

No. 1-11-1838

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PATRICIA JEMISON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	No. 11 L 50363
OF EMPLOYMENT SECURITY; and THE BOARD OF)	
REVIEW,)	
)	
Defendants-Appellees)	
)	
(Sacred Heart Home, Inc.,)	Honorable
)	Alexander P. White,
Defendant).)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 Plaintiff Patricia Jemison appeals *pro se* from an order of the circuit court affirming a decision by the Board of Review (Board) of the Department of Employment Security (Department) finding her ineligible to receive benefits under the Unemployment Insurance Act (Act). 820 ILCS 405/100 *et seq.* (West 2010). The Board affirmed a Department referee’s decision finding plaintiff ineligible because she was discharged from her employment as a

certified nursing assistant (CNA) with defendant Sacred Heart Home, Inc. ("the Home") for misconduct connected with her work: failure to properly account for one of the Home's residents. On appeal, plaintiff contends that the Board's decision was erroneous.

¶ 2 Section 602(A) of the Act provides that a person is ineligible for unemployment insurance benefits when he was "discharged for misconduct connected with his work." 820 ILCS 405/602(A) (West 2010). Misconduct is:

"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 employing unit." 820 ILCS 405/602(A) (West 2010).

The elements of misconduct under the Act are that the: (1) claimant deliberately and willfully violated a rule or policy of the employer, (2) rule or policy was reasonable, and (3) violation either harmed the employer or was repeated despite warnings. *Abbott Industries Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, at ¶ 18. Conduct is willful when it constitutes a conscious act done in knowing violation of the employer's rules; conversely, an inadvertent or negligent act, or an incapacity or inability to perform assigned tasks, is not misconduct under the Act. *Id.* at ¶ 19.

¶ 3 We review the decision of the Board, not the circuit court. *Id.* at ¶ 15. The Board is the trier of fact in cases regarding unemployment insurance claims, and its findings of fact are *prima facie* correct. *Id.* at ¶ 15. The Board's decision as to whether an employee was discharged from employment for misconduct under the Act presents a mixed question of law and fact reviewed for clear error. *Id.* at ¶ 16. The Board's decision is clearly erroneous only if, after reviewing the entire record, we definitely and firmly believe that a mistake has occurred. *Id.* at ¶ 15.

¶ 4 Here, the Board could reasonably conclude, on the evidence from the referee's hearing, that plaintiff was discharged by the Home for misconduct under the Act. It was undisputed that plaintiff as a CNA was supposed to make hourly rounds of a certain portion of the Home and then mark on a chart that each resident in that area was on the Home's premises during her rounds. If a resident was not found during an hour's rounds, the CNA was supposed to notify the supervising nurse so that more of the staff would search for the resident. It was also undisputed that, on the day in question, plaintiff was assigned the 4 o'clock round but two residents were not accounted for on the chart when fellow CNA Nicole Whitfield (Whitfield) appeared for the 5 o'clock round. Plaintiff and Whitfield agreed that plaintiff in fact accounted for one of the two residents. However, they disagreed regarding the other resident: plaintiff maintained that she found him, while Whitfield testified that plaintiff asked for her help in finding him and that Whitfield found him. Plaintiff and Whitfield agreed that plaintiff asked Whitfield to mark one of the residents on the chart on plaintiff's behalf. While plaintiff testified that she and co-workers had previously marked the chart for each other, the supervisor explained that this was improper, and Whitfield denied doing so. Whitfield testified that she, rather than plaintiff, reported the chart discrepancy and the resident's absence to the supervisor. When the supervisor asked plaintiff about the situation, she explained that she kept her own account of her rounds but lost that piece of paper so that she did not enter the data on the chart. Plaintiff admitted in her testimony to keeping such a separate accounting.

¶ 5 It was reasonable for the Board to conclude on this evidence that plaintiff did not merely fail to mark two residents as present on the chart, which could arguably be attributed to inadvertence. Instead, the Board could reasonably find that one of the residents was actually unaccounted for or absent for some time after plaintiff's rounds ended, that plaintiff failed to report this absence to a supervisor as required so that more of the staff could join the search, and that plaintiff improperly asked a co-worker to mark the chart for her. We conclude that the

1-11-1838

Board's decision of misconduct was not clearly erroneous.

¶ 6 Accordingly, we confirm the Board's decision.

¶ 7 Confirmed.