

No. 1-12-0254

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RAYMOND BRYANT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; THE DIRECTOR OF THE ILLINOIS)	
DEPARTMENT OF EMPLOYMENT SECURITY; and)	
THE BOARD OF REVIEW,)	No. 11 L 51176
)	
Defendants-Appellees)	
)	
(OCB Restaurant Co., c/o UC Express,)	Honorable
)	Daniel T. Gillespie,
Defendant).)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

- ¶ 1 **Held:** Board's decision to deny plaintiff benefits under the Unemployment Insurance Act is confirmed where plaintiff was discharged for misconduct connected with his work and he admitted the misconduct.

- ¶ 2 Plaintiff Raymond Bryant 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 him 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 he was discharged from his employment as a restaurant manager with defendant OCB Restaurant Company ("the Restaurant") for misconduct connected with his work; specifically, violation of the Restaurant's cash-handling policy. On appeal, plaintiff contends that the Board's decision was erroneous.

¶ 3 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: (1) the claimant deliberately and willfully violated a rule or policy of the employer, (2) the rule or policy was reasonable, and (3) the 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.* ¶ 19.

¶ 4 We review the decision of the Board, not the circuit court. *Id.* ¶ 15. The Board is the trier of fact in cases regarding unemployment insurance claims, and its findings of fact are *prima facie* correct. *Id.* 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.* ¶ 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.* ¶ 15.

¶ 5 Here, the Board could reasonably conclude on the evidence from the referee's hearing that plaintiff was discharged by the Restaurant for misconduct under the Act. The Restaurant witness explained that the Restaurant's cash-handling policy was to have a customer at the register for a return, to have the customer sign the return receipt, and to have the manager input the return while the cashier would actually take the money from the cash register and hand it to the customer. A routine audit by the Restaurant, conducted by comparing security video to the cash register's account, showed instances where plaintiff reversed or refunded sales with no customer present at the register. In one incident, he walked away from the register with the refunded money in his pocket. In another incident, the refund was made shortly after the sale while the customers from the sales transaction did not leave for nearly an hour. When Restaurant supervisors asked plaintiff to explain the discrepancies, he did not. However, he later admitted to taking \$350 in mishandled funds, and the Restaurant deducted that amount from his final paycheck. Though plaintiff had no prior disciplinary record, violation of the cash-handling policy is grounds for immediate termination in the Restaurant's employee code of conduct – a copy of which plaintiff signed soon after he was hired – because the Restaurant loses money from violations.

¶ 6 Plaintiff admitted in the hearing that he and other Restaurant employees made about \$350 in returns without a customer present at the register. He explained his refusal to explain the discrepancies: at the time he was confronted, he could not recall the particular transactions and was not shown the security video. The Restaurant witness testified that plaintiff did not ask to see the video. Plaintiff admitted that although he and other Restaurant managers knew it was against Restaurant policy, they would process returns without a customer at the register when the customer was irate and was either still at a table or being removed by security. In sum, plaintiff

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admitted to knowingly violating the Restaurant's cash-handling policy. We conclude that the Board's decision of misconduct was not clearly erroneous.

¶ 7 Accordingly, we confirm the decision of the Board

¶ 8 Confirmed.