

harassing messages to employer's managers and staff. Circuit court's order overturning Board of Review's determination was reversed.

¶ 2 The defendants-appellants, the Illinois Department of Employment Security (Department), its Director, and its Board of Review (Board), appeal from an order of the circuit court of Cook County reversing the Board's decision to deny unemployment insurance benefits to plaintiff Christine A. Gryszkiewicz (plaintiff), who had been discharged by her employer, defendant Better Existence With HIV (BEHIV). Defendants-appellants contend that plaintiff was justifiably discharged for misconduct harming BEHIV because she revealed confidential BEHIV information to her husband, Paul Gryszkiewicz (Paul G.), who then used that information to send to BEHIV board members, managers, and staff harassing emails, text messages, and letters in which some of the confidential information was revealed.

¶ 3 A claims adjudicator initially granted plaintiff's application for unemployment benefits. This decision was protested and a telephonic evidentiary hearing was held before a Department referee. Eric Nelson, BEHIV's executive director, was plaintiff's direct supervisor. He testified that plaintiff was BEHIV's business manager. She worked at BEHIV from November 16, 1998, until August 11, 2009, when Nelson discharged her. Beginning on July 22, 2009, Nelson and other staff members began receiving emails from fabricated email addresses purporting to be connected to BEHIV. That first email discussed possible layoffs at BEHIV and contained a number of paragraphs disparaging Nelson's work performance. One such paragraph stated that Nelson was "arrogant, inept, incompetent, inefficient, financially irresponsible, and insecure in [his] position as ED of BEHIV." A second email on July 23, 2009, from beehivestaff@beehive.org was sent to the entire staff and again referred to potential layoffs. This email address was traced to a United Kingdom website which allowed people to create fabricated email addresses. On July 24, 2009, Nelson received a package of materials at the BEHIV office. The materials were made to look as if they came from the Illinois Department of Human Rights.

They contained a claim that one BEHIV employee was a member of a protected class but was "potentially targeted" for a layoff. A copy of these materials was sent to a BEHIV staff member who was discharged about one week later.

¶ 4 Nelson testified that on August 9 or 10, 2009, plaintiff's husband, Paul G., came to the BEHIV office with an affidavit in which he admitted sending the emails and text messages. He also claimed in the affidavit that plaintiff had no knowledge of what he had been doing and had not furnished him with any of the information contained in those messages. In the affidavit, Paul G. claimed that he had been able to determine staff email addresses by observing patterns in the published email addresses of some BEHIV employees.

¶ 5 According to Nelson, information about potential layoffs was known only by three BEHIV managers: plaintiff, BEHIV's program director, and Nelson. In addition, non-published staff email addresses used by Paul G. could only have come from an inside source because no particular pattern was used by BEHIV in creating them. Some used a first initial and last name, some used a first name and last initial, some used just a first name, and some used only a last name.

¶ 6 Nelson had also discovered a series of emails sent from plaintiff's work email address to an email address used by Paul G., PaulG26@Ameritech.net. According to Nelson, these were evidence of violations of confidentiality by plaintiff because they discussed financial difficulties arising at BEHIV. One email contained a copy of an email from plaintiff to Nelson, discussing BEHIV's financial problems. In that email, plaintiff suggested that BEHIV cut certain programs and reduce the hours of one of its employees. Another forwarded email discussed how BEHIV would be able to make its rent payments. A third forwarded email was from plaintiff to a BEHIV employee concerning paying an individual who had provided services to BEHIV. The record also contains an email from Paul G. to a BEHIV board member concerning Paul G.'s affidavit in

which he admitted sending the series of email and text messages. The email address used by Paul G. was the same one to which plaintiff had forwarded a series of email messages.

¶ 7 According to Nelson, plaintiff's conduct violated BEHIV rules by revealing confidential information about BEHIV's financial strengths and weaknesses as well as potential layoffs and private personnel issues. Nelson testified that this was strictly forbidden by BEHIV's employee handbook and was grounds for immediate termination. A portion of that handbook is contained in the record. It lists as a "major violation" the disclosure of confidential organizational or client information.

¶ 8 Nelson testified that when this information was discovered, including the origin of the harassing emails from Paul G., plaintiff was given the option of signing a separation agreement. When she refused, she was fired. In this same meeting plaintiff denied forwarding the emails to Paul G.

