

No. 1-14-0072

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TIFFANY DAWSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 13 L 50798
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY;)	
DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; BOARD OF REVIEW; and SVT, LLC ULTRA)	
FOODS c/o UC EXPRESS ADP, INC.,)	Honorable
)	Eileen O'Neill Burke,
Defendants-Appellees.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Plaintiff's willful violation of a known coupon policy constituted misconduct in connection with her work and disqualified her from unemployment benefits.
- ¶ 2 Plaintiff Tiffany Dawson appeals *pro se* from the circuit court's order that affirmed the decision of the Board of Review of the Illinois Department of Employment Security (Board), finding that she was discharged for misconduct and thus ineligible to receive unemployment

benefits under section 602(A) of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2012). Plaintiff appeals *pro se*, contending that she was unfairly terminated for improperly accepting product coupons from customers where the employee handbook did not contain a coupon policy, she was never warned about her behavior, and she was discriminated against because other employees who had violated the employer's rules were not terminated. We affirm the Board's decision.

¶ 3 The record shows that plaintiff was employed as a cashier with her employer SVT, LLC d/b/a Ultra Foods (Ultra) from May 11, 2007, until she was terminated on February 4, 2013. Plaintiff applied for unemployment benefits with the Illinois Department of Employment Security (Department), and the employer objected claiming that plaintiff was discharged for violation of a reasonable and known policy. Specifically, in the final incident on January 31, 2013, plaintiff took coupons for products that the customer did not purchase, and accepted more than the allowable number of coupons.

¶ 4 The employer submitted an employee termination form indicating that plaintiff's overall performance was "Average," and that she was being terminated for her failure to follow the coupon policy, resulting in a significant loss to the organization. The employer also submitted an employee corrective action notice where the manager reiterated that plaintiff was being terminated for failing to follow the coupon policy. Moreover, in a separate incident report, Ultra employee Sandra Stefanacci stated that on January 31, 2013, she spoke with plaintiff who took \$644 in coupons in a transaction where the customer paid \$3. Plaintiff told her that the transaction involved a regular customer that has "gone through other cashiers." Stefanacci then located another order that plaintiff had taken sometime between January 1 and January 31, 2013,

where the same customer paid \$.02 for a bill that was \$108.02. There was no evidence that this customer was using similar coupons at any other register. Finally, the employer submitted a statement from plaintiff, which she signed. In the statement, plaintiff stated that on January 31, 2013, she scanned some coupons that she assumed had a value of \$1.00, but instead had a value of \$10.00. Plaintiff indicated that she knew it was her responsibility to look at the coupons, but she admitted that she did not do so.

¶ 5 An adjudication summary attached to the record indicated that plaintiff responded to her employer's protest, stating that she did not steal any store merchandise or funds, and did not intentionally violate the coupon policy. She also stated she did not think that the store lost any money as a result of her actions because she believed that all of the coupons were scanned and the store received payment for the coupons from the manufacturer.

¶ 6 On February 28, 2013, a claims adjudicator found plaintiff ineligible for benefits because she violated store coupon policy, which adversely affected the employer's interest. Plaintiff asked for reconsideration or an appeal to a hearing referee, claiming that she had not been previously warned about violating the coupon policy, no such policy was included in the employee handbook, and other cashiers have acted similarly without being terminated. The denial of benefits was affirmed on reconsideration and a telephone hearing was held on April 12, 2013.

¶ 7 At the telephone hearing, Ruthie Taplet (Taplet), a "front end manager" for Ultra, testified that plaintiff was terminated by Denise Oliver, the store manager, on February 4, 2013, for failing to follow coupon policy on January 31, 2013, resulting in a loss of revenue. Specifically, plaintiff took \$644 worth of coupons for a product the customer did not buy, and

accepted more coupons per transaction than company policy allowed, *i.e.*, 12 coupons. Taplet spoke to plaintiff regarding the incident, and plaintiff admitted that she did not look at the coupons before scanning them. Plaintiff had previously been made aware of Ultra's coupon policy in writing and verbally by Taplet. In particular, Taplet had warned the cashiers about the customer plaintiff took the coupons from because she had tried to use a large amount of the coupons at the registers on prior occasions.

¶ 8 Plaintiff testified that she was discharged for violating Ultra's coupon policy, admitted the allegations against her were true, and did not look at the coupons presented to her during the incident in question. Plaintiff explained that the woman she accepted the coupons from was a regular customer and that she was not the only cashier taking coupons from her. No written coupon policy was provided to the employees of Ultra, but plaintiff was verbally instructed on how many coupons to accept for paper towels and tissue. According to plaintiff, other than the above mentioned product, no other items had a coupon limit. When plaintiff was asked if she was allowed to accept coupons for products that a customer did not purchase, she responded, "I was told that if it scans, *** we are allowed to take the coupons."

