

No. 1-11-3158

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

ALEXANDER WEST,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 11 L 50779
SECURITY, DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY, BOARD OF REVIEW,)	
and TERRACE PAPER CO., INC. c/o PERSONNEL)	
PLANNERS,)	Honorable
)	Robert Lopez Cepero,
Defendants-Appellees.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where plaintiff refused to perform work tasks as directed by his supervisor, the termination of plaintiff's employment was due to misconduct related to his work; the decision of the Board denying unemployment benefits was affirmed.
- ¶ 2 Plaintiff Alexander West 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 plaintiff was ineligible for unemployment benefits due to misconduct related to his job. On appeal, plaintiff asserts the evidence was insufficient to support the Board's determination. We affirm the decision of the Board.

¶ 3 The record establishes that plaintiff worked as a die-cut machine operator's helper at Terrace Paper Company (Terrace) until he was suspended on March 19, 2010. Plaintiff's employment was terminated on March 25, 2010.

¶ 4 Plaintiff's claim for unemployment benefits was challenged by Terrace, 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)). Terrace asserted plaintiff had "refused to complete a task as directed by his supervisor" and did so "in the presence of another supervisor and the union steward." After consecutive hearings at which Terrace first failed to appear and then plaintiff failed to appear, the circuit court remanded for a third hearing, which is the subject of this appeal.

¶ 5 On April 27, 2011, a Department referee conducted a telephone hearing with plaintiff; Patricia Vaughn, a representative of the employer; Patricia Roberts, Terrace's human resources manager; and Miguel Del Toro, plaintiff's supervisor at Terrace.

¶ 6 Del Toro testified that plaintiff's job as a machine operator's helper entailed supporting the operator and running the machine in the operator's absence. In addition to the helpers, a third employee was assigned to some machines as a utility worker to remove and wrap the product load. When Terrace purchased an automatic wrapping machine, one utility worker position was eliminated. Del Toro stated that the machine to which plaintiff was assigned did not have a utility worker assigned to it, and therefore, plaintiff's tasks were not affected by the change.

¶ 7 On March 19, 2010, Del Toro explained the new procedure to plaintiff and his co-workers, stating that some of the helpers would be assigned an additional task of assisting the

remaining utility workers in wrapping, with a pay increase of \$1 per hour. Del Toro said "[i]nitially everyone kind of grumbled a little bit" but the employees were "pretty happy with the dollar raise and they went back to work."

¶ 8 Del Toro testified that about 15 minutes after he addressed the employees, plaintiff and another worker, Eugene Bell, approached him and said they did not care about the extra pay and did not want to do extra work because it was not their job. Del Toro told plaintiff and Bell they should seek advice from their union but he reiterated that employees would have to perform the additional tasks starting that night.

¶ 9 According to Del Toro, Bell said "fine" and went back to work, but plaintiff continued to refuse to work. Del Toro spoke to a loss prevention supervisor and a union steward. The union steward conferred with plaintiff and confirmed to Del Toro that plaintiff refused to work and would "take a stand." Del Toro told plaintiff he would be suspended from his job for insubordination. Del Toro and the loss prevention supervisor escorted plaintiff from the building.

¶ 10 According to Roberts, plaintiff's employment was terminated for "insubordination, lack of cooperation, teamwork and violation of company rules of conduct." When Roberts spoke with plaintiff on the phone on March 25, plaintiff acknowledged his refusal to perform the work "because of the way he felt that [Del Toro] spoke to him." Roberts stated plaintiff "had every opportunity to [] conduct the task that was being asked of him" and was aware that his refusal to do so could result in termination.

¶ 11 Plaintiff denied that he refused Del Toro's request to perform the job. Plaintiff said Del Toro spoke to him and his co-workers before their shift started and he immediately asked to speak to a supervisor because the extra work he was being asked to do was unfair. Del Toro refused to let him do so and told plaintiff to "go home for the night." Plaintiff returned to his

workplace on subsequent days and was told his employment had been terminated. Plaintiff said Roberts also relayed that news to him over the telephone. In response to plaintiff's testimony, Del Toro said he attempted to notify a supervisor in response to plaintiff's request but one was not available.

