

NOTICE

Decision filed 10/27/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 100551-U
NO. 5-10-0551
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

AMANDA INGRHAM,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 09-MR-614
)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY, THE DIRECTOR OF)	
EMPLOYMENT SECURITY, and THE BOARD)	
OF REVIEW,)	
)	
Defendants-Appellants,)	
)	
and)	
)	
OLIN CORPORATION,)	Honorable
)	Clarence W. Harrison II,
Defendant.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Donovan and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in reversing the Board's decision denying the plaintiff unemployment benefits.

¶ 2 The Illinois Department of Employment Security (the Department), its director, and its board of review (the Board) appeal from the circuit court's judgment reversing the Board's decision to deny the plaintiff, Amanda Ingrham, unemployment benefits. For the reasons that follow, we reverse the circuit court's judgment.

¶ 3 **BACKGROUND**

¶ 4 From June 10, 2008, through April 7, 2009, the plaintiff was employed by defendant

Olin Corporation (Olin). When she was hired by Olin, as part of her employment application, the plaintiff completed a medical history report form indicating, *inter alia*, that she had never received medical treatment for pain or injury to her back.

¶ 5 On March 13, 2009, after being assigned to a temporary position requiring heavy lifting, the plaintiff claimed to have injured her back in the course of her employment with Olin. Seeking workers' compensation benefits, the plaintiff subsequently signed a release allowing Olin access to her past medical records. When reviewing the medical records, Olin discovered that contrary to her representations, the plaintiff had been treated for back pain injury in 2005 and 2007 and had been diagnosed with scoliosis. It further discovered that the plaintiff had also made false statements regarding prior surgeries related to other medical conditions.

¶ 6 On March 21, 2009, Olin suspended the plaintiff from her employment. On March 22, 2009, asserting that she had been separated from her employment due to lack of work, the plaintiff filed a claim for unemployment benefits with the Department. Thereafter, Olin filed a protest advising that on April 7, 2009, the plaintiff had been formally terminated on the grounds that she had falsified her employment application.

¶ 7 On April 24, 2009, a Department claims adjustor determined that the plaintiff was eligible for unemployment benefits because Olin had failed to substantiate that the plaintiff had been terminated for falsifying her employment application. In response, Olin filed a timely notice of appeal, and on June 8, 2009, the cause proceeded to a teleconference appeals hearing before Department referee Roberta Shallenberger.

¶ 8 At the hearing, Olin presented testimony establishing that the plaintiff had been terminated on April 7, 2009, for violating its rule against falsifying records and providing false information, *i.e.*, "General Plant Rule 2-10." The medical history report form that the plaintiff completed and signed when she was hired was thoroughly discussed, as were the

medical documents that alerted Olin to the fact that the plaintiff had falsified the form. Olin also presented testimony that when confronted about the representations she had made regarding her medical history, the plaintiff had stated that she "didn't recall *** being treated for her back." She had further stated that the other matters that she had failed to divulge did not involve "life limiting issues," so she "didn't feel" the need to disclose them. Olin indicated that had it known about the plaintiff's back problems when she had been hired, she would never have been placed in a "heavy lifting position."

¶ 9 The plaintiff testified that when filling out the medical history portion of her employment application, she had failed to disclose that she had received prior treatment for her back because she had "mainly forgot" and because she "hadn't had a problem with [her back]" since 2007. Acknowledging that she had further failed to disclose that she had had numerous surgeries unrelated to her back, the plaintiff offered no reason for her failure to list the surgeries, other than indicating that she was "almost positive" that she had.

¶ 10 At the conclusion of the hearing, noting that Olin had previously provided "blank" copies of its medical history report form, the referee asked that Olin also provide her with a copy of the form that the plaintiff had completed and signed. Confirming that the plaintiff had a copy of the completed and signed form, the referee indicated that she wanted a copy "to make the record complete." In response, indicating that it would provide a copy if necessary, Olin expressed concerns over the potential "HIPAA implications" of the referee's request. The referee then indicated that a copy of the completed form was not necessary, but it "would make [her] record more complete."

