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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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RANDY E. CHAPUIS,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
BOARD OF REVIEW OF THE ILLINOIS	)	No. 11-MR-512
DEPARTMENT OF EMPLOYMENT	)	
SECURITY and JAY ROWELL, Director	)	
of Employment Security,	)	
	)	
Defendants-Appellants,	)	Honorable
	)	Thomas E. Mueller,
(C.T. CORPORATION, Registered Agent for	)	Judge Presiding.
Comcast, Defendant).	)	

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JUSTICE BIRKETT delivered the judgment of the court.  
Presiding Justice Burke and Justice McLaren concurred in the judgment.

**ORDER**

¶ 1 *Held:* The decision of the Board of Review of the Illinois Department of Employment Security that employee was discharged for “call avoidance” as a call center worker was not against the manifest weight of the evidence, and its determination that employee was terminated for misconduct was not clearly erroneous. Therefore, the order of the circuit court reversing the Board’s decision was reversed and the Board’s decision denying employee unemployment benefits was upheld.

¶ 2 Appellant, the Board of Review (Board) of the Illinois Department of Employment Security (Department) appeals from an order of the circuit court reversing a decision of the Board which determined that appellee, Randy Chapuis, had been discharged by his employer for misconduct and denying his claim for unemployment benefits under section 602A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602A (West 2010). On appeal, the Board argues: (1) its finding that Chapuis, a call center worker for Comcast, was discharged for “call avoidance,” was not against the manifest weight of the evidence; and (2) its determination that Chapuis was discharged for misconduct was not clearly erroneous. For the following reasons, we reverse the trial court’s order and reinstate the Board’s final administrative decision denying Chapuis unemployment benefits.

¶ 3 I. BACKGROUND

¶ 4 Chapuis was employed by Comcast as a call center worker from March 24, 2008, until his discharge on March 2, 2011. Specifically, Chapuis’ job was to take incoming customer calls in the video repair and billing department. The average call lasted about five or six minutes. If Chapuis received a call intended for another department, such as internet or telephone services, he would transfer the call to the correct department. If he had difficulty with a call correctly routed to him, Chapuis was required to contact his supervisor, team leader, or manager for assistance.

¶ 5 Through an investigation of employees with high call transfer rates, Comcast became suspicious that Chapuis was engaging in “call avoidance,” or transferring calls back into his own department’s queue. Comcast’s investigation identified 11 examples of apparent call avoidance by Chapuis which occurred over a 24-day period, between January 22 and February 15, 2011. In most instances, Chapuis told customers that he was transferring the call to someone who could provide assistance. For example, on February 8, 2011, Chapuis received a call requesting assistance in

adding “HD” channels. Chapuis placed the customer on hold for 13 minutes, then told her that he was unable to activate the service and would be transferring her to someone else who could help her. He then returned the call to his department’s queue. Chapuis also transferred customers who had technical issues, customers who could not verify their identities, and one customer who stated that he spoke Hindi.

¶ 6 On February 19, 2011, customer service manager Joel Gonzalez and supervisor Kermaine Pullen met with Chapuis to listen to and discuss the calls. On March 2, 2011, Gonzalez discharged Chapuis for call avoidance. That same day, Chapuis applied for unemployment benefits. Comcast protested the claim, and alleged that Chapuis was discharged for violating its code of ethics. On March 26, 2011, the claims adjudicator found that the actions resulting from Chapuis’ discharge were not deliberate or willful and awarded him benefits. On April 25, 2011, Comcast administratively appealed. It alleged that Chapuis was observed transferring calls back into the telephone queue, conduct that it deemed call avoidance, and therefore Chapuis was discharged for misconduct connected with work. In support, Comcast submitted a Corrective Action form documenting the 11 transfer calls that led to Chapuis’ discharge.

¶ 7 Chapuis filed a written request asking the Department referee to subpoena four former supervisors who had given him positive performance reviews. Chapuis also submitted the following documents to the referee: (1) a quality review of a call he handled on February 18, 2011; (2) his 2009 annual performance review which indicated that he achieved expectations; (3) his 2008 “Rising Star” award; and (4) documents explaining Comcast’s performance metrics ratings system. Chapuis also filed handwritten notes indicating that he had received an excellent performance review shortly

before his discharge, and that he was discharged only after he complained to Comcast's Human Resources department that some of his performance ratings had been recorded incorrectly.

