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2012 IL App (3d) 110014-U

Order filed January 6, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

FELIPE FRANCHINI, an individual,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	
	)	
THE DEPARTMENT OF EMPLOYMENT	)	
SECURITY, an Illinois administrative	)	
agency; THE DIRECTOR OF	)	Appeal No. 3-11-0014
EMPLOYMENT SECURITY, in his official	)	Circuit No. 10-MR-164
capacity; BOARD OF REVIEW, the board of	)	
review of the Department of Employment	)	
Security and an Illinois administrative	)	
agency; and UCHICAGO ARGONNE, LLC,	)	
an Illinois limited liability company and	)	
former employer of Plaintiff,	)	Honorable
	)	Richard J. Siegel,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices O'Brien and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The Board of Review's determination that plaintiff engaged in misconduct was not clearly erroneous. Further, plaintiff was afforded due process during the administrative hearing.
- ¶ 2 Plaintiff, Felipe Franchini, filed a claim for unemployment benefits following his

discharge from Argonne National Laboratory (Argonne). The Department of Employment Security initially determined that plaintiff was not eligible for benefits. Thereafter, an administrative hearing was held, and it was determined that plaintiff was ineligible for unemployment benefits because he was discharged for misconduct. The Board of Review (Board) affirmed the denial, and the circuit court of Will County affirmed that decision. Plaintiff appeals, arguing that he did not engage in misconduct and that the administrative hearing deprived him of his due process rights. We affirm.

¶ 3

### FACTS

¶ 4 On October 10, 2008, Argonne discharged plaintiff from his job as a technician senior. Following his discharge, plaintiff attempted to obtain unemployment benefits; however, he was denied benefits by a local office of the Department of Employment Security because Argonne had discharged him based on insubordination. An administrative hearing in front of administrative law judge Thomas Plotke (referee) followed.

¶ 5 At the hearing, Argonne stated that they fired plaintiff based on insubordination. At a meeting on June 6, 2008, they learned that plaintiff had been tape recording various meetings and conversations with laboratory officials and Department of Energy officials since 2004, and that he had hundreds of tapes. Plaintiff further had a number of photographs of laboratory equipment. Argonne informed plaintiff that there was an investigation pending and directed him to turn over the tapes and the photographs on June 9, 2008. Plaintiff reported to work that day; however, he did not turn in any of the requested materials. Plaintiff only worked the morning of June 9, and then he left work and began an extended period of sick leave that would last until he was discharged.

¶ 6 On June 13, Argonne sent plaintiff a letter by Federal Express, requesting that he turn in the tapes and pictures when he returned to work. Plaintiff was still on sick leave on October 3, when Argonne sent him a Federal Express package with a letter directing him to turn over the tapes and photographs for their investigation by October 8, or he would be discharged. The package contained a prepaid Federal Express box that plaintiff could use to turn over the tapes and photographs. Argonne produced a Federal Express receipt that indicated that the package was delivered to plaintiff's residence and left on the porch. On October 8, Argonne had not received the tapes or photographs; thus, it sent a letter to plaintiff discharging him on October 10, 2008.

¶ 7 Plaintiff confirmed that he was recording conversations with coworkers and that he had hundreds of tapes. He claimed that he was allowed to record the conversations without the consent of the other party because he believed that Argonne was engaging in criminal activity against him, namely, by creating a conspiracy that would portray him as a liar. Plaintiff also admitted that he had taken various photographs of unsafe working conditions as authorized by the laboratory director. Plaintiff had given some of the photographs to Harry Weertz, his division director. When asked if he had turned in the hundreds of tapes and all of the photographs to Argonne pursuant to their request, plaintiff stated that he had not because he believed that they were his personal property and he did not need to turn them over.

¶ 8 With regards to Argonne's October 3 letter, plaintiff claimed that he was not at home when the letter was delivered and that he never received it. At the beginning of the hearing, plaintiff stated that he was willing to call his wife to testify that he was not at home when the letter was delivered. The referee stated that plaintiff's wife would be brought in if she was

needed; however, at the conclusion of plaintiff's evidence, the referee noted that he did not believe that it would be necessary to call plaintiff's wife as a witness.