¶ 11 On June 9, 2009, the Department's referee rendered a decision finding that when the plaintiff had been hired by Olin, she had falsified information regarding her medical history. The referee therefore concluded that the plaintiff had been terminated for "misconduct" and was thus ineligible to receive unemployment benefits pursuant to section 602 of the Illinois

Unemployment Insurance Act (820 ILCS 405/602 (West 2008)).

¶ 12 On June 15, 2009, contending, *inter alia*, that she had mistakenly thought that the questions on the medical history report form were inquiries pertaining solely to "work related injuries," the plaintiff filed an appeal requesting that the Board reverse the referee's decision. On September 14, 2009, finding that the decision was "supported by the record and the law," the Board affirmed the referee's denial of benefits. The Board noted that the record of proceedings was "adequate" and that "the further taking of evidence [was] unnecessary." Thereafter, the plaintiff filed a complaint for administrative review in the circuit court of Madison County.

¶ 13 On August 25, 2010, following a hearing on the plaintiff's complaint for administrative review, the circuit court entered a written order reversing the Board's judgment affirming the referee's denial of benefits. The court held that because the record of the administrative proceedings did not include a copy of the "completed medical evaluation form" that the plaintiff had completed when she was hired by Olin, the Board's decision was against the manifest weight of the evidence. Referring to the completed medical evaluation form as "the important and decisive document," the court suggested that the referee and the Board had based their decisions on evidence *de hors* the record.

¶ 14 On September 24, 2010, the Board filed a motion asking the circuit court to reconsider and set aside the judgment entered on August 25, 2010. Acknowledging that the record did not contain a copy of the medical evaluation form that the plaintiff had completed and signed, the Board argued that the evidence adduced at the appeals hearing had nonetheless established that the plaintiff had made false statements regarding her medical history when completing the form. The Board noted that the actual form that the plaintiff had filled out had been thoroughly discussed at the hearing and that when the plaintiff, herself, testified, she never denied that she had failed to fully disclose her medical history but had instead

provided explanations for her failure to do so. Noting that the referee's decision necessarily reflected her assessment of "the plaintiff's credibility in this case," the Board further suggested that the only factual dispute that the referee was required to consider was whether the plaintiff's offered explanations were reasonable under the circumstances. As an alternative remedy, the Board requested that in the event that the circuit court still felt the need to "actually see" the plaintiff's completed medical history form, the court should exercise its powers under section 3-111 of the Administrative Review Law (735 ILCS 5/3-111 (West 2008)) and remand the cause with instructions that the Board or the referee acquire the form.

¶ 15 On October 8, 2010, the circuit court entered a written order denying the Board's motion to reconsider and set aside judgment. The court held that in the absence of the "critical" document at issue, "the record simply contains hearsay of little weight regarding the alleged material misrepresentation by the employee." The court also denied the Board's request that the cause be remanded so that the plaintiff's completed medical history form could be obtained and made part of the record. Thereafter, the appellants, *i.e.*, the Department, its director, and the Board, filed a timely notice of appeal.

¶ 16 DISCUSSION

¶ 17 Maintaining that "the circuit court's reasoning for reversing the Board's decision does not withstand scrutiny," the appellants argue that we should reverse the circuit court's judgment and "affirm the Board's decision in its entirety." We agree.

¶ 18 An employee terminated for "misconduct" is ineligible to receive unemployment benefits pursuant to section 602 of the Illinois Unemployment Insurance Act (820 ILCS 405/602 (West 2008)). " '[M]isconduct' 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 ***." 820 ILCS 405/602(A) (West 2008). In this context, the term "harmed" is liberally construed. See *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

¶ 19 "The question of whether an employee was properly terminated for misconduct in connection with his work involves 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 decision is clearly erroneous where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made." *Id.* The clearly erroneous standard of review "provides the necessary deference to the agency's experience and expertise" and recognizes that "the Department is charged with determining whether an employee's behavior that led to her termination amounted to 'misconduct.'" *Oleszczuk v. Department of Employment Security*, 336 Ill. App. 3d 46, 50 (2002).

