2015 IL App (1st) 141600-U

No. 1-14-1600

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
_____

SAWING AND SHEARING SVS, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY; and	)	
BOARD OF REVIEW,	)	No. 13 L 50823
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
AGUSTIN PANTOJA,	)	Honorable
	)	Robert Lopez Cepero,
Defendant.	)	Judge Presiding.

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PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1   ***Held:***   The decision of the Illinois Department of Employment Security (IDES) Board of Review, that claimant did not refuse a legitimate offer to work and thus was eligible to receive unemployment insurance benefits, was not clearly erroneous. Circuit court judgment reversed.

¶ 2   Defendants-appellants, the Illinois Department of Employment Security (IDES), the Director of IDES, and the IDES Board of Review (Board), appeal the order of the circuit court reversing a final administrative decision of the Board which had awarded unemployment benefits to defendant Agustin Pantoja (Pantoja),[1] a former employee of plaintiff-appellee, Sawing and Shearing SVS, Inc. (Sawing). On appeal, defendants contend the Board's determination, that Pantoja was eligible for benefits because he had not refused to accept a re-employment offer from Sawing, was not clearly erroneous. We reverse the circuit court's order and reinstate the Board's administrative decision.

¶ 3   Pantoja had worked for Sawing as a shop worker until he was laid off on October 17, 2012. Four weeks later, its plant manager left a telephone message at Pantoja's home that it wanted him to return to work. Pantoja did not immediately receive the message. When he later attempted to accept the re-employment offer, he was told Sawing had already filled the position. Pantoja applied for unemployment insurance benefits with IDES. Sawing protested his claim on the basis that Pantoja was precluded from benefits under section 603 of the Unemployment Insurance Act (Act) (820 ILCS 405/603) (West 2012)) because he had refused work. Under section 603, a claimant's refusal to seek or accept employment when offered to him will render him ineligible for unemployment benefits. An IDES claims adjudicator granted the claim for unemployment benefits after concluding Pantoja had not refused a job offer from Sawing because he had never actually received an offer of work. Sawing filed an administrative appeal. An IDES referee conducted a telephone hearing with Pantoja and Christina Rios, vice president of Sawing.

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[1] Pantoja, an additional defendant in the circuit court proceeding, is not a party to this appeal.

¶ 4   Rios testified that Pantoja worked for Sawing as a shop worker from April 4, 2012, until he was laid off on October 17, 2012, when business slowed down at Sawing's plant. Rios did not speak personally to Pantoja. However, the plant manager, Felipe Cerda,[2] who was not available to testify at the hearing, told Rios that on November 14, 2012, he phoned Pantoja's house. Pantoja was not at home, but Cerda spoke with his wife and told her: "[W]e are busy now at work, and we want [Pantoja] to come back to work, so have him come back tomorrow. He can start back tomorrow. She said that was fine. And that she would let him know. And that he would be back." They did not hear from Pantoja. When he did not come back to work after three days, Cerda called a different employee from layoff to come in to work. "We assumed [Pantoja] was not interested in coming back to work, so we obviously moved on and got somebody else to come back." Pantoja was never sent a letter about coming back to work.

¶ 5   Agustin Pantoja testified through an interpreter that Sawing telephoned Pantoja's wife on November 14, 2012, but did not speak with Pantoja; he was not home. Two days later, his wife told him about the phone call. Pantoja went to the company about three or four days after the November 14 phone call to his wife and spoke with Cerda, but Cerda had already contacted another person for the job. Pantoja waited to go to see Cerda because he was unable to talk to him by telephone, and "my car was broken and then the weekend came ***." The referee told Pantoja, "Well, you weren't available for work if your car was broken."

¶ 6   The referee determined that Pantoja was not eligible for unemployment benefits. The referee's written decision did not contain Pantoja's testimony that his wife did not tell him about the November 14, 2012, telephone call until two days later. The referee found that three or four days after the phone call, Pantoja "telephoned the [Sawing's] plant manager." At that time the

[2] In the transcript of the hearing before the referee, Cerda's name is spelled "Philippe Verda."

position had been offered to and accepted by another employee. The referee's decision concluded: "A finding is made that a suitable offer of work was made to the claimant on 11/14/2012. The claimant's reason for not returning to work, because his vehicle was not working, was personal, and not good cause for the claimant's failure to return to work on 11/15/2012. Therefore, the claimant is not eligible for benefits under Section 603 of the Act."

