

2013 IL App (1st) 122303-U

FIFTH DIVISION  
August 16, 2013

No. 1-12-2303

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|-----------------------|
| JULIA NORMAN,                             | ) | Appeal from the       |
|   | ) | Circuit Court of      |
| Plaintiff-Appellant,                      | ) | Cook County.          |
|   | ) |                       |
| v.  | ) |                       |
|   | ) |                       |
| ILLINOIS DEPARTMENT OF EMPLOYMENT         | ) | No. 12 L 50575        |
| SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT | ) |                       |
| OF EMPLOYMENT SECURITY; BOARD OF REVIEW;  | ) |                       |
| and GLENWOOD TERRACE LTD.,                | ) | Honorable             |
|   | ) | Margaret Ann Brennan, |
| Defendants-Appellees.                     | ) | Judge Presiding.      |

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JUSTICE TAYLOR delivered the judgment of the court.  
Justices Howse and Palmer concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The decision of the Illinois Department of Employment Security denying plaintiff unemployment benefits was not clearly erroneous where the evidence indicated that plaintiff violated a reasonable workplace rule requiring her to accurately report the resuscitation status (code status) of a patient identified in the patient's chart to a doctor when requesting orders over the telephone.
- ¶ 2 In this administrative review action, plaintiff Julia Norman appeals, *pro se*, from the order of the circuit court affirming the decision of the Board of Review (Board) of the Illinois

Department of Employment Security (Department) denying her claim for unemployment benefits. On appeal, plaintiff appears to contend that the rule she was accused of violating was not reasonable. We affirm.

¶ 3 Plaintiff was employed as a licensed practical nurse (LPN) by defendant Glenwood Terrace, Ltd. (Glenwood), a long-term care facility. Plaintiff was discharged following an incident during which a patient under her care died without being transferred to a hospital, and instead received only oxygen and palliative care. Plaintiff applied for unemployment benefits. Glenwood protested stating that plaintiff failed to follow standard nursing practice and report adequate medical information to the patient's doctors. A Department claims adjudicator initially found that plaintiff did not act willfully and deliberately and found her eligible for benefits. Glenwood requested a hearing.

¶ 4 A Department referee conducted a telephone hearing. Plaintiff did not answer when called, and the referee left a message stating that she could move to reopen the hearing, which plaintiff never did. Tawana Agbenyegah, a nursing supervisor, testified on behalf of Glenwood. Patients at the facility were classified according to their resuscitation status as either "do not resuscitate" (DNR) or "full code." The nursing staff was instructed not to initiate CPR to preserve the life of DNR patients, but instructed to take every measure to preserve the life of full code patients. When the incident leading to plaintiff's discharge occurred, plaintiff was working an evening shift. A patient began having difficulty breathing and his oxygen saturation levels began to decline. Plaintiff telephoned the patient's doctor for orders, and during the telephone conversation informed the doctor that the patient was classified DNR. The doctor ordered increased oxygen and palliative care. In fact, the patient was classified full code, and Agbenyegah testified that, if the doctor had been informed of this information, a 911 call would

have been placed and the patient transferred to a hospital for further treatment. The patient died the following morning at 7 a.m.

¶ 5 When questioned following the incident, plaintiff told Agbenyegah that she thought the patient was DNR. Plaintiff was not asked to explain the basis for this belief. If a patient was classified DNR, this information would be identified multiple places on the patient's chart including on a separate brightly colored DNR form and a DNR sticker. Agbenyegah testified that nurses were expected to have the patient's chart in front of them when calling a physician and to accurately communicate any necessary information including the patient's resuscitation status.

¶ 6 The referee found that plaintiff was not eligible for unemployment benefits based on misconduct. Plaintiff appealed to the Board arguing that she followed the doctor's orders. The Board affirmed the decision of the referee. Plaintiff, *pro se*, filed a complaint for administrative review. The circuit court affirmed the board's decision, and plaintiff timely appealed.

