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¶ 2 Defendants, the Illinois Department of Employment Security (IDES), its director, and its Board of Review (the Board), appeal from an order of the circuit court reversing the Board's finding that plaintiff Annette Douthard was discharged from her employment due to misconduct, and ineligible for unemployment insurance benefits. On appeal, defendants contend that the Board's factual findings were not against the manifest weight of the evidence, and that the Board's finding that plaintiff was discharged for misconduct was not clearly erroneous. We agree and reverse the circuit court's judgment.

¶ 3 The record shows that plaintiff had been employed as a pre-production coordinator with Packaging Dynamics: BagcraftPapercon (Bagcraft) from April 12, 2004, until August 31, 2009, when she was terminated after denying responsibility for a costly production error, throwing documents from her supervisor into the trash, and failing to notify the company of her two-day absence. The following day, plaintiff applied to IDES for unemployment insurance benefits. Plaintiff stated that she had been discharged because she missed two days of work due to an illness. She claimed that she left a message for her employer, and that she had a note from her doctor, but her supervisor refused to accept it. In explaining why her discharge occurred, plaintiff stated that she was an excellent worker, but that her supervisor, Chris Rush, joined the company four months earlier, and in that time, had fired several people and caused another person to quit.

¶ 4 Bagcraft submitted a protest letter to IDES stating that plaintiff was discharged due to deliberate and willful misconduct in violation of its "Standards of On the Job Conduct." The letter explained that plaintiff's supervisor had given her a project, and plaintiff threw it into the trash and left the building. Plaintiff then failed to report to work the next two days and claimed she did not notify her supervisor of her absence because she did not have her supervisor's contact information. Bagcraft stated that plaintiff had been trained regarding the

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proper reporting procedures, acknowledged that fact with her signature, but failed to follow the rules.

¶ 5 Attached to Bagcraft's protest letter was a copy of the company's "Standards of On the Job Conduct" which stated that the standards were designed to ensure effective operation of the business, and adherence to the policy was required of all employees. The policy further states that violations of the standards could result in discipline, including discharge, without prior notice. On the list of unacceptable behavior, one of the standards expressly cites "[f]ailure of an employee to notify the company that he or she will be absent from work." Another standard cites "[c]arelessness or inefficient performance of job duties, including the failure to maintain proper standards of performance or interfering with work of other employees." The standards also specifically prohibit "[i]nsubordination," "[a]ltering company records," and "[a]ny action whatsoever that tends to destroy good relations between the company and its employees or between the company and its suppliers or customers."

¶ 6 Also attached to the protest letter was a copy of plaintiff's termination letter which stated that her termination was due to her violation of Bagcraft's standards of conduct, including carelessness or inefficient performance of her job duties, altering company records, failure to notify the company of her absence, and insubordination. The letter stated that the specific reasons for her termination had been reviewed with her. Bagcraft acknowledged that plaintiff denied receiving emails or being responsible for the noted items, but maintained that documents showed that the items had been reviewed with plaintiff and assigned to her.

¶ 7 Another attachment listed six separate product numbers for which plaintiff had incorrectly set up the production jobs. The listing detailed the consequences of each of those errors, including the production department being unable to produce the work orders, the wrong raw materials being ordered for the production runs, wasted machine time and resources, and

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customers not being serviced on time. One project was reassigned to one of plaintiff's coworkers because plaintiff failed to respond to the customer. A notation indicated that on June 22, 2009, a meeting was held with plaintiff to discuss her overall performance and numerous jobs where both internal and external customers had complained about her lack of response on their projects. A final notation indicated that plaintiff failed to report for work on August 27 and 28, 2009, and did not call her manager to report her absences.

¶ 8 Documents and emails contained in the record show that a particular order for butcher paper was assigned to plaintiff for processing. A company email dated August 26, 2009, states that the job was incorrectly run with an old design and that the customer wanted the new design run as soon as possible. Two hours later, Bagcraft's Regional Manager, Josh Crittenden, sent an email to Chris Rush stating that the company needed to find the "root cause" of why the order was run incorrectly, and to put checks in place to ensure it would not happen again. Crittenden stated that the company would likely have to take back the entire order. The following morning, on August 27, 2009, Rush forwarded the email to plaintiff and said that they needed to discuss the error further. Rush asked plaintiff to bring her the paperwork plaintiff was given the previous evening so they could further review it. The record also contains a "Return to Work" form from a medical center indicating that plaintiff received treatment at that office on August 28, 2009.

