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2015 IL App (3d) 140504-U

Order filed September 3, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

MARIE K. WHEELER,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellant,)	Tazewell County, Illinois,
)	
v.)	
)	Appeal No. 3-14-0504
ILLINOIS DEPARTMENT OF)	Circuit No. 13-MR-117
EMPLOYMENT SECURITY, BOARD OF)	
REVIEW OR ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY, and PEKIN)	
HOSPITAL,)	Honorable
)	Paul P. Gilfillan,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiff's willful violation of the employer's reasonable policy against abusive conduct toward patients constituted misconduct in connection with her employment and disqualified her from receiving unemployment benefits, the Board's denial of her claim for benefits was not clearly erroneous.

¶ 2 Plaintiff, Marie K. Wheeler, was discharged by Pekin Hospital after she was reportedly observed shouting at a paralyzed patient who had sought her help. The employer maintained that

Wheeler's conduct violated its patient care policies and that she had been previously warned after a similar incident that her conduct was a breach of the employer's policy against abusive conduct toward patients. Wheeler sought unemployment insurance benefits from the Illinois Department of Employment Security (Department). The employer filed an objection. Following a hearing before a referee designated by the Board, the referee found that Wheeler's conduct was not a willful or deliberate violation of the employer's policies. The referee ruled that Wheeler was eligible for benefits. The employer appealed the referee's ruling to the Department's Board of Review (Board), which determined that Wheeler had been discharged for misconduct and was, therefore, disqualified from receiving benefits under section 602(A) of the Unemployment Insurance Act (Act). 820 ILCS 405/602(A) (West 2012). Wheeler filed a timely complaint for administrative review in the circuit court of Tazewell County, which affirmed the decision of the Board. Wheeler then filed the instant appeal.

¶ 3

FACTS

¶ 4

The following facts are contained in the record of the administrative hearing on February 7, 2013, before a referee assigned by the Board. From February 2004 until November 2012, Wheeler was employed at Pekin Hospital as a certified nursing assistant (CNA). Her primary job responsibilities were to care for the basic needs of patients. The record before the Board established that the employer had received several complaints from patients regarding Wheeler's "bedside manner." In June 2011, a patient who needed help using the restroom reported that Wheeler "was rude and unwilling to help her." The incident resulted in that patient being reassigned to another CNA, and Wheeler receiving a disciplinary letter noting that her "tone of voice [with patients] has been an issue in the past" and admonishing Wheeler to "speak respectfully" to patients. In July 2012, Wheeler received another disciplinary letter admonishing

her for arguing with a nurse in front of a patient. Wheeler was then placed on a “disciplinary action plan” wherein she was counseled that her “inappropriate rudeness in front of patients, families, and staff” was “an ongoing problem.” She was instructed to be respectful of patients and not raise her voice or argue with or near patients. She was informed that her employment would be terminated if her conduct in this manner continued.

¶ 5 On November 15, 2012, a nurse and a supervisor reported observing Wheeler yelling at one of the patients. The witnesses stated that the patient had bedsores and had difficulty moving. When the patient asked Wheeler for assistance, she reportedly became “very angry and argued with the patient,” telling him that he “was not the only patient she had” in her care. The nurse who observed the incident further reported that, when she sought Wheeler’s assistance in rotating the patient in his bed, Wheeler “kept yelling at him about how we don’t turn patients, that he’s not the only one.” Another employee reported that she observed Wheeler “screaming that [the patient] is not the only patient on our floor” and that it was not her job “to turn him every hour.” This employee also reported that, as Wheeler left the patient’s room, “she was very angry and threw her paper and pen down” and yelled “son of a bitch.” A new patient who was being admitted at the time, along with a family member, saw and heard Wheeler’s conduct. The family of the patient who needed assistance requested that Wheeler not be assigned to his care. Wheeler’s employment was terminated later that same day.

¶ 6 At the referee hearing, Wheeler acknowledged that she was aware of the employer’s policies regarding patient care. She asserted that, while she had a “tendency to talk loud” she denied yelling or being abusive toward the patient on November 15, 2012. She denied using profanity or throwing an object after she left the patient’s room. The referee determined that Wheeler was eligible for benefits, finding that she “exercised poor judgment” but her actions did

not constitute a willful or deliberate violation of the employer's patient care policies. The employer sought review by the Board.

¶ 7 The Board rejected the referee's ruling, finding that Wheeler's actions constituted a willful violation of the employer's reasonable policy against abusive conduct toward patients. The Board noted that Wheeler had received "at least two prior warnings regarding [patient] abuse" and that her actions on November 15, 2012, were committed "with defiance and utter disregard for a patient, suffering from paralysis, [who] was just asking for help to alleviate his pain." The Board ruled that Wheeler was discharged for misconduct connected to her employment, and thus, was ineligible for benefits under section 602(A) of the Act. 820 ILCS 405/602(A) (West 2012). Wheeler then sought administrative review in the circuit court of Tazewell County, which affirmed the Board's ruling. This appeal ensued.

¶ 8 ANALYSIS

¶ 9 In appeals involving the eligibility for unemployment insurance benefits, we review the decision of the Board, not the circuit court. *Farmers State Bank v. Department of Employment Security*, 216 Ill. App. 3d 663, 667 (1991). On review, we regard the Board as the trier of fact, not the referee, as the Board owes no deference to the referee's findings. *Id.* 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 that follow, we find that the Board's decision was not clearly erroneous.

¶ 10 To be ineligible for unemployment benefits under section 602(A) of the Act, a claimant's termination 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); *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006). 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).

¶ 11 At the hearing, evidence was adduced from several sources that Wheeler was abusive toward a patient, raised her voice toward the patient, utter a vulgarity, and threw an object, all in a manner which caused the patient, other patients, and other employees some degree of discomfort or consternation. The evidence also established that this conduct occurred after one or more prior warnings from her supervisor that further such conduct would result in her discharge from employment. The record of the hearing established that Wheeler acknowledge receiving a prior warning, but disputed that she had been abusive toward the particular patient, raised her voice, or threw an object.

¶ 12 It is the responsibility of the administrative agency to weigh evidence, determine the credibility of witnesses, and resolve conflicting testimony. *Hurst*, 393 Ill. App. 3d at 329. Here, after reviewing the entire record, and deferring to the Board's weighing of the evidence and determinations regarding credibility, we cannot say that the Board's decision was clearly erroneous. The record contains evidence that supports a conclusion that Wheeler was warned that abusive conduct toward patients would result in the termination of her employment and that the events of November 15, 2012, were of a nature that violated the employer's policy regarding