¶ 8 On May 19, 2011, a Department referee conducted a telephone hearing with the following individuals: (1) Chapuis; (2) Jimmy Donner, Comcast's representative; (3) Gina Palmer, a human resources employee and financial analyst for Comcast; and (4) Joel Gonzalez, Chapuis' manager at Comcast.

¶ 9 Palmer testified that Chapuis had received no warnings about his discharge for call avoidance. She also said that while Comcast's conduct policy did not specifically prohibit call avoidance, all employees receive the Comcast's conduct policy, and that policy states that it is not possible to list every specific act of misconduct, but that other unacceptable conduct not specifically listed may result in discipline up to and including termination.

¶ 10 Gonzalez testified that he was a customer service manager for Comcast and that he was Chapuis' manager at the time he was discharged. He said that it was never appropriate for Chapuis to transfer a call back into the same queue without disclosing that he was doing so. Gonzalez listened to the 11 calls cited by Comcast as examples of call avoidance, as well as many other calls. He said none of those calls were beyond Chapuis' ability to handle. Gonzalez said that if one of the calls happened to be something that an employee was unable to handle, the proper procedure was for the employee to contact a supervisor, manager, or other employee in authority that was in the call center. Gonzalez noted that the calls happened moments before Chapuis' scheduled break or at the end of his shift. When he confronted him, Chapuis had no explanation for the transfers. Gonzalez also said that the excellent review cited by Chapuis was a review of only one phone call and was not indicative of his overall performance.

¶ 11 Chapuis testified that on February 18, 2011, he complained to Comcast's Human Resources department that his performance metrics for the month had been wrongly recorded. He said that the day after he complained, he was called into Gonzalez's office to discuss the transferred calls with Gonzalez and Pullen. Two weeks later, he was fired. Chapuis concluded that Comcast had been satisfied with his work performance until he complained to human resources on February 18, 2011.

¶ 12 Chapuis admitted that he was supposed to contact a supervisor if he could not handle a call. He did not qualify this testimony by saying that he only learned about the rule against call avoidance after Gonzalez and Pullen had spoken to him on February 19, 2011. Instead, he said that he transferred calls back into the queue because supervisors were often unavailable, that getting an answer from a supervisor could take from 5 to 25 minutes or longer, and that customers often would not want to wait that long. He said that when he met with Gonzales and Pullen on February 19, 2011, he did provide answers to them as to why the calls were transferred, but he could not remember what those reasons were at the time of the telephone hearing. He said he did not think the calls in question took place before breaks or lunches and Gonzalez's comment about the timing of the calls did not make sense because he would always work after his shift had ended if needed.

¶ 13 The Department referee determined that the record was complete as to why Chapuis was discharged and therefore denied Chapuis' request to subpoena other witnesses. On May 20, 2011, the referee issued a decision denying Chapuis unemployment benefits. In so doing, the referee noted that it found Comcast's witnesses to be credible. It also determined that Chapuis willfully and deliberately violated Comcast's policy against call avoidance, and that his conduct harmed Comcast and Chapuis' coworkers by giving fellow call center workers more work to perform. Accordingly,

Chapuis had been discharged due to misconduct associated with work and was ineligible to receive unemployment benefits.

¶ 14 On June 15, 2011, Chapuis appealed to the Board. In the documents he filed with the Board, Chapuis argued that he was fired for complaining to human resources at Comcast and not for call avoidance. Alternatively, he claimed that he did not engage in call avoidance because he was not entirely unavailable to customers and the number of calls he transferred was small. He also argued that his former supervisors should have been called as witnesses because they could have verified that he generally received favorable ratings. He said he did not contact the witnesses himself because he did not want to break any rules. He concluded that even if he should have handled those calls more effectively, his transfer of calls to the queue was not misconduct.

¶ 15 On June 23, 2011, Chapuis requested that he be allowed to call witnesses before the Board. In his written argument, he asserted that he was an excellent employee who was sometimes forced by “computer issues” to transfer calls. Chapuis resubmitted one of his performance reviews and his “Rising Star” award. He also submitted printouts showing his above average “First Call Resolution” scores for September and October 2010.

