

**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).

NO. 4-14-0387

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

April 10, 2015

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

CATHERINE A. NARITOKU,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
SOI DEPARTMENT OF EMPLOYMENT	)	No. 13MR91
SECURITY; BOARD OF REVIEW OF SOI	)	
DEPARTMENT OF EMPLOYMENT SECURITY;	)	
and JAY ROWELL, Director of SOI Department of	)	
Employment Security,	)	
Defendants-Appellants,	)	
and	)	
PARENTECH, LLC, d/b/a REGENCY NURSING	)	Honorable
CARE RESIDENCE,	)	Leslie J. Graves,
Defendant.	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Pope and Justice Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed the decision of the circuit court and reinstated the decision of the Board of Review of the State of Illinois Department of Employment Security, finding the board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous.

¶ 2 Plaintiff, Catherine A. Naritoku, is a former employee of Parentech, LLC's Regency Nursing Care Residence (Parentech), where she worked as a registered nurse from June 1, 2012, until her termination on July 30, 2012. Defendants are the Illinois Department of Employment Security (Department), the Board of Review (Board), and Jay Rowell, in his capacity as Director of the Department.

¶ 3 In July 2012, plaintiff's employment was terminated because she failed to administer medication to nursing-home residents. She filed a claim for unemployment benefits with the Department and Parentech objected on the grounds plaintiff was discharged due to employment-related misconduct, rendering her ineligible for unemployment benefits. A claims adjudicator found plaintiff eligible for benefits. The Department appealed the claims adjudicator's decision to a Department referee who, following a hearing, determined plaintiff was ineligible for unemployment benefits because her actions constituted misconduct within the meaning of section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2012)). Plaintiff appealed the referee's decision to the Board, which affirmed the referee's decision. Plaintiff then filed a complaint for administrative review in the circuit court, arguing carelessness and poor performance do not fall within the meaning of misconduct and her failure to timely administer medication did not result in harm to Parentech. The circuit court agreed and reversed the Board's decision.

¶ 4 The Department, its Director, and the Board appeal the circuit court's decision, arguing its determination that plaintiff committed misconduct in the course of her job was not clearly erroneous.

¶ 5 We reverse the circuit court's judgment and reinstate the Board's decision.

¶ 6 I. BACKGROUND

¶ 7 The record shows plaintiff was employed as a registered nurse at Parentech from June 1, 2012, until July 30, 2012, when she was discharged for violating its policy regarding the timely administration of medication. Plaintiff applied to the Department for unemployment benefits. In a misconduct questionnaire, plaintiff indicated she was terminated for violating Parentech's medication policy, which according to plaintiff, required medications to be delivered

within one hour of the scheduled dose. Parentech protested plaintiff's claim for benefits and provided the following reason for plaintiff's termination:

"On 07/30/12 Employee failed to pass 8:00 a.m. medications to a resident, then attempted to give them at 4 p.m. Employee attempted to give another resident an 8:00 a.m. medication at noon. She failed to administer several noon medications, however she signed the medications out as given. Employee had previously been retrained and placed on another shift due to a previous medication error."

¶ 8 The claims adjudicator initially determined plaintiff violated a known and reasonable company policy and was discharged for misconduct connected with her work. Consequently, the claims adjudicator found plaintiff ineligible for unemployment benefits under section 602(A) of the Act (820 ILCS 405/602(A) (West 2012)).

¶ 9 Plaintiff requested the claims adjudicator reconsider his decision. She explained she delivered some medications two hours late because she was attending to the needs of other residents and could not find some of the medications, which were located in the wrong drawer. On reconsideration, the claims adjudicator found plaintiff did not engage in a deliberate and willful violation of Parentech's policy, and therefore, her discharge was not based on misconduct. The claims adjudicator set aside the denial of benefits and found plaintiff eligible for unemployment benefits.

¶ 10 Parentech appealed the claims adjudicator's decision to a Department referee. The referee held a telephone hearing on September 14, 2012, where plaintiff and Parentech administrators Tony Twardowski and Chris Stock appeared and testified.

