

FIRST DIVISION
JULY 27, 2015

No. 1-14-2915

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

| | | |
|---|---|------------------|
| JANA P. MYERS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | |
| |) | |
| ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, |) | |
| DIRECTOR OF ILLINOIS DEPARTMENT OF |) | |
| EMPLOYMENT SECURITY; BOARD OF REVIEW, |) | |
| |) | No. 13 L 51018 |
| Defendants-Appellants. |) | |
| |) | |
| and |) | |
| |) | |
| SEARS LOGISTICS SERVICES, |) | Honorable |
| |) | Robert L. Cepero |
| Defendant. |) | Judge Presiding. |

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's willful violation of employer's reasonable policy against insubordination constituted misconduct in connection with her work and disqualified her from unemployment benefits, the circuit court's judgment was reversed.

¶ 2 The Board of Review of the Illinois Department of Employment Security (Board) found plaintiff, Jana Myers, ineligible to receive unemployment benefits under section 602A of the

Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602A (West 2012). The circuit court reversed the Board's decision. On appeal, defendants (the Board and the Illinois Department of Employment Security (Department)) contend that the Board's finding that plaintiff was discharged for misconduct was neither against the manifest weight of the evidence nor clearly erroneous. We agree with defendants and uphold the Board's decision.

¶ 3 Although plaintiff has not filed a brief, we will proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 4 Plaintiff worked as a "Clerical II" doing inventory at Sears' Romeoville warehouse, from December 20, 1999, until she was terminated on October 11, 2012. At the time she was discharged, plaintiff was working from 6:30 a.m. to 3 p.m. and earning \$13.59 per hour. Included in the record is an employee termination form indicating that plaintiff's unprofessional behavior towards her manager was uncalled for and unnecessary. The form further indicated that plaintiff had previously been warned that any future instances of misconduct would result in termination, and, therefore, termination was warranted. The record also contains two final warnings to plaintiff on August 3, 2012. The first warning was for engaging in excessive non-work related conversations and interactions with another associate. The second warning noted that plaintiff displayed "aggressive, disrespectful, inappropriate and unprofessional behavior" at work. Both warnings indicated that if plaintiff failed to improve her performance she would be subject to further disciplinary action up to and including immediate termination. Plaintiff refused to sign the second warning.

¶ 5 Following her discharge, plaintiff applied for unemployment benefits with the Department, and Sears objected claiming that plaintiff was discharged for insubordination. A claims adjudicator found plaintiff eligible for benefits because Sears failed to substantiate that

she was discharged for misconduct. Instead, the adjudicator found that plaintiff was terminated because Sears was dissatisfied with her attitude.

¶ 6 Sears appealed, and on May 24, 2013, a telephone hearing was conducted by a Department referee. At this hearing, Christine Sabin, an operations manager at the Sears warehouse in Romeoville, testified that plaintiff reported to her. Plaintiff was discharged for insubordination on October 11, 2012, in that she raised her voice at Sabin and was being aggressive in her behavior, tone, and mannerisms. In particular, when Sabin asked plaintiff about her work, plaintiff aggressively yelled at Sabin and accused her of not caring about what plaintiff did. At that point, plaintiff was asked to enter the office of Carlos Addoh, the general manager of the warehouse, in order to address the situation privately. Plaintiff refused to enter Addoh's office, saying that she was "sick and tired." According to Sabin, plaintiff's behavior disrupted other people in the office. Sabin said that she never ascertained why plaintiff was upset. However, plaintiff repeatedly said that Sabin did not appreciate her work. Sabin further testified that plaintiff had been warned in writing for similar conduct on August 3, 2012, involving a different employee, and plaintiff had received other informal warnings in the past.

¶ 7 Carlos Addoh, general manager of the warehouse, testified that he fired plaintiff, who told him that she was tired of Sabin and was not going to follow Sabin's directions anymore. Addoh indicated that plaintiff was surprised when she was sent home that day for disrupting the office because she thought she was "in the right." However, Addoh testified that an employee cannot disrupt the work flow of the office in front of customers and other employees. He stated that employees have to follow the orders of their managers. Addoh indicated that there had been prior incidents and plaintiff had previously been warned that she would be terminated for any further workplace disruption.

