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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SUZANNE NAUERTZ,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 14-MR-403
)	
THE DEPARTMENT OF EMPLOYMENT)	
SECURITY, THE DIRECTOR OF THE)	
DEPARTMENT OF EMPLOYMENT)	
SECURITY, and THE DEPARTMENT OF)	
EMPLOYMENT SECURITY)	
BOARD OF REVIEW,)	
)	
Defendants-Appellees)	
)	Honorable
(Select Comfort Distribution Corp.,)	Bonnie M. Wheaton,
Defendant).)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant properly denied plaintiff unemployment benefits: plaintiff was not denied due process, as the employer's purported reason for discharge was consistent throughout the administrative process; defendant's finding that plaintiff deliberately and willfully submitted a fraudulent time card was supported by the employer's evidence.

¶ 2 Plaintiff, Suzanne Nauertz, appeals from the judgment of the circuit court of Du Page County affirming the decision of the Department of Employment Security's Board of Review (Board) denying her unemployment benefits. She contends that she was denied due process and that the Board's decision that she was discharged for violating an employment rule was clearly erroneous. Because plaintiff received a full and fair opportunity to present her claim and because the Board's decision was supported by the evidence, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed a complaint in the circuit court challenging the Board's denial of her claim for unemployment benefits. The denial was based on her having been discharged for cause by her employer, Select Comfort Distribution Corp. (Select Comfort).

¶ 5 Plaintiff began working for Select Comfort in 2008. On September 1, 2013, she was sent home three hours early, because she had been involved in a verbal confrontation with a fellow employee. On September 5, 2013, she received a written corrective-action notice based on the September 1 incident. The September 5 corrective-action notice indicated that plaintiff was being warned about the September 1 incident.

¶ 6 On September 13, 2013, plaintiff received another corrective-action notice, which indicated that she had been discharged because of a "violation of Select Comfort policies and Standards of Conduct." The September 13 notice stated that, although plaintiff had been sent home on September 1, she had submitted a time card that included the three hours for which she was not at work. The notice added that such conduct was considered a "falsification of [her] time worked" and violated "Standards of Conduct; Time Card Reporting; Code of Business Conduct."

¶ 7 Plaintiff sought unemployment benefits, and Select Comfort filed a protest. Select Comfort included with its protest a copy of both corrective-action notices. Plaintiff completed a misconduct questionnaire, stating that she had been discharged on September 13, 2013, and identifying the reason as related to her time card. The claims adjudicator determined that plaintiff was eligible for benefits because she had been discharged based on a “dispute with her supervisor” and not a “violation of a reasonable rule or policy.”

¶ 8 Select Comfort appealed. The notice of appeal included, among other things, the corrective-action notices dated September 5 and September 13, 2013.

¶ 9 The appeal referee conducted a telephone hearing. At the hearing, Select Comfort’s district manager, Russ Dawson, testified that plaintiff was discharged because she falsified her time card, which constituted a violation of Select Comfort’s standards of conduct. Dawson explained that plaintiff submitted a time card for September 1, 2013, that included the three hours she was not present on that date. According to Dawson, she was not present because she had been instructed to leave early after having engaged in a verbal confrontation with a coworker. When Dawson asked plaintiff about the discrepancy on her September 1 time card, she told him that she had confused the date with September 2, 2013, when she had worked through her lunch hour. Dawson believed that plaintiff had spoken to the new store manager, who was not aware of the September 1 incident, about adding the three hours to her September 1 time card. Dawson clarified that plaintiff was not discharged for the September 1 incident involving the verbal confrontation.

¶ 10 Julie Trondo, a human-capital business partner for Select Comfort, testified that the standards of conduct prohibited falsifying a time card and that plaintiff was aware of that rule,

having acknowledged in writing that she had reviewed the standards of conduct. The rule allowed for submitting a time-card correction for inadvertent entries.

¶ 11 Plaintiff testified that she was discharged on September 13, 2013. She admitted that she was discharged because of her September 1, 2013, time card.

