

No. 1-13-3359

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AINE FAHERTY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; and BOARD OF)	
REVIEW,)	No. 13 L 50064
)	
Defendants-Appellant,)	
)	
and)	
)	
AMERICAN AIRLINES,)	Honorable
)	Robert Lopez Cepero
Defendant.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* Where evidence established that an employee was discharged for stealing a dress from a passenger's garment bag, the Board of Review for the Illinois Department of Employment Security's determination that the employee committed theft making her ineligible for unemployment benefits pursuant to section 602(B) of the Unemployment Insurance Act (820 ILCS 405/602(B) (West 2012)) was not

clearly erroneous; circuit court's decision is reversed and Board's decision is reinstated.

¶ 2 Defendant, the Board of Review (the Board) of the Illinois Department of Employment Security (IDES), appeals the order of the circuit court reversing the Board's decision to deny unemployment benefits to plaintiff Aine Faherty, a former customer service agent for American Airlines (American). On appeal, the Board contends its determination that plaintiff committed theft in connection with her work pursuant to section 602(B) of the Unemployment Insurance Act (the Act) (820 ILCS 405/602(B) (West 2012)) was not clearly erroneous. We reverse the judgment of the circuit court and reinstate the decision of the Board.

¶ 3 Initially, we note that plaintiff has not filed a brief in response to defendant's contentions. However, we have the authority to decide the merits of this appeal because the record is simple and the claimed errors are such that we can decide them without the assistance of an appellee's brief. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008) citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133 (1976).

¶ 4 Plaintiff worked at American Airlines at O'Hare Airport from May 1985 to June 2012. She was discharged on June 19, 2012 for allegedly stealing a passenger's dress from a garment bag that had been left behind on a plane. According to American, plaintiff had been discharged for theft, which is a violation of company policy prohibiting dishonest conduct. During American's initial investigation of the theft, plaintiff wrote:

"On May 22nd at [Gate] K4. I did steal a Womens Dress that was left by a passanger [sic] at K4. My Apology for this doings [sic]. I have no answer as of why I did this, I never stole anything before, American has always been good to me."

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When plaintiff applied for unemployment benefits, she submitted an online misconduct questionnaire to the IDES where she stated that the reason given by American for her discharge was that she "stole an item from a departure gate." She stated the circumstances that led to the discharge as "Mental Health, I was crying out for help!" She acknowledged the rule that "employees must not steal company items or employees items," and stated that there was no effect on American because "she returned the items stolen."

¶ 5 American submitted a letter to IDES protesting plaintiff's claim. In the letter, American contended that defendant was not eligible for unemployment benefits stating that she was "discharged for violation of a reasonable and known policy" when she "admitted that she took a passengers [*sic*] lost dress that was left at Gate K4. She removed the dress from the Nordstrom's bag and placed it in her backpack." American further wrote that plaintiff acknowledged receipt of the company handbook at the time of hire, which clearly outlines the company policy and procedures and her action constituted a "willful disregard of the employer's best interests."

¶ 6 American also attached an investigation report in which Maggie Molander, plaintiff's supervisor, stated that "[plaintiff] was aware that [her] actions were wrong and violated policy but [she] could not give a good answer to why [she] took the dress and also why [she] didn't bring it back." Molander stated that plaintiff's action were a direct violation of American Airlines rules and regulations.

¶ 7 During an interview with an IDES claims adjudicator, plaintiff stated that she had intended to take the dress to the lost-and-found area, placed it in her bag, but then forgot and took it home. She told an unidentified coworker that she had taken the dress home, and forgot to bring it back. She brought the dress back three weeks after taking it home when she heard American was asking about it. She denied that she admitted to stealing the dress, stating "I

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totally forgot about the dress." The Board denied plaintiff's claims because she admitted the theft and found that she was disqualified from receiving unemployment benefits under Section 602(B) of the Act.

¶ 8 Plaintiff sent a letter to IDES requesting reconsideration of the claims adjudicator's decision, and attached her prescription for anti-depressants and a doctor's note which stated that defendant "acted out of character as a cry for help." Plaintiff attributed her actions to anxiety and depression. She also stated that the dress was not even her size.

¶ 9 The claims adjudicator denied plaintiff's request, noting that she had admitted stealing the dress in a signed statement to American and in the misconduct questionnaire she submitted to IDES. Plaintiff then appealed and requested an evidentiary hearing before a referee.

¶ 10 During the evidentiary hearing, Molander testified that on May 22, 2012, a passenger left a woman's dress behind and had called to inquire if someone had found it. On June 15, 2012, plaintiff was questioned because she was working at a gate area where the garment had been seen. Plaintiff admitted to taking the dress, and told Molander that the dress was a type that she has been looking for to wear to a wedding. She hid the dress behind the podium while she worked a flight, then removed the dress from the garment bag and placed it into her backpack. Plaintiff believed the dress was worth about \$200 to \$300. She denied wearing the dress. Molander opined that the employer was harmed because the "passenger was gonna [*sic*] file a claim because she left her item." Plaintiff did not bring the dress to Molander, but the dress was subsequently returned.

¶ 11 Plaintiff testified that she looked in the garment bag because it was on the desk on the captain's paperwork. She moved the bag and put it behind the desk. After working her flight, plaintiff intended to take the dress to lost and found; however, she did not do that because she

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had gotten a smoothie to drink and forgot that she had the item. She went home with the bag instead. When she went home, she realized she had the dress, put it on a hanger, and hung it next to her uniform so she would remember to bring it back to work the next day. She forgot to bring it to work the next day, although she did tell a coworker about it. She also forgot to bring it to work the next two days that she worked, and then she was off work for approximately ten days because she had family in town for a wedding.