¶ 16 On September 28, 2011, the Board issued its decision. First, it denied Chapuis’ request for a hearing, and noted that pursuant to the Department’s rules, it was required to decide the case on the existing record, without oral argument, unless oral argument was necessary for “a full and fair disposition of the appeal.” The Board found that Chapuis had the opportunity to present his best case at the administrative hearing and there was therefore no reason for another hearing.

¶ 17 The Board then found that Chapuis had been discharged for call avoidance and transferring incoming calls back into the queue. Further, it found that Chapuis was aware that this conduct

violated Comcast's rules and he nevertheless deliberately violated that rule. Accordingly, it determined that Chapuis was discharged for misconduct as that term was defined in the Act, and he was therefore ineligible for unemployment benefits. See 820 IL 405/602A (West 2010). In so doing, the Board stated that whether or not Chapuis had been rated an excellent or above average employee by Comcast was irrelevant.

¶ 18 On October 31, 2011, Chapuis filed a complaint for administrative review before the circuit court of Kane County. In his complaint, Chapuis argued that he was not discharged for misconduct because: (1) Comcast had no rule about transferring customers back into the queue; (2) he was never warned not to transfer customers back into the queue; and (3) he did not harm Comcast or his coworkers by doing so. In support of his claim of no harm, Chapuis alleged that customers had to wait only another 15 to 60 seconds for assistance after being transferred back into the queue.

¶ 19 On April 13, 2012, following argument, the trial court reversed the Board's decision, holding that there was no evidence that Chapuis repeated his conduct after a warning or that there was harm to the employer.

¶ 20

## II. ANALYSIS

¶ 21 On appeal, the Board argues: (1) its finding that Chapuis was discharged for call avoidance was not against the manifest weight of the evidence; and (2) its determination that Chapuis was discharged for misconduct was not clearly erroneous. The Board also argues that Chapuis has forfeited his arguments on appeal because he does not cite the record in support of any of them, in violation of Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). The Board also contends that Chapuis relies on several facts in his brief that are outside the administrative record. See *Franciscan*

*Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 32 (the reviewing court cannot consider evidence outside the administrative record).

¶ 22 We have reviewed Chapuis' brief and agree that other than two references to four lines total of the transcripts of the telephone hearing, Chapuis's brief completely fails to cite to the record, and it is therefore in violation of our supreme court rules. We note that although the requirements of Supreme Court Rule 341(h)(7) apply on its face only to the appellant's brief, that rule also applies to the appellee's brief through Supreme Court Rule 341(i) (eff. Feb. 6, 2013); *Vancura v. Katris*, 238 Ill. 2d 352, 372 (2010). Further, the fact that a party appears *pro se* does not relieve that party from complying as nearly as possible to the Illinois Supreme Court Rules for practice before this court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. We also agree with the Board that Chapuis erroneously relies on several facts outside the administrative record to support his arguments on appeal. For both of these reasons, then, Chapuis has forfeited the points he argues in his appellee brief.

¶ 23 Turning to the merits of the Board's appeal, we initially note that an appellate court reviews the final administrative decision of the Board and not the decision of the trial court. *Kilpatrick v. Illinois Department of Employment Securities*, 401 Ill. App. 3d 90, 92-93 (2010). The standard of review utilized depends on the issue raised. See *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Therefore, we will analyze the Board's finding of call avoidance and its ultimate determination of misconduct separately.

¶ 24 A. Findings of Call Avoidance

¶ 25 In an appeal of a claim for unemployment benefits, the Board's factual findings must be affirmed unless they are against the manifest weight of the evidence. *Woods v. Illinois Department*



*of Employment Security*, 2012 IL App (1st) 101639, ¶16. This court may not reweigh the evidence, judge the credibility of witnesses, or resolve conflicts in testimony. *Id.* Instead, this court deems the Board's factual findings to be "*prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). If there is any evidence in the record to support the Board's decision, that decision is not contrary to the manifest weight of the evidence and must be sustained on review. *James L. Hafele & Associates v. Department of Employment Security*, 308 Ill. App. 3d 983, 986 (1999).