¶ 12 According to plaintiff, on September 1, 2013, she was sent home early. Although she did not punch out, Dawson did so on her behalf. Plaintiff submitted a time-card correction to her new manager, seeking to have the three hours added to her time worked for September 1, 2013. When asked by the referee why she did that, plaintiff explained that, when an employee is sent home early “for no reason at all,” Select Comfort might do so with or without pay. Because she was unsure whether she was to be paid for the three hours, she wrote on the time card that her time could be corrected to include the three hours if she was to “get paid for that.” When the referee asked plaintiff what she said in response to being discharged, plaintiff answered that she said, “how could I do that if I punch in and I punch out and when we’re supposed to go to our superior *** to ask any questions, [and] she indicated if you have a question about your time card submitted [*sic*] it on your time card because of [Select Comfort’s] policy is if you are asked to leave on a day, they can either pay you or not pay you by their code of conduct. So I simply asked a question and this is what I got in return.”

¶ 13 The referee, in turn, asked Dawson if plaintiff’s time card included the explanation regarding the three hours. Dawson responded that he “[saw] something completely different than what she’s saying.” When asked if he had the time card and what it said, Dawson answered that he had it and that it said “September 1st please correct 3:00 p.m. to 6:00 p.m.” According to Dawson, it said “[n]othing additional.” When the referee asked plaintiff if there was anything she wanted to say in response to Dawson’s testimony, she said “[n]o judge.”

¶ 14 In deciding that plaintiff was ineligible for benefits, the referee found that plaintiff had been disciplined by being sent home early on September 1, 2013, and that plaintiff had requested that her new manager, who was not aware of why plaintiff had been sent home early, adjust her time card so that she would be paid for the three hours. The referee found that plaintiff had deliberately violated the rule against creating false time documentation and that Select Comfort was harmed by the resulting loss of trust in plaintiff and the time that it spent investigating the incident.

¶ 15 Plaintiff appealed to the Board. Although she submitted materials in support of her appeal, she did not seek to add the time card to the record. The Board reviewed the record and found that no additional evidence was needed. It further found, based on the record, that plaintiff had submitted a time-card correction to the new manager, who “had no knowledge why [plaintiff] was short three hours for 9/1/2013.” The Board found that plaintiff’s explanation that she requested to be paid for the three hours only if it was approved was “wrong.” It found that the “actual notation from her time correction,” which had been read into the record by Dawson, was “conclusive evidence that [plaintiff] *** deliberately attempted to obtain pay for which she was not eligible.” The Board, having incorporated the referee’s decision, found that plaintiff was discharged for misconduct and it affirmed the denial of benefits.

¶ 16 Plaintiff appealed to the circuit court. At the hearing, plaintiff’s attorney contended that, although Select Comfort relied on the September 1 incident as the reason for plaintiff’s discharge before the claims adjudicator, it relied on the time-card falsification before the referee and the Board. He further asserted that the record did not establish that plaintiff engaged in any misconduct, because the actual time card containing the request for correction was not admitted into evidence.

¶ 17 The circuit court found that plaintiff had been notified that the allegation of falsifying her time card was the basis for her discharge. The court found that there was sufficient evidence to support the Board's decision and affirmed its ruling. Plaintiff timely appealed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, plaintiff contends that: (1) she was denied due process when the referee allowed Select Comfort to change its reason for discharging her from the verbal confrontation with a co-worker to falsification of her time card; and (2) the evidence was insufficient to support the Board's finding that she deliberately falsified her time card.

¶ 20 Under the Unemployment Insurance Act (Act) (820 ILCS 405/1000 *et seq.* (West 2012)), a claimant's application for benefits is initially decided by a claims adjudicator without a full hearing. 820 ILCS 405/700, 701 (West 2012). An appeal from a claims adjudicator's determination is considered first by a referee, while the final decision lies with the Board. 820 ILCS 405/800, 803 (West 2012).

