

No. 1-13-3990

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

ADVANCED CRITICAL TRANSPORT, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 L 50281
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY; BOARD OF REVIEW, and)	
JAMES B. CADY,)	Honorable
)	Robert Lopez-Cepero,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Board's decision to grant plaintiff's former employee unemployment insurance benefits was not clearly erroneous; judgment affirmed.
- ¶ 2 Plaintiff, Advanced Critical Transport, Inc., discharged its employee, James B. Cady, for misconduct in connection with his work. The Illinois Department of Employment Security (IDES) initially denied his claim for unemployment insurance benefits, but, on appeal, the Board

of Review (Board) reversed that decision and found that he was eligible. The circuit court of Cook County affirmed the Board's decision on administrative review, and plaintiff now appeals that ruling.

¶ 3 The record shows that Cady was employed by plaintiff as a registered nurse from June 14, 2010, until December 23, 2011, when he was discharged for his conduct on December 21, 2011, while transporting a patient from Gottlieb Hospital to Loyola Hospital. Cady applied for unemployment insurance benefits, and plaintiff objected that he was ineligible because he violated its policy to perform his job responsibilities in a professional, cheerful manner, and to represent the best interests of plaintiff at all times.

¶ 4 In support of its objection, plaintiff attached a letter from its nurse general manager, James Erwin. He stated that he spoke to Dr. Christine Murray, who reported that Cady was "mouthing off, putzing around, and generally argumentative, rude and disrespectful." On December 23, 2011, Erwin contacted Cady who denied the allegations, but noted that he might have been a "little smart," when the doctors kept changing their orders regarding the patient transport. Erwin noted, however, that the transport was done without any detriment to the patient.

¶ 5 Erwin further stated that he was contacted by Jason Brandani, who is not further identified in the record, and that Brandani was then contacted by "Sue" from Loyola Hospital emergency management services (EMS), who is not identified further. Erwin related that Brandani informed him that Sue told him that she was contacted by Gottlieb Hospital regarding the transport by Cady at issue. Sue did not identify the person from Gottlieb Hospital who contacted her, but noted that she was informed by the hospital that the nurse was very rude to the

physician, condescending, and wearing just a t-shirt with suspenders. Sue stated that Gottlieb Hospital related to her that it did not wish to use plaintiff for their transports, and wanted to contact another company. Erwin read this letter to Cady, who confirmed that he can be sarcastic, but was surprised that his sarcasm was unacceptable.

¶ 6 In the interview conducted on Cady's claim for benefits, Cady stated that he was told that he was discharged for being rude to the doctor. He explained that the EMS dispatcher told him they had a critical patient to transport, and when he went to pick up this patient at Gottlieb Hospital, the doctor told him the patient was unstable and to get him out of here. Cady told the doctor that he could not transfer an unstable patient and must first make sure he is stabilized. Cady worked for 45 minutes to ensure that the patient was stable, and then had the patient transferred to Loyola Hospital. When Erwin told Cady that the doctor from the hospital reported that he was condescending, Cady denied the allegation, and said the doctors were trying to get rid of a patient. The claims adjudicator found that Cady's actions were not deliberate or willful, and that he was entitled to benefits.

¶ 7 Plaintiff appealed, and a hearing on the merits of the claims adjudicator's decision was held before a referee. Erwin testified that Cady was discharged for unprofessional and sarcastic behavior on December 21, 2011, which ultimately interfered with plaintiff's ability to do business with Gottlieb Hospital. Erwin acknowledged that he did not have any firsthand knowledge of the incident, but that he had spoken with the doctor and two other nurses involved in the transport. The doctor indicated that Cady was "mouthing off, putzing around, generally argumentative, rude and disrespectful." Erwin first testified that Cady admitted this behavior, but

under further questioning, he could not recall the specific behaviors Cady admitted or denied. Cady denied most of the accusations made by the doctor, and noted that the doctor kept changing orders. Erwin acknowledged that Cady had not received any prior warnings, but was discharged because his behavior interfered with plaintiff's ability to do its business, as indicated in the call plaintiff received that Gottlieb Hospital was no longer going to use its services.

