



store in January 2009. The employer formally hired Riggs to manage that store on January 2, 2009. It discharged Riggs on December 30, 2010, because he claimed hours on his time card that he had not worked. On January 3, 2011, Riggs filed a claim for unemployment benefits with the Illinois Department of Employment Security (the Department). The employer filed a timely protest. A claims adjudicator with the Department reviewed Riggs' claim and determined, pursuant to section 602(A) of the Unemployment Insurance Act (the Act) (820 ILCS 405/602(A) (West 2010)), that Riggs was disqualified from receiving unemployment benefits because he had been discharged for misconduct connected with the work. Riggs moved for reconsideration. The Department scheduled the case for an evidentiary hearing before a referee. Don Apgar testified for the employer. Riggs and his assistant manager, Tabby Irwin, testified in his case.

¶ 4 Don Apgar, a division manager for Huck's, was Riggs' immediate supervisor. Apgar testified that Riggs was hired to manage the Centralia Huck's store on January 2, 2009. He noted that Riggs had worked at that store under other management for some years prior to that hire date. Apgar testified that he began to monitor Riggs after Riggs, without any notice, failed to attend an important meeting in December 2010. Apgar reviewed Riggs' time cards for the first two weeks in December 2010. The daily entries on the time cards showed that Riggs had clocked in at exactly 7 a.m. and that he clocked out at exactly 5 p.m. Apgar questioned the accuracy of the times recorded, and so he visited the store on December 18, 2010. Apgar obtained the store's surveillance video to assist him in determining whether Riggs actually arrived at and departed from the store at the times recorded on the time cards. The video revealed that Riggs actually arrived late and left early on December 3, 4, 5, 13, and 14, 2010, and that Riggs was not in the store at all from December 6 through December 10, 2010. Apgar terminated Riggs' employment on December 30, 2010. Apgar testified that all employees, hourly and salaried alike, are required to punch a time card, and that all

employees, including managers, are required to notify their supervisors if they will be absent from work.

¶ 5 Apgar identified copies of the employee work rules and the store manager's duties from the associates' handbook. The work rules identify acts which are prohibited. Prohibited acts include falsifying payroll records, inaccurate recording of the number of hours worked, and excessive or unauthorized absences. The opening statement in the work rules provides that violations of any of the work rules may be cause for discipline up to and including discharge. The store manager has several stated duties including a duty to ensure that the store is open and ready for business, a duty to ensure that all paperwork is done accurately and in a timely manner, a duty to ensure that all associates are properly recording all hours worked, and a duty to act as a role model for the other employees.

¶ 6 Apgar identified a receipt that Riggs signed on March 4, 2009. The receipt indicates that Riggs received a copy of the associates' handbook. Apgar testified that Riggs had received a copy of the handbook and that he should have been aware that he could be discharged for failing to accurately record his work hours. Apgar acknowledged that Riggs had not been previously counseled about recording his hours accurately on his time card. Apgar could not point to any measurable harm directly caused by Riggs' misconduct, but he stated that the employer could have suffered potential harm in terms of impacting customer service. He also stated that the employer suffered harm because it paid Riggs for time he had not worked.

¶ 7 Riggs testified that he was discharged by his district manager, Don Apgar, because of a disparity between the hours he logged on his time cards and the amount of time he was physically present at the store. Riggs said that during his many years of employment with Huck's, he regularly logged on his time card daily work hours as 7 a.m. to 5 p.m. Riggs stated that during the first week in December 2010, he arrived at the store after 7 a.m.

because he had to perform work duties away from the store and that he left before 5 p.m. because he had to attend physical therapy sessions. Riggs said that the employer knew about the physical therapy because he had been receiving treatment for more than two years. Riggs acknowledged that he did not report for work at all during the second week in December. He stated that he had a flu-like illness and then pneumonia. Riggs testified that he advised his assistant manager, Tabby Irwin, that he was ill and would not be coming to work, and that he checked in with her each day he was absent. He did not know he was required to report his absences to his supervisor. He did not think that he had to notify his supervisor about his absence because he had taken care of his responsibilities at his store. Riggs stated that Tabby Irwin completed the payroll and filled out his time card during his absence. He stated that he did not tell her how to complete his time card. Riggs noted that he was rarely ill and that when he was ill, he left a blank on his time card for those days he was absent.

¶ 8 Riggs acknowledged that he signed a receipt indicating that he had been provided with a copy of the associates' handbook. Riggs further acknowledged that the employee handbook provides that employees may not inaccurately report the number of hours they work. Riggs understood that the rules and conditions set out in the handbook applied to hourly employees and not salaried employees. Riggs noted that he was a manager and received a salary. This meant that he was on call and available for work 24 hours a day, 7 days week, and that he was paid the same compensation whether he worked 1 hour or 100 hours during a pay period. Riggs said that he logged his daily hours from 7 a.m. to 5 p.m. because managers were salaried and not paid by the hour. Riggs testified that he did not deliberately do anything wrong.

¶ 9 The assistant manager, Tabby Irwin, testified that she worked at the Huck's store as an assistant manager under Riggs. During the first few weeks in December 2010, Irwin worked at the store from 7 a.m. to 3 p.m., Monday through Friday. Irwin testified that Riggs

called her daily from December 6 through December 10, 2010, to inform her that he was ill and would not be able to work. Irwin noted that Riggs was rarely ill. She could not recall any previous time that Riggs was ill and unable to work for an entire week. Irwin testified that she was in charge of the store during Riggs' absence, and that she did the payroll for all employees, including Riggs. She stated that she recorded daily hours of 7 a.m. to 5 p.m. on Riggs' time card because Riggs received a salary and was not paid by the hour. Irwin said that she was under the impression that this was the way that hours were recorded for salaried managers. Irwin testified that Riggs had trained her to do payroll, but he never directed her to record his hours as 7 a.m. to 5 p.m. on his time card. Irwin stated that she covered the store during Riggs' absence and that his absence had no impact on customer service.