¶ 20 "It is settled authority that the role of a court when reviewing administrative rulings, is not to reweigh the evidence or judge the credibility of the witnesses." *Wilson v. Board of Fire & Police Commissioners*, 205 Ill. App. 3d 984, 990 (1990). "The Board is the trier of fact in cases involving claims for unemployment compensation, and its findings of fact are considered *prima facie* true and correct." *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998). "In examining an administrative agency's factual findings, we are limited to ascertaining whether such findings of fact are against the manifest weight of the evidence." *Hmelyar v. Phoenix Controls*, 339 Ill. App. 3d 700, 704 (2003). Furthermore, "it is the duty of this court to review the decision of the Board rather than the circuit court." *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009).

¶ 21 Here, we agree with the appellants' contention that the circuit court erred in reversing

the Board's decision to deny the plaintiff unemployment benefits. Having reviewed the record of the administrative proceedings, we find that the decision to deny the plaintiff benefits on the grounds that she had been terminated for misconduct was not clearly erroneous. See, e.g., *Roundtree v. Board of Review*, 4 Ill. App. 3d 695, 696 (1972) ("There can be no doubt that the falsification of an employment application is a proper ground for dismissal."). We further find that only by improperly reevaluating the evidence presented for the referee's consideration was the circuit court able to conclude that the Department's factual determinations were against the manifest weight of the evidence and thereby reverse the Board's decision.

¶22 As previously indicated, never disagreeing with the appellants' determination that the plaintiff's conduct constituted "misconduct" for purposes of section 602 of the Illinois Unemployment Insurance Act (820 ILCS 405/602 (West 2008)), the circuit court held that because the record of the administrative proceedings did not include a copy of the "completed medical evaluation form" that the plaintiff had filled out when she was hired, the Board's decision was "against the manifest weight of the evidence" and based on evidence *de hors* the record. When denying the Board's motion to reconsider and set aside judgment, the court further stated that in the absence of the "critical" document, "the record simply contains hearsay of little weight regarding the alleged material misrepresentation by the employee.

¶23 "The best evidence rule states a preference for the production of original documentary evidence when the contents of the documentary evidence are sought to be proved." *People v. Vasser*, 331 Ill. App. 3d 675, 685 (2002). Nevertheless, "[t]here is no general rule that a party must produce the best evidence that the nature of the case permits." *People v. Tharpe-Williams*, 286 Ill. App. 3d 605, 610 (1997). "Hearsay evidence is in-court testimony of an out-of-court statement, which is offered to establish the truth of the matter contained in the

statement" (*Vasser*, 331 Ill. App. 3d at 685), and hearsay evidence is generally inadmissible in an administrative proceeding (*Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 94 (1992)). However, "[i]t is well established that when hearsay evidence is admitted without an objection, it is to be considered and given its natural and probative effect." *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007). Furthermore, "the strict rules of evidence that apply in a judicial proceeding do not apply in proceedings before an administrative agency" (*Ivy v. Illinois State Police*, 263 Ill. App. 3d 12, 19 (1994)), and an administrative agency's decisions regarding the admission of evidence are discretionary (*MJ Ontario, Inc. v. Daley*, 371 Ill. App. 3d 140, 149 (2007)).

¶ 24 Here, without objection, Olin presented testimony describing how the plaintiff had falsified the medical history portion of her employment application, and the plaintiff's specific answers on the form were thoroughly discussed at the appeals hearing. Moreover, when the plaintiff testified, she acknowledged that she had failed to fully disclose her medical history, and given her admissions, the only issue before the referee was whether the plaintiff's stated reasons for failing to disclose her medical history were credible and reasonable. As the appellants note on appeal, "while it is understandable why the referee (and the circuit court) might have preferred to review the completed form, it was unnecessary to do so where the parties were in agreement regarding what matters [the plaintiff] omitted and it was clear from the record what questions she inaccurately answered."

¶ 25 "On judicial review of an administrative determination, the function of the circuit court is not to reweigh the evidence, but merely to determine if the conclusion is against the manifest weight of the evidence." *Comito v. Police Board of the City of Chicago*, 317 Ill. App. 3d 677, 686 (2000). Here, we conclude that the circuit court erred in reversing the Board's decision, and we accordingly reverse the court's judgment.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, the circuit court's judgment is hereby reversed.

¶ 28 Reversed.