¶ 9 Paul G. also testified at the hearing. He again admitted that he had sent the email and text messages at issue, although he denied having sent anything by mail. He denied that plaintiff was involved in sending these messages, or that she "shared" any information contained in them with him. Paul G. also admitted that the email address to which plaintiff had forwarded messages was his, although he asserted that it was not an address that he used routinely. He identified it as a shared address with plaintiff. In his testimony he initially claimed that he had been given the nonpublished email addresses of BEHIV employees by two former BEHIV board members and one current board member. He claimed that he knew about the layoffs because he was told about them by the same former board members as well as by BEHIV's program director, in a telephone conversation. He reiterated that plaintiff did not know that he was sending these messages and that he never received information from her about what BEHIV was doing.

¶ 10 In his affidavit, Paul G. had claimed that he was able to determine the nonpublic email addresses of BEHIV employees by detecting patterns in published BEHIV email addresses. When asked about his contradictory testimony that he was given these addresses by current and former BEHIV board members, Paul G. stated that he did not mention these sources in his affidavit because he did not consider it relevant. He admitted that there was no discernible pattern to the published email addresses. Nelson also admitted that on August 4, 2009, he had texted the following message to Nelson on Nelson's cell phone:

"You made a big mistake in the way layoffs were handled. I'm coming after you with everything I have every day until you are gone."

¶ 11 Plaintiff testified that she had no conversations with Paul G. about what was occurring at BEHIV. She did not know how he had obtained the nonpublished email addresses. She admitted forwarding BEHIV email messages to the email address which she shared with Paul G. but stated that she only did so in order to print them for her private files. She also stated that part of this shared account was an individual email address for her. When asked why she did not forward the email messages to that account she claimed that it was possible that she had but they may have appeared under the "PaulG" address. She denied giving any confidential information to Paul G. She also denied having any conversations with him about being upset about what was happening at work. She also admitted that she could have printed out the messages she wanted for her files on a work printer.

¶ 12 Based upon this testimony and the exhibits, the referee determined that BEHIV had proven that plaintiff disclosed confidential information which Paul G. used to harass BEHIV management. The referee specifically found that plaintiff's assertion that she had no knowledge of this was not credible. Accordingly, the referee found that plaintiff was ineligible for

unemployment benefits because she had been discharged for misconduct connected with her work. Plaintiff appealed this decision to the Board, which incorporated the referee's decision as part of its decision and affirmed the denial of benefits. Plaintiff then filed a complaint for administrative review with the circuit court of Cook County, which reversed the decision of the Board. This appeal ensued.

¶ 13 Plaintiff has failed to file a brief on appeal, but we will consider the merits of the appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-133 (1976). Our review is of the decision of the Board, as the trier of fact. *Caterpillar, Inc. v. Department of Employment Security*, 313 Ill. App. 3d 645, 653 (2000). We will not overturn the Board's determination unless it is clearly erroneous, where upon review the record creates a definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). Under section 602(A) of the Unemployment Insurance Act (Act) an individual is disqualified from receiving unemployment benefits if they were discharged for misconduct connected with their work. 820 ILCS 405/602(A) (West 2008); *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). Misconduct is found where there has been (1) a deliberate and willful violation of (2) a reasonable rule or policy (3) which harms either the employer or the employees at the plaintiff's place of work. 820 ILCS 405/602(A) (West 2008); *Phistry*, 405 Ill. App. 3d at 607; *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 826 (2009).

¶ 14 Here, the Board adopted the referee's findings, which included her conclusion that the testimony of plaintiff was not credible. Implicit in these findings was the conclusion that Paul G. was also not credible. There was clear evidence that plaintiff had forwarded confidential information of her employer, BEHIV, to an email address which she shared with Paul G., who in turn used that information to send harassing emails, text messages, and mail to BEHIV

employees which disclosed confidential information about impending layoffs. As we have noted, BEHIV's employee handbook stated that the disclosure of confidential BEHIV information constituted a major violation. The harm to BEHIV is evident. Plaintiff, a BEHIV manager, deliberately violated a BEHIV rule against revealing confidential information by emailing that information to her husband, Paul G. He in turn revealed that information to BEHIV staff while also harassing management with insulting email messages, revealing confidential information. It was not in BEHIV's interest to have its internal plans for layoffs disclosed to employees before BEHIV announced those layoffs. BEHIV was also harmed by plaintiff's breach of the trust placed in her by BEHIV. See *Phistry*, 405 Ill. App. 3d at 607.

¶ 15 Based upon this evidence we find that the Board's determination that plaintiff was ineligible for unemployment benefits because of misconduct related to her work was not clearly erroneous. We affirm the Board's determination and reverse the ruling of the circuit court that plaintiff was eligible for such benefits.

¶ 16 Reversed.