¶ 9 In a telephone interview, plaintiff informed an IDES claims adjudicator that she was told by Rush and Julie Wisniewski, Bagcraft's human resources manager, that she was discharged due to insufficient performance of her job duties and for not following a new process. Plaintiff stated that she was aware of the new process because her supervisor introduced it to her six months earlier. Plaintiff claimed that she did not process the particular order the way her employer wanted because she never received the email regarding that order. The record shows

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that the claims adjudicator reviewed plaintiff's application for benefits and doctor's note, and Bagcraft's protest letter and supporting documentation. In a rebuttal interview, plaintiff denied that she threw away company documents. She also maintained that she had a doctor's note when she returned to work, but that her supervisor would not consider it. In response, Wisniewski told the adjudicator that the primary reason for plaintiff's discharge was insubordination and her act of throwing away the company documents, which two other employees witnessed.

¶ 10 The claims adjudicator found that plaintiff was discharged due to deliberate and willful misconduct. In his factual findings, the adjudicator noted that plaintiff took a project given to her by her supervisor, threw it in the trash, and left the building. He further found that plaintiff failed to report to work for two days, and failed to contact her supervisor, claiming she did not have the contact information. The adjudicator concluded that the reason for the discharge was within plaintiff's control to avoid, and that she was discharged for misconduct connected with her work. Based on these findings, the claims adjudicator found plaintiff ineligible for unemployment insurance benefits. Plaintiff appealed that decision.

¶ 11 At the November 18, 2009, telephone hearing, plaintiff's supervisor, Chris Rush, testified that on May 29, 2009, plaintiff was assigned a job to process a customer's order. Plaintiff submitted product numbers to the sales department, but she did not create the required building material. Plaintiff also failed to submit the new artwork for the customer's product to the graphics department, which was necessary to convert the customer's former product to a new product. As a result, the material was built incorrectly and the product was printed and shipped to the customer with the wrong artwork.

¶ 12 Rush further testified that on August 26, 2009, she received an email from the sales department informing her that the product had been manufactured incorrectly. Rush investigated the error and found that plaintiff never created the material and never submitted the

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new artwork. When Rush questioned plaintiff about the error, plaintiff claimed that the job had not been assigned to her. Rush then showed plaintiff emails that plaintiff had previously sent to the sales department informing it of the new product numbers. Rush gave plaintiff some documents and asked her to see what she could find in regards to that job because Bagcraft was going to have to take back the product, which cost \$10,000. Rush left the documents on plaintiff's desk and walked across the hall to speak with the graphics manager. Plaintiff took the documents Rush had given her, threw them into the trash can, and went home. When Rush returned to plaintiff's work area to see if she had found any information about the job, one of her coworkers said plaintiff left for the day. Rush asked that employee if he knew what happened to the documents. The employee pulled out the recycle bin, and Rush found the documents inside that bin.

¶ 13 Rush further testified that plaintiff did not report to work for the next two days, and did not call Rush to report her absence. Rush obtained plaintiff's telephone number from human resources and called plaintiff, but there was no answer. Kathy Long, a human resources manager for Bagcraft*, testified that the company's policy requires an employee to telephone her supervisor to notify her that she will not be in and the date she expects to return to work. Rush acknowledged that plaintiff did not have any prior attendance problems, but testified that there had been numerous problems with plaintiff's work performance in the past.

¶ 14 When plaintiff reported to work on August 31, 2009, Rush and Wisniewski called her into the office for a meeting. Plaintiff was then given her termination letter and told that she was being discharged because she threw away the documents, did not do her assigned work, and failed to report to work. Plaintiff maintained that the job had never been assigned to her.

*The record shows that the hearings referee was unable to reach human resources manager Julie Wisniewski for the telephone hearing because she was on medical leave. Kathy Long testified on behalf of Bagcraft's human resources department.