¶ 8 Cady testified that during the transfer in question, the doctor kept changing the orders. The doctor initially told him the patient he was to transport was unstable, and when he replied that he could not transport an unstable patient, the doctor said the patient is stable, but will not be much longer if he stays here. Cady claimed that he had denied all of the allegations made by the doctor regarding his behavior, and told Erwin that he might have been a "little smart, but [] tried to keep it under control." Cady did not recall exactly what he said to the doctor, but explained that he can be sarcastic even when he is not trying to be. Cady testified that he was not "terribly impressed" with the doctors trying to rush him out the door with the patient, so he was sure his attitude toward them was "a little less than welcoming." Cady did not recall anything he did or said that was wrong or out of line, and testified that he knew how his attitude "can be," but was trying to "keep [his] tongue in line."

¶ 9 On September 28, 2012, the referee found that Cady was not entitled to benefits and was discharged for misconduct in connection with his work. In its decision, the referee noted that although the employer's reports of Cady's behavior might be given little weight due to its hearsay nature, Cady's admission of his less than professional behavior and his customary nature to be sarcastic gives more weight to plaintiff's reports than would otherwise be given. The referee

found that plaintiff credibly testified about the events which led to Cady's discharge, and that his actions constituted deliberate and willful disregard of plaintiff's interests.

¶ 10 Plaintiff filed an appeal with the Board, alleging that his actions were not deliberate or willful. He further alleged that his actions did not harm plaintiff.

¶ 11 On March 1, 2013, the Board set aside the referee's decision. In doing so, the Board noted that an employee's conduct may be such that the employer may properly discharge him, but such conduct might not constitute misconduct in connection with the work for the purpose of determining if he is eligible for unemployment insurance benefits.

¶ 12 The Board observed that Cady was discharged by plaintiff due to plaintiff's belief that he engaged in unprofessional and sarcastic behavior while transporting a patient on December 21, 2011. The Board noted that the employer's nurse manager, Erwin, testified that Cady engaged in unprofessional and sarcastic behavior at the time in question, but that he did not recall the specific behaviors that Cady admitted or denied. Plaintiff did not present any witness who had firsthand knowledge that Cady engaged in unprofessional and sarcastic conduct in transporting the patient, and Cady denied that he did so. The Board found that Cady's testimony was "more credible and competent" than Erwin's testimony in light of Erwin's lack of firsthand knowledge of the incident, and concluded that the evidence adduced at the hearing did not establish that Cady was discharged for misconduct in connection with his work. The Board thus found him eligible for benefits.

¶ 13 On March 19, 2013, plaintiff filed a complaint for administrative review in the circuit court of Cook County. Plaintiff later filed a brief in support in which it alleged that it received an

immediate complaint from its client regarding Cady's actions at Gottlieb Hospital, and the client threatened to terminate any business relationship with plaintiff. Thus, plaintiff claimed, Cady's actions were in direct violation of plaintiff's policy prohibiting unprofessional behavior, a policy which warned employees that a violation would result in termination without any prior warnings.

¶ 14 Plaintiff further alleged that the Board ignored the admissions against interest made by Cady, whose opinion that he was not unprofessional was subjective and self-serving. Plaintiff maintained that Cady's own admissions that he was sarcastic, less than welcoming, a little smart, and not terribly impressed with the hospital personnel, and the immediate reaction by the hospital, showed that Cady's actions did not represent the best interests of the company as required by its policy. Plaintiff further maintained that Cady's actions harmed plaintiff in that they resulted in potential financial loss in possibly losing Gottlieb Hospital as a client. The circuit court found that the decision of the Board was not clearly erroneous, and affirmed its decision.

¶ 15 On appeal, plaintiff first contends that the circuit court erred in affirming the administrative decision of the Board under the clearly erroneous standard of review. Plaintiff maintains in its opening brief that the matter before the trial court involved a pure question of law requiring *de novo* review. In its reply brief, plaintiff seeks to extend the *de novo* review standard to this court.

