2013 IL App (1st) 121425-U

FIFTH DIVISION
April 12, 2013

No. 1-12-1425

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

BRENDA L. HUFF,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 12 L 50222
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY; BOARD OF	)	
REVIEW; and EVERGREEN REAL ESTATE LLC,	)	Honorable
	)	Robert Lopez Cepero,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held*: The decision of the Board of Review of the Illinois Department of Employment Security that plaintiff was discharged for misconduct connected with work and thus ineligible for unemployment benefits was not against the manifest weight of the evidence or clearly erroneous.

¶ 2 Plaintiff Brenda Huff filed a complaint for administrative review seeking to reverse a decision by the Board of Review of the Illinois Department of Employment Security (Board) that she was ineligible to receive unemployment benefits because she was discharged for misconduct

connected with her work. On appeal, plaintiff contends that the circuit court erred in affirming the Board's decision because misconduct was not established and because she had "good cause" for engaging in the conduct that resulted in her termination.

¶ 3 For the reasons that follow, we affirm.

¶ 4 Plaintiff was employed by Evergreen Real Estate Services, LLC (Evergreen), as a property manager for about six years, until she was discharged on September 26, 2011. Following her termination from employment with Evergreen, plaintiff filed a claim for unemployment benefits. An IDES claims adjudicator denied plaintiff's claim based on a finding that she was disqualified under section 602(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2010)), which provides that individuals discharged for misconduct are ineligible to receive unemployment benefits. The claims adjudicator found that plaintiff was discharged because of insubordination, in particular, because she refused a directive from her manager to schedule and attend a meeting to discuss her progress on action items from three months earlier.

¶ 5 Plaintiff appealed, and a telephone hearing was held before an administrative law judge (ALJ).

¶ 6 At the telephone hearing, Evergreen's human resources director, Shannon Gougis, testified that the incident that led to plaintiff's discharge was insubordination. Gougis explained that Evergreen had an ongoing issue with plaintiff regarding substandard job performance, dating back to March 2011. She stated that the company had a progressive discipline policy. A warning had been issued in June 2011, with specific action items outlined. According to Gougis, plaintiff had failed to accomplish those items by the dates given. Because email communications did not seem to be getting results, an in-person meeting was required.

¶ 7 Jane Smaga, Evergreen's regional manager and plaintiff's direct supervisor, testified that plaintiff was terminated due to insubordination, as she had refused to attend a meeting with Smaga and Polly Kuehl, Evergreen's vice president. Smaga stated that she had sent plaintiff an email on September 21, 2011, asking her to attend a meeting on September 26, 2011. According to Smaga, she had previously disciplined plaintiff, and this meeting was supposed to have been about plaintiff's "progress to date and what still needed to be done." When Smaga did not get a response to her email, she called plaintiff to stress the importance of the meeting. Plaintiff thereafter responded in writing that she would not attend the meeting because that date was not good for her. Smaga then gave plaintiff a choice of different dates and times to attend a meeting at the corporate office, but plaintiff said she was not going to attend. At some point, plaintiff told Smaga that she was not going to attend the meeting because it was going to be a disciplinary hearing and she did not think it was necessary. Smaga testified that she told plaintiff not attending the meeting would be an act of insubordination that could lead to termination. According to Smaga's testimony, if plaintiff had shown up at the meeting, they would have merely discussed her performance and plaintiff would not have been terminated.

¶ 8 When the referee asked plaintiff whether she had refused to attend the meeting, plaintiff answered that she had questions that she wanted answered before she attended the meeting. She asserted that she had not refused to meet with Smaga and Kuehl, but rather, had emailed Smaga that she "just wanted some questions answered." Plaintiff testified that Smaga refused to tell her why she was being asked to go downtown for a meeting or why she was being disciplined. Plaintiff also stated that she believed the meeting was retaliatory for a memorandum she had sent regarding the hiring of a maintenance person. When the referee asked plaintiff why she had not selected one of the alternate dates offered to her for the meeting, plaintiff responded, "I just wanted my ... my questions answered." In response to further questioning, plaintiff stated that

the main reason she did not attend the meeting was that she thought she was going to be fired and she thought that if she raised any concerns at the meeting, they would fall on deaf ears.

¶ 9 Following the telephone hearing, the ALJ affirmed the claims adjudicator's denial of plaintiff's claim for unemployment benefits. The ALJ found that plaintiff was discharged for insubordination, with the final incident being her refusal to attend a meeting with her manager that she was asked to attend to evaluate her performance. The ALJ found that although plaintiff had been offered several dates and times to schedule the meeting, she nevertheless refused to attend, and testified that she did not want to attend because she knew it was a disciplinary meeting. The ALJ determined that plaintiff's wilful refusal to reply to reasonable questions from her supervisor in the conduct of the business was in violation of the duties implied in the agreement of hire, and that plaintiff's wilful and wanton refusal to accept supervision constituted a breach of her duties and obligations to her employer. The ALJ concluded that plaintiff was discharged for misconduct in connection with her work, and was thus disqualified from receiving benefits.

