

No. 1-11-3742

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

TIFFANY THOMAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; and BOARD)	No. 11 L 50976
OF REVIEW,)	
)	
Defendants-Appellants,)	
and)	
)	
FIRMAN COMMUNITY SERVICES,)	Honorable
)	Robert Lopez Cepero,
Defendant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Harris, P.J., and Quinn, J., concurred in the judgment.

ORDER

- ¶ 1 *Held:* Board of Review found that plaintiff was properly discharged for misconduct because she was attending classes during hours when she was supposed to be working. This determination was not clearly erroneous and therefore the circuit court order granting plaintiff unemployment benefits was reversed.
- ¶ 2 The State defendants, the Department of Employment Security (Department), the Director of the Department (Director), and the Board of Review of the Department (Board), appeal from an order of the circuit court of Cook County reversing the decision of the Board that plaintiff, Tiffany Thomas, was discharged for misconduct by her employer, Firman Community Services

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(Firman). Defendants contend that the circuit court should have affirmed the ruling of the Board because that ruling was not clearly erroneous. Plaintiff has not filed an appellee's brief, but we find that we may decide this case based upon the record and the State defendants' brief. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008); *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 Plaintiff was hired by Firman as a director for its educational services and children's services divisions, beginning January 24, 2011. Her salary was \$43,000 per year. In April 2011 she filed for unemployment benefits, claiming that she had been wrongfully discharged by Firman. A Department claims adjudicator denied her claim. Plaintiff appealed that decision and an evidentiary hearing was held before a Department referee on May 17, 2011. The referee concluded that plaintiff had engaged in misconduct connected with her work by taking classes during working hours without permission. For this reason, plaintiff was denied unemployment benefits. The Board affirmed the decision of the referee. Plaintiff appealed to the circuit court of Cook County, which reversed the decision of the Board. The State defendants have appealed that ruling.

¶ 4 At the hearing, Marjorie Young, Firman's president and chief executive officer, testified that when plaintiff was hired, the letter offering her employment stipulated that her hours would be 9 a.m. to 6 p.m., Monday through Friday. On April 4, 2011, plaintiff was told to attend a 9:30 a.m. meeting in order to prepare for a federal audit. When plaintiff did not come to the meeting, it was determined that she was also not where she was supposed to be working that day. Plaintiff was summoned to a meeting the following day, April 5, 2011. On that date Young received a letter from plaintiff, stating that she was completing her master's degree and was currently taking three courses. These required that she attend classes and conduct research during the day. The letter also stated that the days "most likely affected" were Mondays, Tuesdays, and Fridays. Plaintiff offered to adjust her work schedule in order to complete her 45 hours of work each week, but she did not explain how this could be accomplished. Young investigated the matter

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further and found that on some days plaintiff had only worked till 12 p.m. or 1 p.m., while telling her supervisor, Eileen Moore, that she was going to another facility. According to Young, plaintiff had never discussed the need to work different hours.

¶ 5 At the meeting, Young told plaintiff that she had been hired as a full-time worker and that federal guidelines required full-time, on-site supervision. She also told plaintiff that she had been misleading her supervisor. Plaintiff stated that she believed that she could work from home, but Young told her they had no arrangements for her to do this. Young testified that at the close of the meeting, plaintiff was given two options, continuing to work full-time without continuing to attend classes, or taking a half-time job as an interim teacher, at a salary of \$20,000. When plaintiff declined these offers, Young told her she should think about it. However, plaintiff subsequently sent Young an email stating her understanding that she had been discharged at the April 5 meeting. Young testified that plaintiff had not been discharged at that meeting, but instead had "abandoned" her job. Plaintiff subsequently applied for unemployment benefits.