¶ 12 On May 10, 2011, the referee issued an order disqualifying plaintiff from receiving unemployment benefits under section 602(A) of the Act. The order stated that plaintiff was "discharged for an intentional wrongdoing" and was insubordinate for refusing to comply with his employer's "reasonable request." Plaintiff appealed to the Board, which affirmed the referee's decision.

¶ 13 On July 18, 2011, plaintiff filed a *pro se* complaint for judicial review of that decision. On October 25, 2011, the circuit court entered an order affirming the Board's decision. Plaintiff now appeals.

¶ 14 On appeal, plaintiff's main contention is that the evidence was insufficient to support the decisions of the Board and the circuit court. Plaintiff argues his failure to perform a task does not constitute misconduct "if the failure is in good faith or for good cause."

¶ 15 The main purpose of the Act is to alleviate the economic insecurity and burden cause 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). The individual claiming unemployment insurance benefits has the burden of establishing his eligibility, and an employee discharged for misconduct is ineligible to receive those benefits. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009).

¶ 16 The Board is the trier of fact in cases involving claims for unemployment compensation, and we review the findings of the Board, rather than the findings of the Department referee or of

the circuit court. *Village Discount Outlet v. Department of Employment Security*, 394 Ill. App. 3d 522, 524-25 (2008). 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. *Id.* An agency decision is clearly erroneous where a review of the entire record leaves the court with the definite and firm conviction that a mistake has been committed. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010).

¶ 17 Misconduct under the Act involves the violation of a rule or policy that governs the individual's behavior in performance of his work. Three elements of misconduct must be established: (1) the rule or policy must be deliberately and willfully violated; (2) the rule or policy of the employer must be reasonable; and (3) the violation must have harmed the employer or it must have been repeated by the employee despite previous warnings or other explicit instructions from the employer. 820 ILCS 405/602(A) (West 2008); *Phistry*, 405 Ill. App. 3d at 607.

¶ 18 An employee willfully or deliberately violates a work rule or policy by being aware of, and consciously disregarding, that rule or policy. *Hurst*, 393 Ill. App. 3d at 328-29. The rule or policy of the employer also must be reasonable, meaning it must concern the standards of behavior which an employer has a right to expect from its employee. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 827 (2009). A reviewing court need not find direct evidence of a rule or policy and instead, may make a commonsense determination that certain conduct intentionally and substantially disregards an employer's interest. *Phistry*, 405 Ill. App. 3d at 607.

¶ 19 The situation presented here differs from an employee's argument with a supervisor without using abusive language or threats. See, e.g., *Oleszczuk v. Department of Employment*

Security, 336 Ill. App. 3d 46, 52 (2002) (a "single flurry of temper between a worker and a supervisor" is insufficient to deny unemployment benefits). According to Roberts and Del Toro, plaintiff's employment was terminated for insubordination after plaintiff intentionally refused to perform his job, notwithstanding the fact that the new process announced by Del Toro did not affect his assigned tasks. Although plaintiff offered a different version of events than his employer, the Board is the trier of fact in unemployment compensation cases, and it is that agency's role to weigh the evidence, determine the credibility of witnesses and resolve conflicts in testimony. See *Hurst*, 393 Ill. App. 3d at 329. This court finds no basis in the record to disturb the decision of the Board.

¶ 20 In addition to challenging the Board's decision, plaintiff raises several additional arguments on appeal, including that: (1) his due process rights were violated because counsel was not appointed to represent him; (2) Terrace breached its collective bargaining agreement with him by failing to provide written notice of his termination; and (3) the circuit judge who reviewed the Board's decision exhibited bias and prejudice against him. The Department and the Board correctly respond that plaintiff cannot raise those contentions now, as arguments that are not raised before the circuit court are forfeited and cannot be raised for the first time on appeal. See *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006). Therefore, plaintiff's additional arguments raised in his appellate brief are not properly before this court.

¶ 21 In summary, the Board's determination that plaintiff's actions constituted misconduct such that he should be denied unemployment benefits was not clearly erroneous. Accordingly, the judgment of the Board is affirmed.

¶ 22 Affirmed.