¶ 8 Diane Bodey, a Sears employee, corroborated the testimony of Sabin and Addoh.

¶ 9 Plaintiff testified that Addoh fired her, but did not tell her the reason for her termination.

Plaintiff indicated that she was "put in a situation that sent me to the office." Specifically, Sabin approached plaintiff about her work in a hostile manner, stating that she was not completing her work in accordance with Sabin's directions. Plaintiff responded by telling Sabin that she was never instructed that the manner in which she was completing her work was incorrect. Sabin told plaintiff that they needed to "take this to the office." Plaintiff stated that she did not go directly to the office. Instead, she waited and when Addoh asked her to enter the office, she complied, and explained the incident, *i.e.*, that Sabin was hostile towards her. According to plaintiff, she was sent home at that point. Plaintiff later clarified that Sabin went into the office first, but she did not know that she was supposed to follow Sabin. Plaintiff instead waited outside of the office, and then Addoh called her inside. Plaintiff claimed that she never raised her voice during the incident. She was later notified through the mail that she was fired because Sabin did not like her attitude. Plaintiff acknowledged that she was written up for an attitude problem in August of 2012, but refused to sign the warning because she felt her employer was trying to fire her for an undisclosed reason. In particular, plaintiff believed she had been fired in retaliation for earlier complaints she had made regarding Sabin's behavior. According to plaintiff, other staff members had also reported Sabin's hostile behavior, and some had quit their jobs because of it. Plaintiff, claimed however that she, refused to let Sabin intimidate her.

¶ 10 Following plaintiff's testimony, Addoh added additional testimony in which he stated that he requested plaintiff to enter his office after hearing the commotion outside, but she refused. Addoh had to ask her a second time before she complied. Addoh stated that during the meeting

in his office, plaintiff was not truthful regarding the event in question. Addoh stated that the incident was reported to the human resources department.

¶ 11 In setting aside the local office determination that plaintiff was eligible for benefits, the referee found that Sears discharged plaintiff for misconduct. In so finding, the referee held that plaintiff's refusal to follow a directive from her supervisor that was reasonably within her job duties, amounted to insubordination, which, by definition, harms the employer by distracting supervisory personnel from their regular duties and by interrupting the flow of business. The referee found that plaintiff yelled at her supervisor, refused to leave the work floor to discuss the matter in private, and had been previously warned for her poor attitude.

¶ 12 Plaintiff appealed the referee's decision to the Board. In the written argument attached to her appeal, plaintiff argued that she denied each allegation raised by Sears that she was hostile and insubordinate, and, although she was warned in August 2012 regarding her attitude, she never received a warning for insubordination. Plaintiff contended that her behavior was not extreme enough to constitute insubordination, and claimed that her testimony was credible. Plaintiff also maintained that Sears failed to provide any additional evidence to meet its burden of proving that she was discharged for misconduct.

¶ 13 The Board affirmed the referee's decision, finding that insubordination does not require extreme actions. Insubordination could be found when an employee refuses to submit to reasonable authority exercised by the employer, such as time of reporting to work, assignment of duty, manner of performing work, and conduct on the job. The Board also noted that plaintiff misstated the burden of proof, in that proving eligibility rests with the claimant. The Board concluded its decision by incorporating the referee's decision as part of its decision.

¶ 14 Plaintiff filed a complaint for administrative review of the Board's decision in the circuit court. On August 22, 2014, the circuit court reversed the Board's decision, finding that the Board created a broad definition of misconduct and ignored the principle that the Act is remedial in nature and should be liberally construed to the end that the benefits intended under its provisions are received by employees. The court further held that the Board erred as matter of law in placing the burden on plaintiff to show by a preponderance of the evidence that she was not terminated for misconduct, Sears failed to show that plaintiff's conduct was repeated despite a warning, or that it was harmed by her conduct. This appeal follows.