¶ 6 Young's meeting with plaintiff was also attended by Donna Skinner-Eckels and Eileen Moore. Skinner testified at the hearing that she was the administrator for children's services. She confirmed that plaintiff's work hours were 9 a.m. to 6 p.m. Skinner also testified that plaintiff was responsible for supervising all of the teaching staff at Firman's East, West, and South locations. Plaintiff's duties included visiting those school sites to meet with teachers and verifying that all the children had their required educational documentation. However, Skinner discovered that many of the binders for the students were missing needed information. Skinner also determined that plaintiff had never signed in at the South location. One of the staff members told Skinner that she had never seen plaintiff there and did not know who she was. At the April 4 meeting, Skinner received a text message from plaintiff stating that she would not be attending the meeting. Skinner was unable to contact plaintiff at that time, as plaintiff's phone message service was full and plaintiff did not respond to Skinner's text. Finally, Skinner testified that

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plaintiff had never told her that she was attending classes, nor did she ask for a change in her schedule.

¶ 7 Eileen Moore testified that she also had no knowledge that plaintiff had been attending classes. Because plaintiff had failed to complete the binders needed for the upcoming federal review, Moore had to work overtime to supply the information that was missing from those binders.

¶ 8 Plaintiff confirmed that she had enrolled in school in January 2011, but she asserted that she had notified Young and Skinner in her initial interview that she would be doing so. Her only classes were at 1 p.m. on Mondays and at 5 p.m. on Tuesdays. She sometimes returned to work after the 1 p.m. class, but at other times she did not do so. Plaintiff also testified that she had never been warned or disciplined about attending classes during work hours and her hours were never discussed. She ordinarily worked from 7 a.m. to 6 p.m., but her hours also varied. Plaintiff testified that although her job offer letter stated that her hours were 9 a.m. to 6 p.m., she had informed human resources that this was not what she agreed to. Plaintiff explained that she wrote the letter about her class schedule because the April 4 meeting was set for a time when she would be in school, and thus did not acknowledge the school schedule she had discussed in her job interview with Young and Skinner.

¶ 9 Based upon this testimony, the Board found as follows. Plaintiff was hired to work from 9 a.m. to 6 p.m. and she was not authorized to leave work during these hours to attend classes. Plaintiff failed to notify Firman that she was leaving work to attend classes, in deliberate violation of the reasonable duties which she owed to Firman. She was not honest about where she was going, stating that she was leaving for other Firman locations. Firman was unaware of what plaintiff was doing and did not condone her actions. For these reasons, the Board affirmed the referee's decision that plaintiff was not entitled to unemployment benefits.

¶ 10 Our review is of the decision of the Board, not the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Section 602(A) of the Illinois

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Unemployment Insurance Act (820 ILCS 405/602(A) (West 2010)) provides that a former employee is ineligible for unemployment benefits if she was discharged for misconduct¹ connected with her work. Misconduct occurs when the employee deliberately violates a reasonable rule or policy of the employer and thereby harms the employer. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006). This issue is a mixed question of law and fact to which the "clearly erroneous" standard of review is applicable. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). We will find the Board's resolution of this issue to be clearly erroneous only if, upon review of the record, we are left with a definite and firm conviction that the Board erred. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 11 The Board did not find plaintiff's testimony to be credible. It found that she had deliberately violated Firman's rules by attending classes when she was supposed to be working. Plaintiff was hired to work a regular schedule during the day but instead left during work hours to attend classes under the pretense of going to another Firman location. Contrary to plaintiff's testimony, Firman's employees testified that they were unaware of plaintiff's actions and did not condone them. Firman was harmed because it was cheated out of work which plaintiff was supposed to be performing, requiring another Firman employee to fill the gap. The Board found that plaintiff was properly discharged for misconduct. Our review of the record and the law does not leave us with the definite and firm conviction that the Board erred in this finding. *AFM Messenger*, 198 Ill. 2d at 395. Accordingly, we reverse the judgment of the circuit court and reinstate the Board's determination that plaintiff is not entitled to unemployment benefits.

¶ 12 Reversed.

¹ Firman's president, Marjorie Young, testified that plaintiff had not been discharged, but had "abandoned" her employment. But plaintiff testified that she had been discharged and the findings of the Board were based upon the conclusion that plaintiff was discharged for misconduct.