

¶ 2 Defendants Illinois Department of Employment Security (Department), its Director, and the Department's Board of Review (Board) appeal from a circuit court order reversing a decision of the Board which had found that plaintiff, Valerie Merrideth, was ineligible to receive unemployment benefits because she had unreasonably restricted the distance she was willing to travel to seek work. On appeal, defendants contend the Board's decision was based on a factual finding that was not against the manifest weight of the evidence and should not have been reversed. We reverse the circuit court's reversal of the Board's decision.

¶ 3 Plaintiff was employed by Windmill Nursing Pavilion (Windmill) from January 2009 until her employment ended on April 26, 2010. Subsequently, plaintiff applied for unemployment insurance benefits. On March 29, 2011, a Department claims adjudicator determined that plaintiff was not eligible for benefits from June 6, 2010, through March 28, 2011, on the basis that she had "failed to demonstrate she was able to work" under section 500C of the Unemployment Insurance Act (Act), 820 ILCS 405/500C (2010).

¶ 4 Plaintiff applied for reconsideration of the claims adjudicator's determination of ineligibility. On April 29, 2011, a Department hearings referee conducted an evidentiary hearing by telephone. Plaintiff was the only witness who participated; Windmill did not appear. The referee stated the issue as "whether the claimant was able to work, available for work, and actively seeking work during the period under review" under section 500C.

¶ 5 During the hearing, plaintiff stated under oath that she was fired from her job as a certified nursing assistant (CNA) on April 26, 2010. At that time plaintiff was pregnant. She immediately looked for work but stopped her job search when her child was born on June 18. She sought to resume her job search within two weeks of the child's birth, and on July 1 she received her doctor's permission to do so on the condition that she avoid painful and heavy lifting so soon after the birth of her child. She looked for positions as a CNA, most of which required lifting. She also sought positions in telemarketing, retail, and restaurants. Plaintiff was willing

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to work mornings (7 a.m. to 3 p.m.) or evenings (3 p.m. to 11 p.m.) on any day of the week, and she was willing to accept minimum wage. Questioning of plaintiff included the following:

"R[eferee]: How far were you willing to travel to work?"

CL[aimant]: At least two or three miles.

R: Two or three miles?

CL: Yes.

* * *

R: Okay. Just one moment, please. Okay, what kind of method of transportation do you use?

CL: I use public transportation.

R: Okay, but what's the reason you can't go anymore than two to three miles on public transportation?

CL: Um, because certain places that you go to or certain cities that you go to, but don't run . . . don't run that often, or don't run that late. And I also have three young babies that if something happened I would need to get back."

¶ 6 On May 4, 2011, the referee rendered her decision, affirming the determination of the local office that plaintiff was disqualified from receiving benefits. The referee's written decision contained findings of fact which included: "The claimant *** restricts her search to 2 to 3 miles from her home, because she needs to be close to her children." The referee's conclusion stated in pertinent part that "the claimant placed unreasonable restrictions on her job search. A restriction of working within two to three miles from home is an undue restriction. Therefore, the claimant was not able to work, available for work and actively seeking work during the period under review."

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¶ 7 Plaintiff appealed *pro se* for administrative review of the referee's decision. On July 27, 2011, the Board found that the referee's decision was supported by the record and the law, and affirmed the denial of unemployment benefits. Plaintiff sought judicial review. On November 3, 2011, the circuit court reversed the Board's decision and ruled: "The court finds plaintiff was not restricting her work search to two to three miles and was, therefore, able, available, and actively seeking work." Defendants timely appealed. Although plaintiff has not filed an appellee's brief, we may nevertheless decide the merits on appeal because the issue is sufficiently simple that we do not need the aid of an appellee's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976); *In re Guardianship of Tatyanna T.*, 2012 IL App (1st) 112957, ¶14.

¶ 8 On appeal to this court, defendants contend that the Board's final administrative decision denying plaintiff unemployment compensation benefits was not contrary to the manifest weight of the evidence and was erroneously reversed where the facts showed plaintiff unreasonably restricted the distance she was willing to travel to work.

¶ 9 In reviewing a final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)), we review the administrative agency's decision, not the circuit court's determination. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). We will reverse an agency's factual findings only where they are against the manifest weight of the evidence. *Young-Gibson v. Board of Education of City of Chicago*, 2011 IL App (1st) 103804, ¶56. Where the agency's ultimate determination is a mixed question of fact and law, *i.e.*, whether the facts satisfy the statutory standard, the "clearly erroneous" standard applies. *Livingston v. Department of Employment Security*, 375 Ill.

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App. 3d 710, 715-16 (2007). The agency's final decision will be overturned only where clearly erroneous. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173 (2008).

¶ 10 The denial of unemployment benefits is governed by the Unemployment Insurance Act (Act). 820 ILCS 405/100 *et seq.* (West 2010). An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director finds that the individual is able to work and is available for work. 820 ILCS 405/500C (West 2010). Availability for work is defined in section 2865.110 of the Department's rules:

"a) An individual is available for work - even if he imposes conditions upon the acceptance of work - unless a condition so narrows opportunities that he has no reasonable prospect of securing work.

* * *

d) If there are no work opportunities that an individual can reach from his home, he is unavailable for work. If the individual unreasonably restricts the distance or time he will travel to work, he is unavailable for work. Reasonableness is determined by factors including, but not limited to: where work opportunities are located, the customs of workers similarly situated (as to location or occupation), the types and costs of transportation, physical capabilities, and the length of unemployment; generally, an individual is expected to extend the area in which he will seek work the longer he is unemployed. Generally, in metropolitan areas, 1 ½ hours, each way, is not an unreasonable travel time." 56 Ill. Adm. Code 2865.110(a), (d) (2010).

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¶ 11 Here, the Board's factual finding that plaintiff restricted her job search to within two or three miles from her home is clearly not against the manifest weight of the evidence because she actually testified that she was willing to travel "at least two or three miles" to work by using public transportation. When questioned as to her reason for not traveling "anymore than two to three miles on public transportation," plaintiff explained that the buses sometimes were not available or were running infrequently. Plaintiff further explained that she needed to be close to her three children. Regardless of her rationale, plaintiff clearly limited her job search to two to three miles from her home.

¶ 12 The Board concluded that the two-to-three mile limitation constituted an "unreasonable restriction[] on her job search" and, therefore, plaintiff was not available for work, making her ineligible for unemployment benefits. This decision was not clearly erroneous where plaintiff testified at the April 2011 hearing that she was discharged from her prior job in April 2010, she had been looking for work since May 3, 2010, she had a baby in June 2010, and was able to return to work on July 1, 2010. Given the length of her job search in the less than three-mile range by public transportation, it would be reasonable to search beyond the limited geographical radius to find where work opportunities may be located. 56 Ill. Adm. Code 2865.110(d) (2010) (factors to consider in determining whether distance restriction is reasonable includes, but is not limited to, location of work opportunities and the expectation that the individual will extend the area of her search the longer she is unemployed). Furthermore, plaintiff's domestic circumstances do not prevent a finding of unavailable for work for purposes of unemployment benefits. 56 Ill. Adm. Code 2865.110(b) (2010) (limitations based on child care may render an individual unavailable for work).

¶ 13 Accordingly, we reverse the judgment of the circuit court and uphold the Board's decision.

¶ 14 Reversed.

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