

time he was discharged. After he was discharged, he filed a claim with IDES for unemployment benefits. DynCorp filed a timely protest to the plaintiff's claim, alleging that the plaintiff was not qualified to receive unemployment benefits pursuant to section 602(A) of the Unemployment Insurance Act (the Act) (820 ILCS 405/602(A) (West 2010)), because he was discharged from employment for misconduct. Specifically, DynCorp alleged that the plaintiff had been absent from work without the approval of a supervisor, and had falsified his timecard. On February 10, 2011, the IDES claims adjudicator found that the plaintiff was ineligible for unemployment benefits because he was discharged for misconduct. The plaintiff then appealed the decision of the claims adjudicator to the IDES.

¶ 5 On March 15, 2011, a referee with the IDES conducted a telephone hearing. A human resources representative testified that the plaintiff was employed with DynCorp from September 3, 2006, to January 17, 2011. John Wood testified that he was the plaintiff's immediate supervisor and that he discharged the plaintiff for inaccurate timekeeping on his timecard. Specifically, Wood stated that on January 10, 2011, the plaintiff had left the premises without obtaining permission from Wood or the assistant site supervisor but had indicated on his timecard that he was working during the time he was gone. Wood testified that, on the morning in question, the day shift lead asked Wood if he had given the plaintiff permission to leave the premises, and Wood responded that he had not. The day shift lead asked Wood whether he knew where the plaintiff had gone, which Wood did not, nor did Wood's assistant site supervisor. Wood waited 35 minutes and then asked his day shift lead if he had seen the plaintiff, and the day shift lead indicated that he had not. Wood testified that he waited for a while longer and then went outside and saw the plaintiff in a hangar. Wood testified that people reported to him that the plaintiff left at 8:45 a.m. and did not return to the hangar until 10:15 a.m., and when Wood looked at the plaintiff's timecard for that period, he noted that the plaintiff submitted and certified his timecard with the time he

was absent as time he had worked. Wood testified that accurate billing was a government requirement for the company's contract.

¶ 6 Wood testified that the company policy was that an employee could not leave the premises during duty hours without obtaining permission from Wood or the assistant site supervisor. He further testified that the plaintiff had been previously warned about the policy after an incident in August 2010, before Wood began working as the site supervisor, where the plaintiff had left the premises and gone to Hawaii. Finally, Wood testified that the business was negatively impacted by the plaintiff's actions because it had ongoing work to be performed while the plaintiff was off the premises.

¶ 7 The plaintiff testified that his normal working hours were from 6:45 a.m. to 3:15 p.m., Monday through Friday. He testified that on the day in question, he thought he started work at about 5 a.m., but he was not entirely sure. He testified that he was gone from the work site to pick up lab reports from the on-base medical center from 9 a.m. to 9:30 a.m., not 8:45 a.m. to 10:15 a.m. He testified that he did not obtain permission from a supervisor or lead person to leave the premises, and that he did not report on his timecard that he was gone from 9 a.m. to 9:30 a.m. The plaintiff testified that he should not have been discharged for falsifying his timecard because he was under the impression that he had two breaks that he could take together because he came into work early that day. The plaintiff believed that he was entitled to two breaks because, according to the plaintiff, the collective bargaining agreement (CBA) formerly said that, for any additional work, employees were entitled to an additional break. However, the plaintiff admitted that a new CBA stated that the additional break was not given until an additional four hours of work after the normal eight-hour workday. He also admitted that the usual times for breaks were from 9 a.m. to 9:15 a.m. and from 2 p.m. to 2:15 p.m.

¶ 8 Jeffrey Roth testified that he was the program director for the C21 program with

DynCorp. He testified that he signed the plaintiff's discharge letter and that Wood delivered the letter to the plaintiff. He testified that the issue about breaks and time off had come up before with the plaintiff and that, as a result, all of the mechanics were required to sign a company policy memorandum that included information about obtaining approval from a supervisor before being absent from work. Roth indicated that the policy memorandum was a response to a previous issue the plaintiff had with leaving to go to Hawaii without first informing a supervisor that he was going to do so.

¶ 9 In response, the plaintiff testified that he believed the policy memorandum violated the CBA. He admitted that the memorandum and the CBA were the same, though "the verbiage [was] different." The plaintiff further argued that he did request permission to go to Hawaii and that situation was currently being evaluated in another grievance. In a closing statement, the plaintiff stated that he did not know he was not able to take two breaks in the morning and that mistake was not misconduct, but was a misunderstanding.

¶ 10 In a letter that was mailed on March 16, 2011, the referee affirmed the decision of the claims adjudicator. The referee found that the plaintiff was ineligible for benefits because he was discharged for misconduct pursuant to section 602(A) of the Act (820 ILCS 405/602(A) (West 2010)). The letter specified that the plaintiff had willfully violated the employer's policies by misusing company time by leaving work for an extended period such that the employer was harmed by being deprived of the plaintiff's services. The plaintiff appealed the referee's decision to the Board. In a letter dated September 7, 2011, the Board affirmed the decision of the referee, finding that the referee's decision was supported by the record and the law. The Board found the evidence and transcript from the hearing adequate and determined that it was unnecessary to take any more evidence. The Board incorporated the referee's decision in its decision and did not consider the plaintiff's written appeal or request to submit additional evidence because he had failed to certify that the appeal or

request were served on the employer.