¶26 Here, the question of whether Chapuis was discharged for call avoidance is a question of fact. Therefore, we will review this finding under a manifest weight of the evidence standard. In doing so, we find ample evidence in the record to support the Board's finding that Chapuis engaged in call avoidance. The Corrective Action form documenting Chapuis' termination cited 11 improperly transferred calls as the reason for his discharge. In addition, Gonzales testified at the telephone hearing before the Department referee that it was never appropriate for Chapuis to transfer a call back into the same queue without disclosing that he was doing so. Gonzales listened to the 11 calls that Chapuis returned to the queue and said that none of them were beyond Chapuis' ability to handle. Moreover, Gonzalez said that even if a call happened to be something that an employee was unable to handle, the proper procedure was for the employee to contact a supervisor, manager, or other employee in authority that was in the call center. That procedure was not followed with the 11 calls. Further, Gonzales noted that the calls happened moments before Chapuis' scheduled breaks or at the end of his shift. Gonzalez also testified that when he confronted him, Chapuis had no explanation for the transfers. More important, Chapuis himself admitted that he knew he was supposed to contact a supervisor if he could not handle a call, and he never testified that he did not know about that rule until after he had violated it. It is irrelevant that Chapuis may have been a

stellar employee in the past, or that Chapuis provided several reasons for why he transferred the calls. Based on all this evidence, it is clear that the Board rejected Chapuis' claim that he was actually terminated because he complained to Comcast's Human Resources department that his performance metrics had been wrongly recorded. Therefore, the Board's finding that Chapuis was terminated for call avoidance was not against the manifest weight of the evidence.

¶ 27

#### B. Misconduct Determination

¶ 28 Next, the Board argues that its determination that Chapuis was discharged for misconduct was not clearly erroneous because: (1) Chapuis deliberately and willfully violated Comcast's rule against call avoidance; (2) Comcast's rule was reasonable; and (3) Chapuis potentially harmed Comcast by diminishing customer goodwill and wasting his coworkers' time.

¶ 29 Consistent with the purposes of the Act, an employee who has been discharged for misconduct connected with his work is ineligible to receive unemployment benefits. 820 ILCS 405/602A (West 2010). In order to constitute misconduct under the Act, three requirements must be proven: (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 other employees *or* was repeated by the employee despite a previous warning or other explicit instruction from the employing unit. 820 ILCS 405/602A (West 2010). Whether an employee was properly terminated for misconduct in connection with his work involves a mixed question of law and fact, to which we apply the clearly erroneous standard of review. *Woods*, 2012 IL App (1st) 101639, ¶ 19. 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).

¶ 30 Here, the Board's determination that Chapuis was discharged for misconduct was not clearly erroneous since a review of the record demonstrates that all three requirements for a determination of misconduct under the Act were met. First, the record supports the Board's determination that Chapuis' violation was deliberate and willful. Willful conduct occurs when an employee is aware of a company rule and disregards it. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 716 (2007). Here, Chapuis admitted knowing that he was required to contact his supervisor when he could not resolve an issue, and that he was not authorized to transfer a call back into the queue instead. Nevertheless, he chose to transfer those calls rather than ask a customer to wait for a supervisor. Again, whether he felt he was justified in doing so for any number of reasons is irrelevant.

¶ 31 Second, the rule against call avoidance was a reasonable one. Prohibiting employees from transferring a call back into the queue instead of contacting a supervisor served Comcast's interest in providing good customer service. The rule also conserved Comcast's resources by ensuring that other call takers would not have to handle Chapuis' calls as well as their own calls.

¶ 32 Third, although Chapuis did not repeat the violation after being warned or being given an explicit instruction, the violation did clearly harm Comcast and other Comcast employees. See 820 ILCS 405/602(A) (West 2010) (to establish the third element it must be proven that employee's violation *either* harmed employer or other employees *or* was repeated despite a warning or other explicit instruction). Here, Chapuis' act of returning customer calls back into the waiting queue harmed Comcast by potentially diminishing customer goodwill toward the company. See *Livingston*, 375 Ill. App. 3d at 718 (potential damage to employer's reputation is a form of harm). Chapuis also harmed Comcast by forcing it to pay its employees for duplicative efforts to resolve customers'

problems when those employees could have been assisting other customers had Chapuis been doing his job. Finally, Chapuis' actions also harmed other Comcast employees because it forced them to do Chapuis' job as well as their own. Accordingly, the Board's determination that Chapuis' call avoidance constituted misconduct under the Act was not clearly erroneous.

¶ 33 For these reasons, we reverse the judgment of the circuit court of Kane County, and we uphold the Board's final administrative decision denying Chapuis unemployment benefits.

¶ 34 Reversed.