

No. 1-11-2890

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL A. FOREMAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	No. 11 L 50741
OF EMPLOYMENT SECURITY; BOARD OF)	
REVIEW; and CHICAGO TRANSIT AUTHORITY)	
C.T.A. MERCHANDISE MART PLAZA c/o)	
XCHANGING/CAMBRIDGE INTEGRATED,)	
BRUCE KIJEWSKI,)	Honorable
)	Margaret A. Brennan,
Defendants-Appellees.)	Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Steele, P.J., and Salone, J., concurred in the judgment.

ORDER

- ¶ 1 *Held:* When commercial driver's license of plaintiff bus operator was suspended for six months due to DUI arrest, plaintiff was not eligible for unemployment benefits because failure to maintain his license constituted a "voluntary leaving" of his job; the decision of the Board denying benefits was affirmed.
- ¶ 2 Plaintiff Michael Foreman appeals *pro se* the order of the circuit court affirming the decision of the Board of Review (the Board) of the Illinois Department of Employment Security (the Department) that he was ineligible to receive unemployment benefits after his commercial

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driver's license (CDL) was suspended. On appeal, plaintiff contends that he is eligible for unemployment benefits because he did not willingly leave his job as a bus driver. We affirm the decision of the Board.

¶ 3 The record establishes that in 2010, plaintiff was employed as a full-time bus operator for the Chicago Transit Authority (CTA). On June 28, 2010, plaintiff was arrested for driving under the influence while driving his own vehicle. On or about the next day, plaintiff reported the arrest to his employer and informed the CTA that the Illinois Secretary of State's office would suspend his CDL on August 13, 2010, via a statutory summary suspension. Effective on August 13, 2010, plaintiff's driver's license was suspended for six months.

¶ 4 On September 2, 2010, plaintiff received from the CTA a "Notice of Administrative Separation," which stated he was in violation of several company rules. Among the violated rules listed in the notice was company Rule No. 27, which stated, "Employees who operate company vehicles or who are authorized to operate a personal vehicle on Company [*sic*] required to maintain a valid driver's license with the appropriate classification." The notice also indicated plaintiff was in violation of company Safety Rule 9, which stated, in pertinent part, that "[a]ll employees driving CTA vehicles *** shall comply with State Rules of the Road, which include having a valid driver's license with proper classification for the type of vehicle driven ***. To operate CTA buses, a valid CDL license is required." The notice stated that plaintiff had failed to maintain a valid CDL "as is required for your job function."

¶ 5 Plaintiff's application for unemployment benefits was challenged by the CTA, which asserted plaintiff was discharged for misconduct under section 602(A) of the Unemployment Insurance Act (the Act) (820 ILCS 405/602(a) (West 2010)). The CTA asserted that plaintiff had been discharged for failing to maintain a valid CDL. On December 21, 2010, the Department informed plaintiff he was ineligible to receive unemployment benefits because he was discharged for misconduct related to his employment. Plaintiff acknowledged he needed a valid driver's license to perform his job. Plaintiff stated the CTA had an alternative work program for

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employees in that situation, which he entered in 1997, but he was not aware that employees were only permitted to use that program once.

¶ 6 In January 2011, plaintiff requested reconsideration of the denial of benefits. Plaintiff was given notice of a telephone hearing with the Department to be held on February 4, 2011; however, his appeal was dismissed when he failed to answer the Department's phone call. Plaintiff later reported to the Department that a conflicting court date prevented him from participating on February 4, and a new hearing date of February 28, 2011, was granted.

¶ 7 At the February 28 hearing, plaintiff stated he had worked for the CTA for 15 years and had been discharged because he was no longer able to drive. He also stated he was denied entry into the alternative work program because he had "been in it once before." The CTA was not represented at the hearing.