¶ 11 On October 7, 2011, the plaintiff filed a complaint and then an amended complaint in the circuit court, seeking judicial review of the Board's decision. The circuit court affirmed the Board's decision, finding that it was not against the manifest weight of the evidence. This appeal followed.

¶ 12 ANALYSIS

¶ 13 On review, we review the decision of the Board, not the circuit court or the IDES referee. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15. The standard of review that we apply depends on whether the question presented is one of fact, law, or a mixed question of both. *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 20. The Board's factual findings are *prima facie* correct unless they are against the manifest weight of the evidence. *Abbott Industries, Inc.*, 2011 IL App (2d) 100610, ¶ 15. On the other hand, questions of law are reviewed *de novo*. *Id.* The question of whether an employee was discharged for misconduct is a mixed question of law and fact, which will be overturned only if the Board's determinations are clearly erroneous. *Id.*

¶ 14 The Act defines misconduct as "the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit." 820 ILCS 405/602(A) (West 2010). Thus, an employee is ineligible for unemployment benefits when he (1) willfully violates, (2) a reasonable rule or policy of the employer, and (3) the employer was harmed by such violation. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

¶ 15 An employee acts willfully when he is aware of a reasonable rule or policy, but

disregards it. *Alternative Staffing, Inc. v. Illinois Department of Employment Security*, 2012 IL App (1st) 113332, ¶ 31. A reasonable rule or policy is one that governs the standards of behavior an employer has a right to expect from its employees, appropriately relates to the workplace, does not need to be written or otherwise formalized, and does not need to be proven by direct evidence. *Manning*, 365 Ill. App. 3d at 557. An employer's rule prohibiting the falsification of timecards is reasonable under the Act. See *DeBois v. Department of Employment Security*, 274 Ill. App. 3d 660, 665 (1995). "Even without direct evidence, the reviewing court may make a 'commonsense realization that certain conduct intentionally and substantially disregards an employer's interest.'" *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 827 (2009) (quoting *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998)). Harm includes not just actual harm to the employer, but also potential harm. *Manning*, 365 Ill. App. 3d at 558.

¶ 16 Here, the plaintiff's conduct was willful because he was aware of the employer's policy that prohibited employees from leaving the work site during scheduled work hours, as well as falsifying time records. DynCorp had a written policy memorandum, which the plaintiff signed, that expressly stated that employees would be disciplined for falsifying time records as well as for leaving the work site during work hours without prior permission to do so. Further, the CBA stated that employees were not permitted to leave the premises before completing their scheduled work hours without first obtaining permission. Finally, the plaintiff admitted that the new CBA stated the policy about breaks and that he had not obtained permission to leave. The plaintiff argues that he was under the impression that he was able to take two breaks in conjunction with one another, and that Wood had no firsthand knowledge of when the plaintiff left and came back on the day in question. However, the CBA stated the policy about leaving the premises, and the plaintiff signed the memorandum

that reiterated DynCorp's policy. Further, regardless of whether the plaintiff was gone from 9 a.m. to 9:30 a.m. or from 8:45 a.m. to 10:15 a.m., the plaintiff still left the premises and took a break that was longer than the allotted 15-minute break to which the plaintiff was entitled. Thus, the Board's finding that the plaintiff's conduct was willful was not clearly erroneous.

¶ 17 Next, the policy regarding breaks and timekeeping was a reasonable rule or policy as defined by the Act. It is reasonable for an employee to have to first obtain permission to leave the premises during working hours so that the employer can depend on the employee and know where he is during his scheduled shift. Also, an employer has a right to expect that an employee will not falsify his time records. Such an expectation is consistent with the commonsense notion that an employer should be able to trust an employee not to lie about time worked. Wood testified that accurate billing and time-record keeping was a requirement for the business's contract with the government. The plaintiff argues that the policy memorandum violates the CBA. However, both the policy memorandum and the CBA clearly stated these rules and contained essentially the same language. The Board's finding that the plaintiff violated a reasonable rule or policy was not clearly erroneous.

¶ 18 Finally, the plaintiff's conduct harmed the employer. Wood testified that the business was harmed because there was ongoing work that needed to be performed while the plaintiff was off of the premises. Furthermore, as mentioned above, Wood testified that accurate timekeeping and billing was a requirement for the contract that DynCorp had with the government. By falsifying his timecard, the plaintiff was going to be paid for work that he did not actually do, which is against the interests of the employer. Thus, the Board's determination that the plaintiff's conduct harmed the employer was not clearly erroneous.

¶ 19 The Board's determination that the plaintiff was ineligible to receive unemployment benefits was not clearly erroneous because the plaintiff's discharge from employment was

a result of the plaintiff's misconduct.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 22 Affirmed.