¶ 15 We review the final decision of the administrative agency and not the decision of the circuit court. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). The applicable standard of review depends on the issue raised. This court reviews pure questions of law *de novo* (*Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008)), 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)).

¶ 16 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); *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). 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. *AFM Messenger Service*, 198 Ill. 2d at 395; *Sudzus v. Department of Employment*

Security, 393 Ill. App. 3d 814, 820 (2009). For the reasons which follow, we find that the agency's decision was not clearly erroneous.

¶ 17 To be ineligible for unemployment benefits under section 602A 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 405/602A (West 2012); see *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006) (stating that a reasonable work policy does not need to be written or otherwise formalized). Further, such violation must harm the employer or other employees, or must be repeated after a warning from the employer. 820 ILCS 405/602A (West 2012).

¶ 18 At the hearing, Christine Sabin testified that plaintiff was discharged for insubordination on October 11, 2012, after Sabin asked plaintiff about her work, and plaintiff responded by aggressively yelling and accusing Sabin of not caring about plaintiff's work nor giving plaintiff credit for her work. Furthermore, plaintiff refused Sabin's request to address the matter privately in Carlos Addoh's office, stating she was "sick and tired." Plaintiff disrupted the office, and Sabin never found the specific cause of plaintiff's outburst. Sabin noted that plaintiff had previously been warned in writing for similar conduct. Carlos Addoh testified that he fired plaintiff, who told him that she was tired of Sabin and was not going to follow directions anymore. Addoh also testified that plaintiff disrupted the work flow of the office where the incident occurred in front of other employees and customers, and plaintiff had previously been warned that she would be terminated for any further workplace disruption. Diane Bodey corroborated the testimony of Sabin and Addoh. Contrary to the testimony of the Sears' employees, plaintiff testified that Sabin approached her in a hostile manner, stating that plaintiff was not completing her work per Sabin's instructions. When plaintiff responded by telling Sabin

that she was never instructed that the manner in which she was completing her work was incorrect, Sabin told plaintiff that they needed to discuss the matter in a private office. Plaintiff entered the office only after Addoh twice requested her to do so. Plaintiff maintained that she never raised her voice during the incident. Although plaintiff acknowledged that she was written up for an attitude problem in August, she refused to sign the warning because she felt her employer was trying to fire her in retaliation for earlier complaints she made regarding Sabin.

¶ 19 It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicting testimony. *Hurst*, 393 Ill. App. 3d at 329. Here, after considering the testimony of Sabin, Addoh, Bodey, and plaintiff during the telephone hearing, the Board determined that plaintiff's insubordination harmed the employer because it disrupted the work flow and distracted other employees, and was committed following a warning about her poor attitude. In other words, the trier of fact found Sabin's, Addoh's and Bodey's version of the facts to be more credible than plaintiff's. The Board thus settled this issue in favor of Sears, 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). This is particularly true where we have repeatedly held that insubordinate conduct similar to that of the plaintiff in this case, constituted a deliberate and willful violation of an employer's rule under the Act. See *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 449 (1998) (affirming the Board's determination that plaintiff engaged in misconduct when, in a discussion over a reduction in hours, she told a supervisor to "kiss my grits," refused to sign a document as instructed to by a supervisor, and refused to return to the office); *Stovall v. Department of Employment Security*,

262 Ill. App. 3d 1098, 1103 (1994) (affirming the Board's determination that the plaintiff, who had been informally warned about how she talked to other employees, engaged in misconduct when she called her supervisor a liar and declared in a loud argumentative outburst during a meeting that she did not have to follow directions).

¶ 20 Considering the Board's findings as *prima facie* true and correct (*Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173 (2008)), 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 against insubordinate conduct where she yelled at her supervisor and refused to follow reasonable instructions related to her work, and thus she injured the interests of Sears because her conduct disrupted work flow.

¶ 21 For the foregoing reasons, we reverse the circuit court's judgment and affirm the Board's decision disqualifying plaintiff from receiving unemployment benefits.

¶ 22 Circuit court reversed; Board's decision reinstated.