¶ 21 Because the Board's decision is the Department's final determination regarding a claim, that is the decision that we review. *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 20. In reviewing the Board's findings of fact, we deem those *prima facie* true and correct and will reverse only if they are against the manifest weight of the evidence. *Pesoli*, 2012 IL App (1st) 111835, ¶ 20. When the issue involves the Board's decision regarding a question of law, our review is *de novo*. *Pesoli*, 2012 IL App (1st) 111835, ¶ 20. When the Board's decision presents a mixed question of law and fact, we apply the "clearly erroneous" standard of review and will reverse only if the entire record leaves us with the definite and firm conviction that the decision was a mistake. *Pesoli*, 2012 IL App (1st) 111835, ¶ 20.

¶ 22 When the question concerns whether an employee was properly discharged for misconduct, we are presented with a mixed question of law and fact. *Universal Security Corp. v. Department of Employment Security*, 2015 IL App (1st) 133886, ¶ 13. We review that decision to determine if it was clearly erroneous. *Universal Security Corp.*, 2015 IL App (1st) 133886, ¶ 13.

¶ 23 The Act affords economic relief to employees who, through no fault of their own, become involuntarily unemployed. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 396 (2001). It is the employee's burden to establish her eligibility for unemployment benefits. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007). Although courts construe the Act expansively to avoid the loss of benefits (*Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 174 (2008)), the Board is responsible for weighing the evidence, evaluating witness credibility, and resolving conflicts in the testimony (*Pesoli*, 2012 IL App (1st) 111835, ¶ 26).

¶ 24 Misconduct is defined as “[1] the deliberate and willful violation [2] of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of [her] work, [3] provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.” 820 ILCS 405/602(A) (West 2012). Misconduct can be based on either a particular violation of the employer's rules that triggered the discharge or the employee's cumulative violations of the employer's rules. *Alternative Staffing, Inc. v. Illinois Department of Employment Security*, 2012 IL App (1st) 113332, ¶ 30. Moreover, an employee deliberately and willfully violates a work rule or policy when she is aware of, and consciously disregards, the rule. *Odie v. Department of Employment Security*, 377 Ill. App. 3d 710, 713 (2007).

¶ 25 We address first the due-process contention. Although administrative hearings are governed by due process, due process in that context is flexible and requires only those procedural protections demanded by the situation and the fundamental principles of justice. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 92 (1992). In an administrative hearing, due process requires a fair hearing, including the opportunity to be heard, the right to cross-examine witnesses, and an impartial decision-maker. *Abrahamson*, 153 Ill. 2d at 95. An alleged due-process violation compels reversal only upon a showing of prejudice resulting from the violation. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 825 (2009).

¶ 26 The record does not demonstrate that Select Comfort changed positions as to why plaintiff was discharged. Select Comfort included in its materials supporting its protest the September 5, 2013, corrective-action notice, which indicated that plaintiff had received a written warning about her conduct on September 1. It also included the September 13, 2013, corrective-action notice stating that plaintiff had been discharged because of her false time card. Those two documents together showed that Select Comfort's purported reason for discharging plaintiff was her conduct related to the submission of her time card. Additionally, plaintiff completed a misconduct questionnaire, in which she stated that she was discharged on September 13, 2013, and that the reason given was related to her time card. The questionnaire further substantiates that plaintiff was aware that Select Comfort was raising before the claims adjudicator the falsification of her time card as the reason for her discharge.

¶ 27 Although the claims adjudicator's written determination characterized the reason for plaintiff's discharge as a "dispute with her supervisor," that alone does not show that the time-card issue was not raised, particularly where the documents show otherwise. Therefore, because

the time-card justification was before the claims adjudicator, Select Comfort did not change its basis for plaintiff's discharge in its appeal to the referee. Thus, plaintiff's due-process claim fails on that basis.