¶ 10 Plaintiff appealed to the Board, which affirmed the ALJ's decision. The Board found the record adequate, determined that the referee's decision was supported by the record and the law, and incorporated the ALJ's decision as part of its own. Plaintiff thereafter filed a complaint for administrative review. The circuit court affirmed.

¶ 11 On appeal, plaintiff contends that the circuit court erred in affirming the Board's decision because misconduct was not established and because she had "good cause" for engaging in the conduct that resulted in her termination. Plaintiff argues that the record contains no evidence of (1) the existence of a work rule or policy related to attending meetings or the consequences for failing to do so; (2) how her employer was harmed by her conduct; or (3) whether the conduct

was repeated after a warning. She further argues that because of intolerable working conditions, she had good cause not to attend the meeting at issue.

¶ 12 In an appeal involving a claim for unemployment benefits, we defer to the Board's factual findings unless they are against the manifest weight of the evidence. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556 (2006). An administrative agency's findings of fact are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). In our role as a reviewing court, we may not judge the credibility of the witnesses, resolve conflicts in testimony, or reweigh the evidence. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007).

¶ 13 To establish misconduct under the Act, it must be proven that (1) there was a deliberate and willful violation of a rule or policy of the employing unit, (2) the rule or policy was reasonable, and (3) the violation either harmed the employer or was repeated by the employee despite a previous warning or other explicit instruction from the employing unit. 820 ILCS 405/602(A) (West 2010); *Manning*, 365 Ill. App. 3d at 557. Whether an individual was properly terminated for misconduct in connection with her work is a question that involves a mixed question of law and fact to which we apply the clearly erroneous standard of review. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). An agency's decision is considered to be clearly erroneous where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 14 In the instant case, the record supports the Board's determination that plaintiff's actions constituted misconduct under section 602(A) of the Act.

¶ 15 First, Evergreen presented evidence that plaintiff deliberately and willfully violated a workplace rule or policy in that she refused to attend a meeting that was requested by her supervisor. Plaintiff's supervisor, Smaga, testified during the telephone hearing that plaintiff told her she was not going to attend the meeting because it was going to be a disciplinary hearing and she did not think it was necessary. In contrast, plaintiff testified that she had not refused to meet with Smaga and Kuehl. However, plaintiff also acknowledged that she did not attend the meeting and had not selected one of the alternate dates offered to her. On this factual issue, the Board determined that plaintiff refused to accept supervision and refused to attend the meeting. On administrative review, we may not judge the credibility of the witnesses or reweigh the evidence. *White*, 376 Ill. App. 3d at 671-72. Accordingly, we defer to the Board's finding of fact.

¶ 16 Second, Evergreen's policies that employees must follow their supervisors' orders and discuss their job performance are reasonable. We are mindful that Evergreen did not present direct evidence of these workplace policies. However, employers are not required to prove the existence of a reasonable rule by direct evidence. *Manning*, 365 Ill. App. 3d at 557. Courts may find the existence of a reasonable rule or policy "by a commonsense realization that certain conduct intentionally and substantially disregards an employer's interests." *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998). Here, common sense dictates that refusing to follow directions given by a supervisor intentionally and substantially disregards the employer's interests. In addition, an employee's refusal to discuss work performance is in clear disregard of an employer's interest. *Carroll v. Board of Review*, 132 Ill. App. 3d 686, 692 (1985).

¶ 17 Third, harm to the employer is not limited to actual harm, but can be established by potential harm. *Hurst*, 393 Ill. App. 3d at 329; *Manning*, 365 Ill. App. 3d at 557. For example,

insubordinate behavior is harmful to an employer's interest in maintaining an orderly workplace. *Hurst*, 393 Ill. App. 3d at 329. In this case, plaintiff's behavior of refusing to meet with her supervisor and the company's vice president could adversely affect the work environment in that it could affect employee morale and cooperation. Thus, the element of harm was established.

¶ 18 Finally, we note plaintiff's argument that intolerable working conditions gave her good cause not to attend the meeting that resulted in her termination. Plaintiff's argument is misplaced. Whether a claimant has "good cause" for taking certain actions is not part of the inquiry when she has been found ineligible for unemployment benefits due to misconduct. "Good cause" only arises as a consideration when a claimant has been disqualified due to leaving employment voluntarily. See 820 ILCS 405/601(A) (West 2010). In the circumstances presented here, whether "good cause" existed is irrelevant.

¶ 19 After reviewing the entire record, we cannot say that the Board's determination that plaintiff was discharged for misconduct connected with work was clearly erroneous. Accordingly, for the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.