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¶ 15 Bagcraft submitted copies of plaintiff's email exchange with the sales department to the hearings referee. The emails show that on the morning of May 29, 2009, Bagcraft sales representative Joel Jensen sent an email to the Item Setup department requesting item numbers for the new product that was the subject of the order at issue. That afternoon, Rush forwarded the email to plaintiff with a request to "please process." On June 2, 2009, plaintiff forwarded the email to Jensen with the item number and other information he requested. Jensen replied to plaintiff, advising her that there were two items rather than one. Plaintiff replied to him minutes later, noting that he was correct, and including the information for the additional item.

¶ 16 Plaintiff testified that Rush told her she was being discharged for misconduct and failure to call in her absence. Plaintiff said she did not understand the misconduct claim and testified that she never threw away any documents, nor did she delete any emails. Plaintiff maintained that she never received the email assigning the particular job to her, nor did any of her coworkers or the graphics department manager, who would have been copied on the email. Plaintiff alleged that Rush is very skilled with the computer and that she "must have done something" with cut and paste at a later time. Plaintiff acknowledged that Rush asked her about the erroneous order on August 26, 2009. She claimed that she and her coworkers looked for it, but no one, including another manager, could find the order. Plaintiff denied that Rush gave her any documents that day, and that she left work early. She explained that her shift ended at 5 p.m., but that she often worked overtime, and that day, left work at 5:30 p.m.

¶ 17 Plaintiff acknowledged that she was scheduled to work on August 27 and 28, 2009, but she did not report to work because she was ill. She claimed that she called Rush each day, but Rush was not available and difficult to locate. Plaintiff left messages with another supervisor and with a coworker that she was ill and unable to come to work. She acknowledged that she did not leave a message on Rush's voicemail. Plaintiff said she felt dizzy, very nauseous

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and could barely walk due to her high blood pressure. She also had a returning ulcer that caused a burning pain in her stomach which prevented her from eating. The doctor prescribed her medication and advised her to take a week off from work, but she returned to her job the following Monday because she had too much work to do.

¶ 18 The hearings referee issued a written decision affirming the denial of benefits to plaintiff. The referee found that plaintiff knew she was required to call her supervisor if she was not going to be at work, but she failed to do so on two consecutive days. The referee also found that plaintiff's refusal to comply with her supervisor's request to review the documents and discuss the project with her constituted insubordination. The referee found that such request was reasonable because the company needed to determine how the production error occurred. In addition, the referee found that plaintiff's actions of throwing away the documents and walking out showed a lack of respect that all employees owe their supervisors, which also constituted insubordination. Based on these findings, the referee concluded that plaintiff was discharged for misconduct connected with her work, and thus, was not eligible for unemployment benefits.

¶ 19 Plaintiff appealed the referee's decision to the Board which reviewed the entire record, and found that the referee's decision was supported by the law and the record. The Board noted that while it considered plaintiff's appeal, it did not consider her written argument submitted with her appeal because her argument did not comply with the requirements of the Benefit Rules, and a copy of that argument was not served on Bagcraft. The Board stated that it was able to make an independent decision based on the evidence of record, and it affirmed the denial of benefits. Plaintiff appealed the Board's ruling to the circuit court of Cook County. The circuit court held a hearing and reversed the Board's decision.

¶ 20 On appeal, defendants contend that the Board's factual findings that plaintiff was discharged for insubordination and for violating her employer's express rule to call her

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supervisor to report her absence were not against the manifest weight of the evidence.

Defendants also contend that the Board's finding the plaintiff was discharged for misconduct was not clearly erroneous. Defendants argue that plaintiff's dispute of the evidence and claims that Rush lied and falsified emails was not enough to justify the circuit court reversing the Board's decision because it was the Board's responsibility to weigh the evidence and evaluate witness credibility.