¶ 12 When she returned to work, American security personnel called her in for an interview. During the interview, she wrote a statement admitting to stealing the dress. She stated that she feared that there had been an accident with some of her family members who had flown back to Ireland. She stated that she wrote the statement because she worried that her family members had been involved in an accident and she was not thinking clearly. She denied telling Molander that she wanted the dress for herself, and stated that she was a size 10 and the dress was a size 14.

¶ 13 The referee affirmed the claims adjudicator's decision denying benefits. The referee determined that "[plaintiff] was aware of the employer's lost and found policies. [Plaintiff's] actions harmed the employer. [Plaintiff] admitted her actions to the local office."

¶ 14 Plaintiff appealed the referee's decision to the Board maintaining that she did not steal the dress. She also submitted additional documents. The Board eventually affirmed the decision. It stated that it had not considered plaintiff's additional documents because she had not submitted them within the permissible time period.

¶ 15 Plaintiff filed a complaint for administrative review in the circuit court. The court reversed the Board's decision. It stated that plaintiff lacked the intent to deprive the rightful owner of the garment and noted that "while Plaintiff did admit in writing that she 'did steal' the dress. However, Plaintiff also stated that she did not know why she did it." Additionally, the

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court stated that Molander's testimony that plaintiff was looking for that specific dress for the wedding was hearsay, and "infers intent at best." The court also noted that the sales tags were still on the dress and that the dress was a size 14 and plaintiff was a size 10. The Board, IDES, and IDES' Department director filed a notice of appeal.

¶ 16 On appeal, the Board contends its determination that plaintiff committed theft in connection with her work was not clearly erroneous where she admitted to stealing a passenger's dress.

¶ 17 As relevant to this case, section 602(B) of the Act denies unemployment benefits to anyone who has been "discharged *** because of theft in connection with his work, for which the employer was in no way responsible" provided that the employee "has signed a written admission of such act and such written admission has been presented to a representative of the Director." 820 ILCS 405/602(B) (West 2012). The Act does not define theft, but this court has looked to the Criminal Code of 2012 (the Code) to further define theft. See *Cetnar v. Bernardi*, 145 Ill. App. 3d 511, 514 (1986). Under section 16-2(c) of the Code, theft is defined as the knowing exercise of unauthorized control over property of the owner when the offender "intends to deprive the owner permanently of the use or benefit of the property." 720 ILCS 5/16-2(c) (2012). Proof that the person accused of theft acted knowingly is an essential element of the offense. *Cetnar*, 145 Ill. App. 3d at 514.

¶ 18 In reviewing a decision by an administrative agency, we must review the final decision of that agency. Thus, we review the decision of the Board of Review, which made the Department's final determination regarding Mitchell's claim, not the decision of the referee or the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 819 (2009). It is well established that "[t]he question of whether an employee was properly terminated for misconduct

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in connection with his work 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). By analogy, whether a claimant committed a theft in connection with her work for purposes of section 602(B) of the Act also poses a mixed question. The Board's decision is clearly erroneous only if, after reviewing the entire record, we definitely and firmly believe that a mistake has occurred. *Abbott Industries Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15.

¶ 19 In this case, we find that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous. First, it was undisputed that plaintiff took the passenger's dress. Plaintiff provided a written admission to American that she "stole" the dress and also stated on the IDES misconduct questionnaire that she was discharged because she stole a dress from the departure gate. During subsequent interviews with plaintiff, she offered a number of reasons for her conduct, including that 1) she intended to return the dress, but merely forgot that she had it; 2) suffered from mental illness; and 3) wrote her admission to American only because she had been worried about the possibility that her family members had been involved in an accident and was not thinking clearly. However, none of these facts were in American's investigation report or contained in plaintiff's initial documents to IDES. In fact, it was not until she applied for unemployment benefits, and was subsequently denied by IDES, that she changed the details of her story while before the claims adjudicator. The Board rejected her version of events, and found that she committed theft. We find that the Board's decision to reject plaintiff's new account of events was not clearly erroneous where she previously wrote a statement that she stole the dress in her initial interview with American, and then changed her story once IDES denied her benefits.

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¶ 20 Plaintiff's primary contention is that she did not intend to steal the dress because she planned to return the dress, but "forgot." A review of the record shows that plaintiff returned the dress only after American security personnel called her in for an interview. Therefore, there is no basis for concluding that plaintiff would have brought the dress back on her own, especially since nearly three weeks had passed before she admitted to her employer that she had taken it. Plaintiff also contends that the dress was not her size, and therefore there was no intent to steal; however, whether the dress was her size is irrelevant to the issue of whether plaintiff committed the theft. The fact remains that she took the passenger's dress and did not return it until she was questioned by Molander. Thus, we find that plaintiff's contentions do not absolve her from theft, and we do not "definitely and firmly" believe that the Board's findings were a mistake. See *Abbott Industries Inc.*, 2011 IL App (2d) 100610, ¶ 15.

¶ 21 The Board reviewed all of the evidence in the record, including the testimony of both plaintiff and Molander, and determined that plaintiff committed theft. Our review of the record reveals that an opposite conclusion is not clearly evident, and therefore, we will not disturb the Board's finding. Accordingly, we conclude that plaintiff was discharged for theft connected with her work pursuant to section 602(B) of Act, and the Board's determination that she was ineligible for unemployment insurance benefits was not clearly erroneous.

¶ 22 Based on the foregoing reasons, we reverse the judgment of the circuit court of Cook County and reinstate the order of the Board disqualifying plaintiff from receiving unemployment benefits.

¶ 23 Circuit court reversed; administrative decision reinstated.