

No. 1-10-1447

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

YOLANDA JACKSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 10 L5 0146
SECURITY; DIRECTOR OF THE ILLINOIS)	
DEPARTMENT OF EMPLOYMENT SECURITY;)	
BOARD OF REVIEW, and COZEN AND)	
O'CONNOR c/o UC EXPRESS,)	Honorable
)	Sanjay T. Taylor,
Defendant-Appellee.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon
concurred in the judgment.

O R D E R

HELD: The Board's finding that plaintiff was disqualified from receiving unemployment benefits based on misconduct in connection with her work was not clearly erroneous; judgment affirmed.

Plaintiff Yolanda Jackson, *pro se*, appeals from an order of the circuit court of Cook County which affirmed the decision of the Board of Review of the Illinois Department of Employment

Security (Board) denying her claim for unemployment benefits under section 602(A) of the Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2008). In this court, plaintiff challenges the Board's determination that she deliberately violated a reasonable rule of her employer, Cozen and O'Connor (Cozen), and was disqualified from receiving benefits due to misconduct in connection with her work. Plaintiff also contends that Cozen did not rightfully terminate her for misconduct, failed to follow its own policies regarding termination, and retaliated against her.

The record shows that plaintiff was employed as a paralegal for Cozen from April 15, 2008, until her termination on August 26, 2009. In that employment, plaintiff was privy to confidential materials, including client documents and attorney work-product. The record further shows that she acknowledged her awareness of the policy set forth in the employee handbook prohibiting an employee from violating the confidentiality of any privileged work. Notwithstanding, the record shows that on August 25, 2009, approximately 40 e-mails containing confidential client documents were sent from plaintiff's employer-provided e-mail account to her personal e-mail account. Plaintiff denied sending the e-mails and posited that someone must have logged on to her computer when she was away from her workstation and sent the e-mails.

Plaintiff was discharged from her employment on August 26, 2009, and applied for unemployment benefits with the Illinois Department of Employment Security (Department). Cozen protested the claim. In an interview with the claims adjudicator, plaintiff denied sending the e-mails, but acknowledged the policy prohibiting the sending of such information. The claims adjudicator found her ineligible for benefits, noting that plaintiff was discharged from Cozen "because she sent confidential client information to her personal e-mail."

Plaintiff appealed and on October 23, 2009, a telephone hearing was conducted by a referee, for which plaintiff and a representative from Cozen were present. The Cozen representative testified that plaintiff violated Cozen's confidentiality policy when she sent a "multitude" of client documents to her personal e-mail address without approval, authority, or knowledge of any of the attorneys who produced the documents. Cozen entered into evidence a printout of the e-mail history for plaintiff's employer-provided e-mail account which showed the 40 e-mails containing confidential documents sent to plaintiff's personal e-mail account. The section of Cozen's confidentiality policy which provides that all client documents and firm work-product are confidential and may not be shared outside the firm was also entered into evidence. Plaintiff did not object to the entry of either of these documents.

The Cozen representative further testified that during an investigation prior to plaintiff's termination, plaintiff stated that she must have been at lunch when the e-mails had been sent and that she "didn't know how it happened." Prior to her termination, Cozen prepared a memorandum stating that plaintiff would delete all of the e-mails in question in order to avoid a potential liability issue for Cozen's clients. Plaintiff signed the memorandum and added a written notation at the bottom stating that she did not know what happened.

During her testimony, plaintiff indicated that this memorandum did not serve as a termination. The referee agreed with her that the memorandum did not indicate that plaintiff was being terminated. Plaintiff then stated that Cozen's representatives told her on the date of termination that, in light of another disciplinary issue which had occurred the week prior, the attorneys for whom she worked "lost confidence" in her and that she was being terminated.

Plaintiff further testified that the employer policy indicated that "except in cases of misconduct an employee will receive either two weeks notice or ten days pay in lieu of notice." Since a Cozen representative sent her an e-mail stating that she would be given the 10 days of pay in lieu of notice, she interpreted this action to mean that she had not been terminated for misconduct.

