

2011 IL App (1st) 101640-U

FIRST DIVISION  
DATE 10/11/11

No. 1-10-1640

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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	)	
	)	
TIMOTHY QUINN,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	Appeal from the
	)	Circuit Court of
THE DEPARTMENT OF EMPLOYMENT	)	Cook County.
SECURITY, DIRECTOR OF	)	
EMPLOYMENT SECURITY,	)	
THE BOARD OF REVIEW,	)	
	)	No. 10 L 50156
Defendants-Appellants,	)	
	)	The Honorable
and	)	Elmer James Tolmaire III,
	)	Judge Presiding.
EAGLE EXPRESS LINES c/o NSN,	)	
	)	
Defendant.	)	
	)	
	)	

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JUSTICE HALL delivered the judgment of the court.

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Justices KARNEZIS and ROCHFORD concurred in the judgment.

## ORDER

¶ 1 *Held:* Board's decision that plaintiff truck driver was discharged for misconduct connected to work and was disqualified from receiving unemployment insurance benefits was neither against the manifest weight of the evidence nor clearly erroneous where plaintiff was aware of employer's reasonable rule or policy against tardiness, he previously had been warned about it, despite the warning he did not arrive on time for a scheduled shift, and the Board believed the testimony of the employer's representatives and disbelieved plaintiff's testimony.

¶ 2 Defendant Eagle Express Lines discharged plaintiff Timothy Quinn from his job as a truck driver because of alleged misconduct connected with work within the meaning of section 602A of the Unemployment Insurance Act (Act). The defendant Board of Review of the Department of Employment Security (Board) found that plaintiff was discharged for tardiness after prior warnings, which amounted to disqualifying misconduct under section 602A of the Act. The circuit court reversed the Board's decision as clearly erroneous.

¶ 3 Defendants Department of Employment Security, Director of Employment Security, and the Board appeal from the circuit court's order, contending that the Board's decision was neither contrary to the manifest weight of the evidence, nor clearly erroneous.

¶ 4 Plaintiff has not filed a brief on appeal, and we therefore consider this appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 5 There were three witnesses in this case: plaintiff, a truck driver for Eagle Express Lines; John Cobb, the director of safety and compliance for plaintiff's employer, Eagle Express Lines;

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and Eugene Jeffries, the dispatcher for Eagle Express Lines.

¶ 6 The record discloses that on June 13, 2009, dispatch tried to reach plaintiff several times, but plaintiff did not answer and did not return the calls. Cobb told plaintiff in a June 17, 2009, letter that plaintiff previously had been warned about this and that plaintiff's documented work history was "terrible" because he had been warned, he had been suspended, and they had met with him. Cobb then gave a "FINAL WARNING" to plaintiff that "ANY further violations of work place rules and policies WILL result in termination. Enough is enough." Cobb stated that the job was simple and included being at work on time, calling dispatch at the beginning and end of the shift, keeping the company issued Nextel on and responding to calls, fueling the truck, not idling, and doing what he was instructed to do.

¶ 7 In August 2009, plaintiff received a work assignment that the company said started at 1400 on August 11, 2009. Jeffries was adamant that he told plaintiff to start at 1400 and that he explained that 1400 meant 2 p.m. There was inconsistent evidence in the record regarding plaintiff's understanding of the starting time of the assignment. In a handwritten submission dated September 16, 2009, plaintiff inconsistently admitted that he was late because Jeffries told him to start at 1400 and he arrived late at 1446 or 2:46 p.m., and denied that he was late because Jeffries told him to start at 1500 and he arrived early at 1446 or 2:46 p.m. Jeffries responded that he would not have said 1500 because he had no assignments that started at 1500. Jeffries tried to reach plaintiff by telephone, but plaintiff did not return that call until around 1450 or 2:50 p.m. Plaintiff testified that his phone did not ring and that he did not receive any messages from

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Jeffries, who testified that he called plaintiff and left several messages for him.

¶ 8 The referee found that plaintiff was eligible for unemployment insurance benefits because his tardiness was not a deliberate or willful violation of the employer's rules or policies and he had not intentionally reported late to work. The referee observed that plaintiff had reported to work at the time he believed the dispatcher had told him to report.