¶ 16 We note, initially, that our review of an administrative proceeding is limited to the propriety of the Board's decision, not that of the circuit court. *Odie v. Department of Employment Security*, 377 Ill. App. 3d 710, 713 (2007). The Board's decision on whether an

employee was discharged for misconduct and entitled to benefits is a mixed question of fact and law which we review under the clearly erroneous standard. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). A decision is clearly erroneous if the record leaves the reviewing court with the firm and definite conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). For the reasons which follow, we do not find this to be such a case.

¶ 17 An employee who is discharged for misconduct is ineligible for unemployment insurance benefits under the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2012)). Misconduct, under the Act, has been defined as a deliberate and willful violation of an employer's reasonable rule or policy, provided that the violation has harmed the employer or other employees or has been repeated despite a warning or other explicit instruction from the employer. 820 ILCS 405/602(A) (West 2012).

¶ 18 The record in this case shows that on the day in question Cady was asked to transport a patient from Gottlieb Hospital to Loyola Hospital. When the doctor told him the patient was unstable, he informed the doctor that he could not move an unstable patient. The doctor then told him that the patient was stable and would not be for much longer. Cady then spent 45 minutes stabilizing the patient for transport, and admitted that he was not impressed with the hospital staff trying to rush him out of the hospital with an unstable patient, and that he may have been a little smart and unwelcoming to the hospital staff in rushing him out. The record further shows that plaintiff received complaints regarding Cady's demeanor and conduct from hospital personnel.

¶ 19 Plaintiff maintains that this conduct showed that Cady is not entitled to benefits because he violated its policy to perform his job responsibilities in a professional and cheerful manner, representing the best interest of the company at all times. Cady, however, denied Erwin's allegations that he was "mouthing off, putzing around, generally argumentative, rude and disrespectful," but acknowledged that he was a "little smart," has a tendency to be taken as sarcastic, and was not terribly impressed with the hospital staff.

¶ 20 The Board, which is responsible for weighing the evidence, evaluating the credibility of the witnesses and resolving conflicts in the testimony (*Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶26), found Cady more credible and competent than Erwin based on Erwin's lack of firsthand knowledge of the incident. We find no reason to disturb that determination where the information relied upon by plaintiff for discharging Cady was based on hearsay from Dr. Murray and others whose identities and basis of information were not revealed in the record. *Lindsey v. Board of Education of City of Chicago*, 354 Ill. App. 3d 971, 987 (2004).

¶ 21 We further observe that a single flurry of temper has been deemed insufficient to deny unemployment benefits and mere argument without threats or abusive language insufficient to establish discharge for misconduct under the Act. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 176 (2008). Here, Cady denied Erwin's allegations of unprofessional conduct, and although he admitted that he was a little less than genteel given the circumstances, the actions described are not of such a nature as to make him ineligible for unemployment insurance benefits. *Czajka*, 387 Ill. App. 3d at 176.

¶ 22 Plaintiff argues, nonetheless that it was harmed by Cady's misconduct in the form of potential financial loss. We find no credible evidence of that in this record.

¶ 23 Erwin stated in his letter that he was contacted by a Jason Brandani, who allegedly told Erwin that he was contacted by "Sue" from Loyola Hospital EMS, who allegedly told Brandani that she was contacted by Gottlieb Hospital with regard to the transport in question by Cady. However, the identification of the person who spoke to Sue, and allegedly also told Brandani that Gottlieb Hospital did not wish to use plaintiff for their transports and wanted to contact another company was not revealed. Thus, plaintiff's claims regarding harm stemming from Cady's conduct, either actual or potential, were speculative and conjectural, and clearly insufficient to establish the harm required under the Act. *Czajka*, 387 Ill. App. 3d at 180.

¶ 24 We, therefore, conclude that the Board's decision that Cady was entitled to unemployment insurance benefits was not clearly erroneous, and we affirm the judgment of the circuit court of Cook County to that effect.

¶ 25 Affirmed.