¶ 28 Even if Select Comfort had not presented to the claims adjudicator the time-card violation as a basis for the discharge, but instead did so for the first time before the referee, plaintiff suffered no prejudice. The record shows that the issue was fully considered by the referee and the Board. Plaintiff was given ample opportunity to challenge Select Comfort's evidence in that regard and to offer her own, including the September 1 time card. Even had plaintiff not had the opportunity to submit the time card to the referee, she could have sought to add it to the record before the Board. See 820 ILCS 405/803 (West 2012) (party may seek, within the Board's discretion, to submit additional evidence related to an appeal). Indeed, plaintiff was aware of that option, having received a copy of the Department's regulations pertaining to the appeal process. Thus, because she suffered no prejudice, no due-process violation occurred. See *Sudzus*, 393 Ill. App. 3d at 825.

¶ 29 We next address whether the Board's decision, that plaintiff's discharge was based on a deliberate and willful violation of a reasonable rule or policy, was clearly erroneous. It was not.

¶ 30 We note that plaintiff raises no issues as to whether the rule against time-card falsification was reasonable or as to whether Select Comfort was harmed by any violation of that rule. Thus, we are left to decide only whether the evidence supported the finding that plaintiff deliberately and willfully violated the rule.

¶ 31 In that regard, Dawson testified that plaintiff submitted a time-card correction for September 1, 2013, that included three hours for which she had not worked on September 1, 2013. It is undisputed that plaintiff did not work those three hours, because she had been sent

home early after verbally confronting a fellow employee. It is also undisputed that plaintiff knew why she had been sent home and that it was not for no reason. Additionally, Trondo testified that plaintiff was aware of the rule prohibiting the falsification of a time card. The foregoing evidence was sufficient to support the Board's finding that plaintiff deliberately and willfully violated the rule.

¶ 32 Not only was the evidence offered by Select Comfort sufficient to support the Board's finding, but plaintiff's testimony regarding her time card was suspect. Plaintiff testified that she had received approval from the new store manager to seek pay for the three hours and that she did so by noting on the time card that she was including the three hours only if payment was to be approved. She also testified that an employee might be paid if he or she were sent home early "for no reason at all." However, when plaintiff completed the time-card correction, she knew that she had been sent home because she had verbally confronted a coworker. In other words, she knew that she had not been sent home early for no reason. Further, when Dawson asked plaintiff about the discrepancy on her time card, she explained that it was because of her confusing her time worked on September 1 and September 2, 2013, not because she had spoken to the new store manager regarding the three hours. Therefore, her testimony regarding the notation she placed on her time card was questionable, and thus there was an adequate basis for the Board to have found plaintiff's explanation incredible.

¶ 33 Moreover, plaintiff's testimony was directly refuted by Dawson. When asked, he testified that he had the time card and that it said "something completely different" from plaintiff's version. According to Dawson, the notation merely said "September 1st please correct 3:00 pm to 6:00 pm." Because there was a conflict between Dawson's and plaintiff's testimony as to what was written on the time card, it was the prerogative of the referee to decide which

version to credit. More importantly, the Board, in reviewing the evidence, found that plaintiff's explanation was "wrong" and that the "actual notation from her time correction," as testified to by Dawson, was conclusive evidence that she falsified her time card. Regardless of whether it was conclusive, it was certainly sufficient to support that finding. Thus, the record does not leave us with the definite and firm conviction that the Board's decision was a mistake. See *Pesoli*, 2012 IL App (1st) 111835, ¶ 20.

¶ 34 Plaintiff, however, contends that the Board's ruling was clearly erroneous because the time card should have been admitted. As discussed, plaintiff was free to submit the time card before the referee or to have sought to amend the record before the Board to include the time card. It is too late for plaintiff to complain about the lack of admission of the time card. Nonetheless, the actual time card was unnecessary in light of Dawson's unequivocal testimony as to what the time card stated.

¶ 35 In conclusion, the record supports the finding that plaintiff deliberately and willfully violated a reasonable rule of her employer that resulted in her discharge. Therefore, she was disqualified from receiving unemployment benefits.

¶ 36 **III. CONCLUSION**

¶ 37 For the reasons stated, we affirm the judgment of the circuit court of Du Page County affirming the decision of the Board denying plaintiff's claim for unemployment benefits.

¶ 38 Affirmed.