¶ 9 The Board reversed the referee's decision and found that plaintiff was not eligible for unemployment insurance benefits. The Board found that plaintiff had been warned that further infractions of his employer's rules could result in his discharge. The Board further found that the company dispatcher testified that he asked plaintiff to transport a load at 1400 hours, which he explained to plaintiff meant 2 p.m., and that plaintiff agreed to do so, but that plaintiff arrived at 2:44 p.m. on the designated day. The Board observed that when the referee asked plaintiff why he was 44 minutes late, plaintiff answered that he thought he was supposed to arrive at 1500 hours, he denied that the dispatcher had told him that 1400 hours meant 2 p.m., and he was sure that he had been told to report at 1500 hours. The Board observed that plaintiff was discharged for tardiness, which the Board concluded constituted misconduct. The Board concluded that plaintiff's testimony that he believed he was supposed to report to work at 1500 hours, was not credible. Instead, the Board found that the dispatcher's testimony that he told plaintiff that 1400 hours meant 2 p.m. was more believable than plaintiff's testimony. The Board found that plaintiff should have known that his job was in jeopardy and that he was required to be at work at 2 p.m. The Board concluded that plaintiff had been discharged for misconduct and was

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disqualified from receiving unemployment insurance benefits.

¶ 10 On administrative review (see 735 ILCS 5/3-101 *et seq.* (West 2008)), the circuit court reversed the Board's decision as clearly erroneous. The record disclosed no other explanation or reason for the court's decision.

¶ 11 Defendants contend that the Board's decision that plaintiff was not eligible for unemployment insurance benefits must be upheld because it was neither contrary to the manifest weight of the evidence, nor clearly erroneous. Defendants maintain that plaintiff violated a reasonable work rule to report timely to work, that the Board's factual findings should be affirmed unless they contravened the manifest weight of the evidence, and that plaintiff deliberately and willfully violated the rules against tardiness.

¶ 12 Section 602A of the Act states in part:

"An individual shall be ineligible for benefits for the week in which he has been discharged for misconduct connected with his work and, thereafter, until he has become reemployed \*\*\*. For purposes of this subsection, the term 'misconduct' means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the

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

¶ 13 A reasonable rule concerns "standards of behavior which an employer has a right to expect" from an employee. *Bandemer v. Department of Employment Security*, 204 Ill. App. 3d 192, 195 (1990). Willful conduct stems from an employee's awareness of, and conscious disregard for, a company rule. *Wrobel v. Illinois Department of Employment Security*, 344 Ill. App. 3d 533, 538 (2003); *Lachenmyer v. Didrickson*, 263 Ill. App. 3d 382, 389 (1994). Harm need not be actual harm and can consist instead of potential harm. *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998); *Brodde v. Didrickson*, 269 Ill. App. 3d 309, 311 (1995).

¶ 14 This court reviews the Board's decision. *Perto v. Board of Review*, 274 Ill. App. 3d 485, 491-92 (1995). The Board is the trier of fact. *Nykaza v. Department of Employment Security*, 364 Ill. App. 3d 624, 628 (2006). The Board's purely factual findings are "prima facie true and correct" (see *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002); 735 ILCS 5/3-110 (West 2008); 820 ILCS 405/1100 (West 2008)), and will not be reversed unless they are against the manifest weight of the evidence (*In re Austin W.*, 214 Ill. 2d 31, 56 (2005)). The Board's decision on a mixed question of law and fact will not be disturbed unless it was clearly erroneous. See *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715 (2007). The Board's decision is clearly erroneous only if the appellate court "definitely

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and firmly believes that a mistake has occurred." *Livingston*, 375 Ill. App. 3d at 715.

¶ 15 It was neither against the manifest weight of the evidence nor clearly erroneous for the Board to have found that plaintiff deliberately violated a reasonable rule despite previous warnings. Plaintiff had previously been warned that any further violations of company rules or policies would result in the termination of his employment. On June 17, 2009, plaintiff was sent a letter informing him that any further incidents, including being late for work, would result in the termination of his employment. The record discloses that plaintiff previously had been suspended; that on November 1, 2008, plaintiff attended a meeting as part of an effort to correct his problems; and that on June 17, 2009, plaintiff was sent a warning letter that included being at work on time. On August 11, plaintiff was supposed to report for work at 1400, the dispatcher clarified for him that 1400 meant 2 p.m., and plaintiff acknowledged that he understood, but plaintiff did not report at 1400 and instead called in later. Thus, plaintiff arrived late for a scheduled shift and called in late. Jeffries testified that plaintiff said that he was sorry that he was late for the shift scheduled to start at 1400, and then denied that he was late because he arrived at 1444 and the shift did not start until 1500. However, the dispatcher had no work assignments that started at 1500, and by the time that plaintiff arrived, a replacement driver had been sent. The Board found that Jeffries and Cobb were credible witnesses and that plaintiff was not. Plaintiff engaged in disqualifying misconduct because he was aware of, and consciously disregarded, a reasonable company rule or policy to report to work on time, despite a prior suspension, a prior meeting, and a prior written warning about his job performance.

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¶ 16 For the foregoing reasons, we reverse the judgment of the circuit court and hold that plaintiff was not entitled to unemployment insurance benefits. The judgment of the circuit court is reversed.

¶ 17 Reversed.