¶ 7 Before reaching the merits of plaintiff's appeal, we note that the Department has moved, in its appellee's brief, to strike plaintiff's brief for violations of Supreme Court Rule 341(h) (eff. Feb. 6, 2013). We note that the arguments in plaintiff's brief are not well developed and consist primarily of numerous citations to the record with limited commentary such as "Pg. 12: Hours of employment was [*sic*] not 8 am - 5 pm." Plaintiff's brief contains no citation to authority, no explanation of the relevance of the citations to the record, and highly limited argument. It would be well within our discretion to strike the brief and dismiss the appeal or disregard arguments not properly supported. See, *e.g.*, *Walters v. Rodriguez*, 2011 IL App (1st) 103488. Nevertheless, we have the benefit of a cogent appellee's brief and it is possible to discern at least some contentions of error in plaintiff's brief. Therefore, because the deficiencies in plaintiff's brief do not affect our jurisdiction, we decline the Department's invitation to strike the brief and will

endeavor instead to address the merits of plaintiff's appeal to the extent we can discern them. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 8 The introduction section of plaintiff's brief contains the following statement: "The doctor should know their patients and when you call a doctor for orders there should be no need to tell the Doctor whether the patient is a DNR or Full Code. When you call you are calling for a decision on the condition of the resident the doctor should always know the resident's status." Plaintiff does not deny the existence of a rule requiring her to inform the doctor of a patient's status when calling to request orders, and we interpret these statements as contending that the rule was unreasonable.

¶ 9 In an administrative review action, we review the decision of the Board, not the trial court's reasoning in affirming or denying that decision. See *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679, ¶ 31. "Whether an employee was discharged for misconduct is a mixed question of fact and law, and is analyzed under the clearly erroneous standard of review." *Alternative Staffing, Inc. v. Department of Employment Security*, 2012 IL App (1st) 113332, ¶ 29. The definition of misconduct is contained in section 602 of the Unemployment Insurance Act (820 ILCS 504/602 (West 2010)) and has been interpreted as containing three elements: (1) that there was a deliberate and willful violation of a rule or policy of the employing unit; (2) that the rule or policy was reasonable; and (3) that the violation either harmed the employer or was repeated by the employee despite previous warnings. *Pelosi v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 29.

¶ 10 First, the undisputed testimony at the telephone hearing established the existence of a rule that nurses have a patient's chart immediately available for consultation when calling a physician for orders. Evidence was presented that the existence of a DNR order is marked conspicuously several places on a patient's chart. Plaintiff's mistake about the patient's status, therefore,

strongly suggests that she did not examine the chart before calling the physician. Plaintiff did not appear at the hearing and accordingly did not present any evidence that her failure to have the chart readily available when calling the physician was the result of forces beyond her control.

¶ 11 Second, although plaintiff apparently contends that the physicians should know the status of their patients without consulting the nursing staff, we can not find that the rule requiring nurses to have the chart available when calling a physician was unreasonable. The purpose of telephone consultation with a physician is clearly to obtain instructions when the physician is away from the facility and unable to directly examine the patient or the patient's treatment records. A rule that nurses have available the patient's record and accurately transmit the contents of those records to the physician instead of relying on the fallible memory of a physician who may have numerous patients at different facilities is clearly reasonable and necessary to prevent the very type of mistake that occurred in this case.

¶ 12 Finally, the harm to the employer in this case is clear. The Act contemplates not only actual harm, but potential harm to an employer. See *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323 (2009) (collecting cases). The potential for harm to the employer in this case is abundantly clear. A patient died after being denied lifesaving treatment because plaintiff failed to follow the employer's rule regarding consulting with physicians by telephone. The potential for civil liability or loss of operating licenses and permits is obvious. Therefore, we can not conclude the Board's determination that plaintiff was discharged for misconduct related to her employment was clearly erroneous.

¶ 13 For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

¶ 14 Affirmed.