¶ 9 Following the hearing, the referee found that plaintiff had received the letter and affirmed the determination of the local office that plaintiff was disqualified from benefits under section 602(A) of the Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2008). That decision, as well as the referee's factual findings, were adopted by the Board. Finally, the circuit court of Will County concluded that the Board's determination was not against the manifest weight of the evidence or contrary to existing law. Plaintiff appeals.

¶ 10 ANALYSIS

¶ 11 Initially, plaintiff claims that the Board misapplied the law relating to proof of mailing in Illinois, and that the evidence did not support defendants' claim that plaintiff received the October 3 letter requesting that he return the tapes or he would be discharged. Illinois law has long established that a letter, properly addressed with postage prepaid, is presumed to be delivered to the addressee provided that it was mailed. *Ashley Wire Co. v. Illinois Steel Co.*, 164 Ill. 149 (1896). That presumption, however, can be rebutted by evidence of nonreceipt, in which case the issue of whether the letter was received becomes a question of fact. *Thompson v. Bernardi*, 112 Ill. App. 3d 721 (1983). In making factual determinations, the fact finder is afforded great deference because it was in the best position to observe the witnesses' demeanor and judge their credibility. *In re Winthrop*, 219 Ill. 2d 526 (2006). The Board's factual findings will not be disturbed unless they are against the manifest weight of the evidence. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168 (2008).

¶ 12 In this case, defendants presented evidence, in the form of a Federal Express receipt, that

the October 3 letter was delivered to plaintiff's house and left on his porch. This evidence created the presumption that plaintiff received the letter. Plaintiff rebutted that presumption by stating that he did not receive the letter. Thus, the issue became a question to be resolved by the trier of fact. Based on the evidence, the referee determined that plaintiff did receive the letter, and the Board adopted that determination. We find that the Board correctly applied Illinois law and that its factual determination was not against the manifest weight of the evidence.

¶ 13 Plaintiff next contends that the facts in evidence do not indicate that he engaged in misconduct prior to his discharge. Pursuant to section 602(A) of the Act, an individual who has been discharged as a result of misconduct cannot receive unemployment benefits. 820 ILCS 405/602(A) (West 2008). Misconduct is defined as "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." *Id.* Because the Board's determination that plaintiff engaged in misconduct is a mixed question of law and fact, we apply the clearly erroneous standard of review. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App. (2d) 100610.

¶ 14 Plaintiff argues that his conduct was not willful and deliberate, and that he did not repeatedly violate a rule established by his employer despite a warning or other explicit instruction, or harm the employer by his actions. Evidence presented established that plaintiff failed to turn over the tapes and photographs after he learned that an investigation was underway and after receiving a number of directives from his employer insisting that he turn the material

over for the investigation. As stated above, evidence also established that plaintiff received a letter telling him that if he failed to turn over the material he would be discharged. We find that the evidence presented could establish that plaintiff's conduct was willful and deliberate and that he repeatedly violated a rule established by his employer despite explicit instructions. Therefore, the Board's determination that plaintiff engaged in misconduct was not clearly erroneous.

¶ 15 Plaintiff next argues that he was denied due process of law because the referee refused to allow plaintiff's wife to testify. A fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon evidence. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76 (1992). A claim of a due process violation will be sustained only upon a showing of prejudice in the proceeding. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814 (2009).

¶ 16 We hold that there was no violation of due process. At the beginning of the hearing, plaintiff stated that his wife would testify that he was not at home when the October 3 Federal Express letter was delivered. The referee stated that plaintiff's wife would be brought in if she was needed. During the proceeding, plaintiff stated that he was not at home when the letter arrived at his residence. At the conclusion of plaintiff's evidence, the referee stated that he did not believe that it would be necessary to call plaintiff's wife as a witness. Our review of the record shows that this decision by the referee was not prejudicial, since plaintiff's wife would have simply corroborated evidence already in the record. Further, we find that plaintiff has not shown prejudice based on his allegations that he was not allowed to admit exhibits or to effectively cross-examine defendants' witnesses. Therefore, plaintiff's due process claims fail.

¶ 17

#### CONCLUSION

¶ 18 The judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.