¶ 21 Plaintiff has not filed a responsive brief. This court has elected to consider defendants' appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 22 This court reviews the final decision of the Board rather than that of the circuit court. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). The Board's factual findings are considered *prima facie* true and correct, and will not be disturbed unless they are against the manifest weight of the evidence. *520 South Michigan Avenue Associates v. Department of Employment Security*, 404 Ill. App. 3d 304, 312 (2010). Under this standard, the Board's factual findings "must stand unless 'the opposite conclusion is clearly evident.'" *Id.* at 313, quoting *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). When reviewing an administrative agency decision, courts are precluded from reweighing the evidence or evaluating the credibility of the witnesses. *In re Austin W.*, 214 Ill. 2d 31, 56 (2005). It is the Board's responsibility to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). A reviewing court is prohibited from substituting its judgment for that of the Board. *520 South Michigan Avenue*, 404 Ill. App. 3d at 317. If the issue on review merely involves conflicting testimony and witness credibility, the Board's determination should be sustained. *Id.* at 318.

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¶ 23 Whether an employee was properly terminated due to misconduct, and thus, ineligible for unemployment benefits, is a mixed question of law and fact that is reviewed under the clearly erroneous standard. *AFM Messenger Service, Inc., v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001). The Board's decision is considered clearly erroneous where the court reviews the record and definitively concludes that a mistake has been made. *Id.* at 395. Under Section 602(a) of the Illinois Unemployment Insurance Act (820 ILCS 405/602(A) (West 2008)), a person who is discharged by her employer for misconduct connected with her work is not eligible to receive unemployment insurance benefits. *Phistry*, 405 Ill. App. 3d at 607. Misconduct is defined as an employee's willful and deliberate violation of a reasonable policy or rule which harms the employer. *Id.* The court may determine that a policy or rule is reasonable by "a commonsense determination that certain conduct intentionally and substantially disregards an employer's interest." *Id.*

¶ 24 Here, the record shows that the Board's determination that plaintiff willfully and deliberately violated Bagcraft's policy for reporting absences was not against the manifest weight of the evidence. It is undisputed that Bagcraft had a written policy listing the expected standards of job conduct that expressly stated that "[f]ailure of an employee to notify the company that he or she will be absent from work" could result in discipline, including discharge. It is also undisputed that plaintiff was scheduled to work on August 27 and 28, 2009, but did not report to work and did not directly contact her supervisor, Chris Rush. Plaintiff claimed that she called and left messages with a coworker and another supervisor stating that she was ill, but acknowledged that she did not speak with Rush, nor did she leave a message on Rush's voicemail. Plaintiff maintained that she had a doctor's note when she returned to work the following Monday, but Rush would not accept it. The Board determined that this evidence showed that plaintiff violated Bagcraft's absence policy. Our review of the record reveals that an

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opposite conclusion is not clearly evident.

¶ 25 The record also reveals that the Board's determination that plaintiff willfully and deliberately violated Bagcraft's policy against insubordination was not against the manifest weight of the evidence. Rush testified that a particular order had been assigned to plaintiff, and that plaintiff failed to process the order correctly, costing Bagcraft about \$10,000. Rush further testified that in trying to determine the cause of the error, she gave some documents to plaintiff and asked her to find out anything she could about what happened with the job. It is undisputed that plaintiff left work that day without discussing the error with Rush, then did not report to work for the next two days. Rush testified that plaintiff threw the documents into the trash, and that Rush recovered them from the recycling bin. Plaintiff denied throwing the documents into the trash and denied that the job was ever assigned to her. However, copies of emails submitted by Bagcraft showed that Rush did assign the job to plaintiff, and that plaintiff sent information regarding that job to the sales department. It was the Board's responsibility to assess the credibility of the witnesses and to resolve conflicts in the evidence, and this court will not disturb those findings. The Board found that the evidence showed that plaintiff refused to comply with her supervisor's reasonable request to review the documents and discuss the project with her, which constituted insubordination. Again, our review of the record reveals that an opposite conclusion is not clearly evident.

¶ 26 Based on these findings, we conclude that plaintiff deliberately violated Bagcraft's reasonable rules and policies, and was discharged for misconduct connected to her work. The Board's determination that plaintiff was ineligible for unemployment insurance benefits was not clearly erroneous.

¶ 27 For these reasons, we reverse the judgment of the circuit court reversing the Board's decision.

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¶ 28

Reversed.