¶ 9 In affirming the local office determination that plaintiff was ineligible for benefits, the referee found that on January 31, 2013, plaintiff violated known company policies and procedures when she accepted coupons from a customer for items that the customer had not purchased, and allowed the customer to use more than the maximum 12 coupons per product. The employer lost \$644 in revenue as a result of plaintiff's actions, and when plaintiff was confronted by the employer, she acknowledged that she did not follow known procedures to look at the coupons before scanning them. The referee also found that the employer testified credibly,

and that plaintiff failed to offer competent and compelling evidence in order to rebut the employer's statement and substantiate her own allegations. She further found that plaintiff's conduct amounted to misconduct under section 602(A) of the Act (820 ILCS 405/602(A)) (West 2012)), where she willfully disregarded the employer's interests.

¶ 10 Plaintiff appealed the referee's decision to the Board. She essentially argued that there was no written coupon policy, and no coupon limit on the products the customer in question was buying. Plaintiff maintained that she merely made a mistake by not looking at the value of the coupons, and her punishment was unfair in light of how other employees had been disciplined for similar indiscretions. In affirming the referee's decision, the Board found that, after reviewing the entire record, the referee's decision was supported by the record and the law. Plaintiff filed a complaint for administrative review of the Board's decision in the circuit court. On December 4, 2013, the circuit court affirmed the Board's decision. This appeal follows.¹

¶ 11 We review the final decision of the administrative agency and not the decision of the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). The applicable standard of review depends on the issue raised. This court reviews pure questions of law *de novo* (*Id.* at 525), but the Board's findings of fact are governed by a different standard of review, *i.e.*, they are entitled to great deference and will be affirmed unless they are against the manifest weight of the evidence (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)).

¹ Plaintiff did not file a reply brief in this matter.

¶ 12 The question of whether an employee was disqualified from unemployment benefits for misconduct presents a mixed question of law and fact and is subject to the "clearly erroneous" standard of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). An agency's decision may be deemed clearly erroneous only where the reviewing court is left with the definite and firm conviction that a mistake has been made based on the entire record. *Id.* For the reasons which follow, we find that this is not such a case.

¶ 13 To be ineligible for unemployment benefits under section 602(A) of the Act, a claimant's cause of discharge must be related to work misconduct, which deliberately and willfully violates a reasonable work rule or policy governing work-related behavior. 820 ILCS 405/602(A) (West 2012). Further, such violation must harm the employer or other employees, or must be repeated after a warning from the employer. 820 ILCS 405/602(A) (West 2012).

¶ 14 At the hearing, Taplet testified that on January 31, 2013, plaintiff failed to follow Ultra's coupon policy, which she received verbally and in writing. The employer lost significant revenue as a result of plaintiff allowing a customer to use coupons for a product she was not buying, and by allowing her to exceed the number of coupons she could use per transaction. Taplet indicated that plaintiff had been warned about the customer in question because she had tried to use a large amount of coupons at the registers prior to the incident. Plaintiff even admitted fault because she did not look at the coupons before scanning them. She maintained, however, that she should not have been terminated where the products the customer purchased did not have a coupon limit, all of the coupons were scanned without an issue, and other cashiers behaved similarly and were not discharged. Plaintiff also denied that there was a written coupon policy.

¶ 15 It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicting testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Here, after considering the testimony of Taplet and plaintiff during the telephone hearing, the Board determined that plaintiff's violation of a known company policy harmed the employer because it lost revenue, therefore, settled this issue in favor of the employer, and affirmed the referee's decision. In doing so, the Board found that plaintiff was discharged for misconduct. After reviewing the record in this case, and deferring to the Board's assessment, we cannot say that this conclusion was against the manifest weight of the evidence. *Caterpillar, Inc. v. Doherty*, 299 Ill. App. 3d 338, 344 (1998).

¶ 16 Plaintiff attempts to cast doubt on the Board's decision by arguing in her brief that the adjudication summary found in the record did not accurately reflect her original statements regarding the incident in question. She claims that her statements were altered where the individual preparing the summary "deleted important facts and information" from her original statement. Plaintiff also argues in her brief that she should have been warned prior to being discharged, and that she was unfairly terminated where employees who violated the same policy received, at most, a two-day suspension. Nevertheless, we reiterate that it is the responsibility of the administrative agency to weigh the evidence and determine the credibility of witnesses. *Hurst*, 393 Ill. App. 3d at 329. Here, the record discloses that plaintiff exceeded the number of coupons she was allowed to accept for a transaction and took coupons for products that customers did not purchase, which resulted in her discharge. The record thus supports the Board's decision, and plaintiff's arguments provide no cause for reversal, particularly where she repeatedly admitted that her conduct was wrong.

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¶ 17 We consider the Board's findings as *prima facie* true and correct. *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002). Thus, we find that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous. *AFM Messenger Service*, 198 Ill. 2d at 391. Plaintiff violated a reasonable company policy where she improperly accepted coupons, and she injured the interests of her employer because it sustained a loss in revenue as a result of her actions.

¶ 18 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 19 Affirmed.