¶ 10 The referee found that Riggs had been discharged because he falsified his time records in violation of a known and reasonable company rule. The referee concluded that Riggs had been discharged for misconduct connected with the work and was ineligible for unemployment benefits.

¶ 11 Riggs appealed to the Board of Review (the Board). After reviewing the record, including the transcripts of the testimony and the written arguments of the parties, the Board affirmed the referee's decision. The Board determined that Riggs was disqualified from receiving unemployment benefits because he had been discharged for misconduct related to the work. The Board specifically found that the testimony from Riggs in which he stated that he did not know he had to notify his supervisor of his absence due to illness and that he did not know he was required to report his time accurately because he would be paid the same compensation regardless of the hours he actually worked was not credible. The Board also found incredible the testimony of Miss Irwin, the assistant manager, that though Riggs had trained her to do the payroll, he did not direct her to record his hours 7 a.m. to 5 p.m. on his time card and she had acted on her own in recording his hours.

¶ 12 Riggs filed a *pro se* complaint for judicial review in the circuit court of Marion County. The circuit court found that the Board's findings and conclusions were not against the manifest weight of the evidence or contrary to the law and affirmed the Board's decision.

¶ 13 On appeal, Riggs claims that the circuit court erred in affirming the Board's decision because he did not deliberately and wilfully violate the employer's rules or policies and because his misconduct did not harm the employer.

¶ 14 In an appeal from a decision denying unemployment benefits, we review the decision of the Board of Review, and not the decisions of the referee or the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819, 914 N.E.2d 208, 213-14 (2009). The scope of review depends on whether the issue presented is one of fact, law, or a mixed question of law and fact. *Sudzus*, 393 Ill. App. 3d at 819, 914 N.E.2d at 213-14. In reviewing an administrative agency's factual findings, we do not resolve conflicts in the evidence, judge the credibility of witnesses, reweigh the evidence, or substitute our judgment for that of the agency. *Sudzus*, 393 Ill. App. 3d at 819, 914 N.E.2d at 214. We defer to the agency's findings of fact unless they are against the manifest weight of the evidence. *Sudzus*, 393 Ill. App. 3d at 819, 914 N.E.2d at 214. An agency's decisions on questions of law are reviewed *de novo*. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556, 850 N.E.2d 244, 247 (2006). Mixed questions of fact and law involve an examination of the legal effect of a given set of facts, and we will only reverse an agency's decision on a mixed question when it is clearly erroneous. *Manning*, 365 Ill. App. 3d at 557, 850 N.E.2d at 247-48. Under a clearly erroneous standard of review, the agency's decision will be reversed if upon considering the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395, 763 N.E.2d 272, 282 (2001). Whether an employee was terminated for misconduct under the Act presents a mixed

question of law and fact which is reviewed under the clearly erroneous standard of review. *AFM Messenger Service*, 198 Ill. 2d at 395, 763 N.E.2d at 282.

¶ 15 The Act is intended to provide benefits in order to relieve economic insecurity caused to those who have become unemployed through no fault of their own. 820 ILCS 405/100 (West 2010). Subsection 602(A) of the Act states that a former employee is disqualified from receiving unemployment benefits if he was discharged for misconduct connected with the work. 820 ILCS 405/602(A) (West 2010). Subsection 602(A) defines "misconduct" 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." 820 ILCS 405/602(A) (West 2010).

¶ 16 In this case, the Board's determination that Riggs willfully and deliberately violated reasonable rules of the employer and harmed the employer is not clearly erroneous or contrary to law. The evidence established that Riggs received a copy of the associates' handbook containing the work rules for all employees and the duties of the store manager. The work rules prohibit falsifying payroll records, improperly recording the number of hours worked, and unauthorized absences. The store manager has a duty to ensure that the store is open and ready for business, a duty to ensure that all paperwork is done accurately and in a timely manner, a duty to ensure all associates are properly recording all hours worked, and a duty to act as a role model for other associates. There is adequate evidence from which to find that Riggs falsified his time card and inaccurately recorded the number of hours he worked and that he was absent without authorization of his district manager. There is adequate evidence from which to find that Riggs instructed or allowed his assistant manager to submit false information about the number of hours he actually worked. There is also

adequate evidence of harm to the employer in that Riggs was paid for work that he did not perform and that Riggs' unauthorized absence and his tardiness potentially compromised customer service. The Board rejected as incredible that portion of Riggs' testimony in which he claimed that he did not know he was required to notify his supervisor of his absences and that he did not know he had to accurately report his time. The Board also rejected that portion of the assistant manager's testimony in which she claimed that she, on her own and without direction from Riggs, recorded his daily hours as 7 a.m to 5 p.m. for a two-week period in December 2010. The Board's findings that Riggs' actions constituted deliberate and wilful violations of reasonable rules connected with his work duties and that the harm to the employer was not remote are supported by sufficient evidence and are not against the manifest weight of the evidence. The Board's determination that Riggs was disqualified from receiving unemployment benefits under section 602(A) of the Act because he was discharged for misconduct connected with the work is not clearly erroneous.

¶ 17 Accordingly, the judgment of the circuit court of Marion County is affirmed.

¶ 18 Affirmed.