The referee affirmed the disqualification of benefits entered by the claims adjudicator. In so doing, the referee found that the record established that plaintiff deliberately and willfully violated Cozen's rules or policies when she sent firm documents to her personal e-mail address. The referee also found that plaintiff's explanation that someone else used her computer in her absence to search for and send the documents was not credible. Based on the record and her credibility determination, the referee concluded that plaintiff had been discharged for misconduct and was therefore disqualified for benefits under section 602(A).

Plaintiff appealed to the Board and appended a written argument and several exhibits. She disputed that she was discharged for violating the confidentiality policy because the memorandum given to her by Cozen only related to the violation and did not include termination or discharge verbiage. She further argued that she did not forward the documents to her personal e-mail, but acknowledged that "someone did." She then explained that she worked in an open cubicle, her personal e-mail address was widely known at Cozen, and she had seen attorneys or computer technicians working at her workstation in the past; therefore, it is possible that someone else sent the documents to her personal e-mail account. Plaintiff also argued that "no one was harmed" by the incident because she deleted the e-mails.

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Finally, plaintiff argued that because Cozen gave her 10 days of pay in lieu of notice, Cozen did not terminate her for misconduct.

On review, the Board found that the referee's decision was supported by the record and the law. In so finding, the Board noted that it would not consider the written argument and additional evidence attached to plaintiff's appeal because it was not served on the other parties and was not introduced at the hearing. The Board then determined that the referee's decision was supported by the record and the law, incorporated it as part of the Board's decision, and affirmed the denial of benefits.

Thereafter, plaintiff filed a complaint for administrative review. The circuit court affirmed the Board's ruling and this appeal followed.

Plaintiff here contends that Cozen did not terminate her for misconduct under section 602(A) of the Act, that Cozen did not follow its written policy and confirmation letter regarding terminating her for misconduct, that Cozen retaliated against her based upon a judicial sanction given to one of the attorneys for whom she had worked, and that she has a strong argument that she was retaliated against by Cozen and that Cozen is "hiding out" behind misconduct in order to avoid paying unemployment.

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 be deemed clearly erroneous only 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).

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 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. 820 ILCS 405/602(A) (West 2008); *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

In this case, the Board affirmed the referee's determination that plaintiff deliberately and willfully violated a known Cozen confidentiality policy. The Board agreed that plaintiff's act of

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sending firm documents to her personal e-mail account constituted misconduct and disqualified her from obtaining unemployment benefits.

Although plaintiff denied the actions attributed to her, the Board's finding is supported by the record and the law. The record clearly shows, and plaintiff does not dispute, that on August 25, 2009, 40 e-mails, each of which contained an attachment with a confidential firm document, were sent from plaintiff's work e-mail address to her personal e-mail account. Plaintiff's explanation as to how this came to be was found incredible by the referee and the Board agreed. After reviewing the record, and deferring to the Board's assessment of the credibility of the witnesses based on the facts presented (*Caterpillar, Inc. v. Doherty*, 299 Ill. App. 3d 338, 344 (1998)), we conclude that the Board's ruling is not clearly erroneous. To the contrary, we find that the Board could reasonably conclude from the record that plaintiff deliberately and willfully violated Cozen's confidentiality policy.

Plaintiff, however, contends that Cozen failed to follow its own written policy and confirmation e-mail regarding her termination for misconduct; that Cozen retaliated against her because of a sanction given to an attorney by a federal court the week before her employment was terminated; and that Cozen is "hiding out" behind misconduct to avoid paying her benefits.

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Since plaintiff did not raise these arguments at the initial hearing, she has thus forfeited them for purposes of review. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998); 735 ILCS 5/3-110 (West 2008).

Plaintiff, finally, disputes the Board's finding that her conduct harmed Cozen because she deleted the e-mails before they were seen by anyone outside of the firm. We disagree. Plaintiff's actions clearly placed Cozen at direct risk of liability for the disclosure of confidential client information and commensurate loss of reputation and clients (*Manning*, 365 Ill. App. 3d at 558), and directly harmed Cozen by requiring it to expend resources to deal with the situation she created.

For these reasons, we conclude that the Board's determination that plaintiff's actions constituted misconduct in connection with her work and disqualified her from benefits under section 602(A) of the Act was not clearly erroneous. We, thus, affirm the judgment of the circuit court of Cook County to that effect.

Affirmed.