990

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).

FIFTH DIVISION
May 13, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VICTORIA FREDRICKS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF THE ILLINOIS)	
DEPARTMENT OF EMPLOYMENT SECURITY;)	No. 09 L 51347
BOARD OF REVIEW,)	
)	
Defendants-Appellants,)	
)	
and)	
)	
PHWD, LLC c/o UNEMPLOYMENT CONSUL-)	
TANTS,)	The Honorable
)	Elmer James Tolmaire, III,
Defendants.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Epstein concurred in the judgment.

O R D E R

HELD: Plaintiff's willful and deliberate disregard of known company policy constituted misconduct in connection with her work and disqualified her from unemployment benefits; circuit court's judgment to the contrary reversed.

Defendants, the Department of Employment Security (Department), the Director of the Department and the Board of Review (Board), appeal from an order of the circuit court of Cook County reversing the Board's decision denying plaintiff, Victoria Fredricks, unemployment benefits for misconduct in connection with her work under section 602(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2008)). Defendants contend that the Board's findings of fact were not against the manifest weight of the evidence, and its conclusion that plaintiff's conduct disqualified her from receiving unemployment benefits under the Act was not clearly erroneous. Plaintiff has not filed a brief in response, but we may consider the case on defendants' brief alone pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

The record shows that Fredricks worked as a certified nursing assistant for All Faith Pavilion, a residential nursing facility, and was discharged for insubordination after a verbal exchange with her supervisor that culminated with profanity toward her supervisor and a resident who interceded. Following her discharge, Fredricks applied for unemployment benefits and a claims adjudicator found her eligible.

A Department referee dismissed All Faith Pavilion's subsequent appeal based on its failure to appear on the scheduled hearing date. However, the referee granted All Faith Pavilion's request for a rehearing based on unforeseen circumstances.

At the hearing, All Faith Pavilion's payroll manager, Earline Redmond, stated that Fredricks was discharged for insubordination. The incident leading to Fredricks' discharge occurred on August 31, 2008, when she used profanity toward her supervisor and a resident of the facility. Redmond stated that a written policy prohibits the use of abusive language toward coworkers and residents, and while she could not recite that policy verbatim, "it does call for termination." She added that Fredricks received a prior warning regarding an incomplete assignment on July 19, 2008.

Fredricks' supervisor, Felicia Chatman, stated that Fredricks interrupted her conversation with another nurse to ask whom she would be working with on her shift. Chatman assured Fredricks that she would not be working her shift alone and said to wait a moment. Fredricks insisted that she "hurry up" and commented, "bitch acts like she don't hear me and taking her time," She walked away briefly, then returned and said, "bitch you've got to find out who's working this floor." When a resident came out of his room in a wheelchair and complained about the noise, Fredricks told him to "mind his mother fucking business." Chatman told Fredricks that she could not speak that way to a resident and asked a nurse to take the resident to his room. She then walked away from Fredricks and went home because her shift ended.

Fredricks acknowledged that she called her supervisor a bitch, but stated that she did not mean to, that "it just came

out." She claimed that Chatman ignored her and said, "it doesn't make any sense for you to keep asking me this, you're old, Ms. Fredricks." According to Fredricks, the resident who came out of his room touched her hand and she told him, "just leave me alone." She denied using any profanity toward the resident.

Subsequently, in a written decision setting aside the claims adjudicator's determination that Fredricks was eligible for unemployment benefits, the Department referee found that Fredricks accused her supervisor of ignoring her questions, that she used profanity toward her supervisor and then a resident who complained about noise, and that she knew her behavior and use of profanity were unacceptable. The Department referee noted that verbal abuse and disrespect of employees and residents warranted an immediate discharge, Fredricks admitted using profanity toward her supervisor, and All Faith Pavilion presented credible testimony regarding the events that led to Fredricks' discharge. The Department referee concluded that Fredricks' behavior constituted a deliberate and willful disregard of the employer's interests, and, thus, she was discharged for misconduct connected with her work.

The Board affirmed the referee's determination that Fredricks' behavior amounted to misconduct contemplated by section 602(A) of the Act (820 ILCS 405/602(A) (West 2008)), and disqualified her from receiving unemployment benefits. Thereafter, Fredricks filed a complaint for administrative review in the circuit court. In a written order, the circuit court

reversed the Board, finding that its decision was clearly erroneous.

In this challenge to that ruling by defendants, we observe that our review is limited to the propriety of the Board's decision. *Oleszczuk v. Department of Employment Security*, 336 Ill. App. 3d 46, 50 (2002). The question of whether an employee was properly terminated for misconduct 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 Security*, 198 Ill. 2d 380, 395 (2001); *Oleszczuk*, 336 Ill. App. 3d at 50. An agency decision may be deemed clearly erroneous only where a review of the record leaves the reviewing court with a definite and firm conviction that a mistake has been committed. *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395. For the reasons that follow, we find that this is not such a case.

Under the Act, misconduct is defined as a deliberate and willful violation of a reasonable rule or policy that harms the employer or has been repeated by the employee despite previous warnings. 820 ILCS 405/602(A) (West 2008); *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). Willful conduct is a conscious act made with knowing disregard of company rules. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). Standards of behavior that an employer has a right to expect from its employees constitute reasonable rules and policies. *Caterpillar v. Department of Employment Security*, 313 Ill. App. 3d 645, 654 (2000).

A nursing home has a duty to provide an abuse-free environment. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 717 (2007). Moreover, an employee may be disqualified from receiving unemployment benefits on the basis of misconduct where, as here, she uses abusive language, which is a form insubordination. *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998).

The evidence adduced at the telephone hearing established that All Faith Pavilion had a written policy that prohibited the use of abusive language toward coworkers and residents and called for termination if violated. Fredricks knew of that policy and admitted that she called her supervisor a bitch. The conflict in the testimony regarding whether she told the resident to "mind his mother fucking business" was resolved in favor of the employer, and we have no basis for disturbing the Board's credibility determination in that regard. *Hurst*, 393 Ill. App. 3d at 329. Fredricks engaged in insubordinate behavior by using abusive language toward her supervisor and a resident, which was harmful to All Faith Pavilion's interest in maintaining an orderly workplace. *Hurst*, 393 Ill. App. 3d at 329.

We are mindful that a single flurry of temper between an at-will employee and a supervisor may suffice to warrant discharge, but it is not enough to deny unemployment benefits. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 176 (2010). In particular, we have held that an argument with a supervisor without abusive language or threats is insufficient to

establish discharge for misconduct under the Act. *Oleszczuk*, 336 Ill. App. 3d at 52, and cases cited therein. Here, as noted, Fredricks admitted calling her supervisor a bitch during a verbal exchange. On this record, Fredricks' insubordinate behavior, although a single incident, constituted misconduct contemplated under the Act. *Carroll v. Board of Review*, 132 Ill. App. 3d 686, 693 (1985). We thus conclude that the Board's decision that Fredricks was disqualified from receiving unemployment benefits under section 602(A) of the Act was not clearly erroneous, and we reverse the circuit court's ruling to the contrary. *Phistry*, 405 Ill. App. 3d at 608.

Reversed.