¶ 7   Pantoja appealed to the Board, which set aside the referee's decision. The Board found that on October 14, 2012, Sawing's plant manager telephoned Pantoja's home and left a message with his wife to tell him to return to work the next day, November 15. However, it was two days after the phone call that she was able to tell Pantoja that Sawing had called. By the time Pantoja phoned the plant manager, the position had been filled. The Board concluded:

> "A bona fide offer of work was not made to the claimant.
> An offer of work was conveyed to the claimant's wife who related
> it to the claimant two days after it was made. That coupled with
> car problems prevented the claimant from immediately accepting a
> position with the employer. The language of Section 603 is clear
> and unambiguous, and its provisions may be applied to a claimant
> only if he was actually offered available, suitable employment
> which he refused. The claimant was not offered any employment.
> The claimant did not receive the employer's message until two
> days after it had been conveyed to his wife. The employer never
> made an offer of work to the claimant and at no point in the
> chronology of events or in the fact pattern as testified to, did the
> claimant refuse an offer of work made by the employer."

¶ 8   The Board concluded that Pantoja was eligible for unemployment benefits. Sawing filed a complaint for administrative review, and the circuit court reversed the Board's decision. On appeal, defendants contend that the findings of the Board were not against the manifest weight of the evidence nor clearly erroneous.

¶ 9   In reviewing a final decision under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2014)), we review the administrative agency's decision, not the circuit court's determination. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). A reviewing court must first determine whether the agency's factual findings are contrary to the manifest weight of the evidence. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (2011). We consider the purely factual findings of the Board to be *prima facie* true and correct, and they will not be disturbed unless they are contrary to the weight of the evidence. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173 (2008). Findings are against the weight of the evidence when an opposite conclusion is clearly evident from the record. *Id.*

¶ 10   Where the agency's ultimate determination was a mixed question of fact and law, *i.e.*, whether the facts satisfy the statutory standard, the "clearly erroneous" standard applies. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715-16 (2007). The question of whether Pantoja's failure to timely respond to Sawing's message constituted a refusal to work presents a mixed question of fact and law, *i.e.,* whether the facts satisfied the statutory standard of refusal to work under section 603 of the Act. Section 603 states in pertinent part: "An individual shall be ineligible for benefits if he has failed, without good cause, to accept suitable work when offered him by the employment office or an employing unit ***." 820 ILCS 405/603 (West 2012). An agency's decision will be deemed clearly erroneous only 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).

¶ 11   Defendants assert that the Board's findings, that Pantoja's wife failed to relay Sawing's telephone message to him for two days and that the delay plus car problems kept Pantoja from accepting a position immediately, were supported by Pantoja's testimony at the hearing before the referee. Sawing argues that the findings of the Board were against the manifest weight of the evidence, asserting that the Board's decision was silent as to Pantoja's "testimony of failing to accept the offer by any method available in the normal course of business on November 16th or 17th."   Sawing contends that "[t]he earliest date of attempted acceptance" was Monday, November 19, three days after Pantoja became aware on November 16 of the message his wife received on November 14.

¶ 12   The Board found that Pantoja did not receive Cerda's message until two days after it had been conveyed to his wife and that the two-day delay, "coupled with car problems," prevented Pantoja from immediately accepting a position of work. Pantoja never testified that he made no attempt until November 19 to accept an offer of work. On the contrary, at the hearing before the referee, Pantoja testified that after learning of the message on November 16, he "was trying to talk to [Cerda] over the phone, but *** I wasn't able to." He was unable to go to Sawing on the 16th, a Friday, because "my car was broken, and then the weekend came ***." We cannot conclude that no trier of fact would have adopted the Board's position and, accordingly, we have no reason to disturb the Board's findings as they were not against the manifest weight of the evidence. See *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 526 (2008).

¶ 13   The Board also found that Sawing never made an offer of work to Pantoja and that at no time did he refuse an offer of work made by Sawing. It is undisputed that Sawing never sent Pantoja an offer of work in writing, nor did Cerda, Sawing's plant manager, communicate with Pantoja directly or make an attempt to verify that his message to Pantoja's wife had reached Pantoja. Pantoja's testimony that the telephone message was not relayed to him for two days was uncontradicted. While a failure to respond to an offer of work could be deemed a refusal to work in more compelling circumstances, the facts here demonstrate that Sawing presented no offer to work to which Pantoja could respond within a reasonable amount of time and that Pantoja did in fact attempt to respond to Cerda's message as promptly as the circumstances allowed. The agency's final decision will be overturned only where clearly erroneous. *Czajka*, 387 Ill. App. 3d at 173. We conclude that the Board's determination, that Pantoja never directly received an offer of employment from Sawing and never refused an offer of work, was not clearly erroneous and should not have been reversed by the circuit court.

¶ 14   Our review of the record does not leave this court with the firm impression that the Board of Review made a mistake, and we agree with defendants that the circuit court erred in reversing the Board's determination. Accordingly, we reverse the order of the circuit court and reinstate the Board's decision.

¶ 15   Circuit court reversed; administrative decision reinstated.