¶ 8 On March 1, 2011, the referee issued an order disqualifying plaintiff from receiving unemployment benefits under section 601(A) of the Act, in that his failure to maintain his driver's license which was a "tool of his trade as a bus operator" constituted a "voluntary leaving for personal reasons." The referee stated that section 602(A) of the Act, addressing employee misconduct, was not applicable. Plaintiff appealed to the Board, which affirmed the referee's decision.

¶ 9 Plaintiff sought judicial review of the Board's decision in the circuit court. On September 28, 2011, the circuit court affirmed the decision of the Board. Plaintiff now appeals.

¶ 10 Before addressing the merits of this appeal, we note that plaintiff's brief consists of a one-page recitation of facts and unsupported contentions that fails to conform with the requirements of Supreme Court 341 (eff. July 1, 2008) in every respect, including the absence of a jurisdictional statement or statement of the case, references to the record or legal arguments with accompanying citations to authority. A *pro se* litigant is held to the same standards as a litigant represented by counsel. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

Nevertheless, this court may consider the facts and allegations where they can be reasonably

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discerned and where the record is straightforward. See *In re Marriage of Betts*, 159 Ill. App. 3d 327, 330-31 (1987).

¶ 11 In this appeal, plaintiff challenges the denial of unemployment benefits, contending he is entitled to such benefits because he did not resign from his job. He further asserts that although he was arrested for DUI, he was not convicted of that offense but instead was convicted of reckless driving.

¶ 12 The main purpose of the Act is to alleviate the economic insecurity and burden caused by involuntary unemployment, and the Act "is intended to benefit only those persons who become unemployed through no fault of their own." 820 ILCS 405/100 (West 2010); *Jones v. Department of Employment Security*, 276 Ill. App. 3d 281, 284 (1995). Plaintiff was denied unemployment benefits pursuant to section 601(A) of the Act, which provides that an individual is ineligible for benefits if "he has left work voluntarily without good cause attributable to the employing unit." 820 ILCS 405/601(A) (West 2010). That issue presents a mixed question of law and fact, and this court will only disturb the Board's conclusion if it is clearly erroneous, *i.e.*, if this court, based on the entire record, is left with the conclusion that a mistake has been committed. *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540-41 (2002), citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001).

¶ 13 Although plaintiff argues he is entitled to receive unemployment benefits because he did not resign from his job, plaintiff's job as a CTA bus operator required him to hold a valid CDL. When an employee has control over whether he obtains or maintains a license that is legally required for his job, and he does not obtain or maintain that license, an employer's termination of his employment may be viewed as a voluntary leaving, rather than a discharge. *Abbott Industries Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶9; see also *Horton*, 335 Ill. App. 3d at 541-42 (suspension of plaintiff's driver's license, which was condition of employment with rental car agency under union contract, constituted "constructive voluntary

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leaving"); *Hawkins v. Department of Employment Security*, 268 Ill. App. 3d 927 (1994) (Pace bus driver who did not obtain CDL to comply with federal job requirement, as posted at place of employment, left job voluntarily when he failed to make reasonable effort to pass CDL driving test in required time period).

¶ 14 Because plaintiff voluntarily left his job without good cause attributable to his employer, he is ineligible to receive unemployment benefits. 820 ILCS 405/601(A) (West 2010). The ultimate resolution of plaintiff's DUI arrest was not relevant because the statutory summary suspension of his driver's license took effect on August 13, 2010, as a result of his June 28, 2010, arrest. See 625 ILCS 5/11-501.1(g) (West 2010) (summary suspension takes effect on the 46th day following the date the notice of the suspension was given). The suspension of plaintiff's driver's license was not dependent on the outcome of those proceedings.

¶ 15 In conclusion, it is undisputed that plaintiff's driver's license, including his commercial driving privileges, was suspended for six months, thus making him unable to perform his job. Therefore, the Board's decision to deny plaintiff unemployment benefits in this case was not clearly erroneous.

¶ 16 Accordingly, the judgment of the Board is affirmed.

¶ 17 Affirmed.