¶ 11 At the hearing, Twardowski testified plaintiff worked at the nursing home as a registered nurse from June 1, 2012, until July 30, 2012. On July 30, 2012, the director of nursing terminated plaintiff's employment because she failed to deliver the 8 a.m. and 12 p.m. medications. Plaintiff also falsified documents by signing her initials on a medication log to indicate she delivered the medications, when in fact she had not. According to Twardowski, falsifying documents is a separate ground for termination and is something Parentech takes "very, very critically" because it could result in liability. Twardowski further testified plaintiff was previously warned about her medication violations through a written warning on July 11, 2012. The warning informed plaintiff she failed to deliver the 6 a.m. medications, failed to compare medication labels, administered two doses of the wrong medication, and improperly signed a medication log to indicate the correct medications were given. In response to the referee's inquiry of whether he had anything further to state, Twardowski noted plaintiff received additional training at the time she was hired because this was her first position as a registered nurse. Although plaintiff was hired to work the night shift, she was transferred to the day shift because she was making too many errors and residents complained. By transferring her to the day shift, Parentech was able to closely monitor her performance. At the conclusion of Twardowski's testimony, plaintiff declined the opportunity to ask questions.

¶ 12 Plaintiff testified and confirmed she was discharged on July 30, 2012, because of a medication error. When asked for her version of events, plaintiff claimed she delivered all of the 8 a.m. medications and all but two of the 12 p.m. medications. She explained she started administering medications at noon to the residents in the dining room, but she was distracted by other matters that required immediate attention. Plaintiff testified one resident had to go to the hospital, another resident's wound vacuum needed a new canister and tubing, alarms were

sounding, and she needed to return a physician's call. As a result, two medications—a diuretic and an antibiotic—were not administered. Plaintiff attempted to administer the diuretic but the resident refused to take the medication because it was late. Another resident did not receive an antibiotic because it was not located in the correct drawer. She elaborated:

"There's no reason why it should not have been [in the correct drawer], because the medications he was on were what we call stock medications.

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Because his medications weren't in the drawer, I presumed he was supposed to get the stock medications, so I gave him the... you know, the regular house stock medications except for the, um, antibiotic."

Around 3 p.m., when plaintiff's shift ended, she found the antibiotic medication in the bottom drawer. Plaintiff informed a nurse from the next shift about the antibiotic and the nurse instructed plaintiff not to administer the antibiotic because the resident was scheduled to receive his next dose, which would result in him receiving a double dose. In response to the referee's inquiry regarding the medication logs, plaintiff said she circled the medications that were not delivered. When asked whether she had anything else to add, plaintiff admitted giving a hospice resident two doses of Ativan (a sedative) instead of morphine and was warned for delivering the wrong medication.

¶ 13           Following plaintiff's testimony, the referee allowed Twardowski to question her. In response to Twardowski's questions, plaintiff said she was aware of Parentech's policy requiring medications to be delivered within two hours of the scheduled dose and the purpose of

the policy is to ensure medications maintain a therapeutic level in the blood. Plaintiff again acknowledged antibiotics are stock medications, which are located in emergency or convenience boxes to which she had access. When asked why she did not take antibiotics from the emergency box, plaintiff replied, "I was still giving medications." Although plaintiff was aware two nurse managers were on duty, she did not request their assistance because "[she] was not so far behind then."

¶ 14 The referee issued a written decision finding plaintiff ineligible to collect unemployment benefits pursuant to section 602(A) of the Act (820 ILCS 405/602(A) (West 2012)). In doing so, the referee found the following facts:

"The claimant was [a registered nurse] from June 1, 2012 to July 30, 2012 when the employer fired her because of a number of reasons relating to her administering medication to residents. The employer had warned her for violating the employer's medication procedures. \*\*\* The final incident that resulted in her discharge occurred on July 30 when she was to give residents meds at 8:00 AM and noon. \*\*\* The claimant said she gave all the 8:00 meds. Omitting unnecessary detail, she said she gave all but 2 of the 12:00 meds. In 1 instance the resident refused to take the medication. She did not give the other resident the medication, an antibiotic, because it was not where it should have been. The employer testified this was no excuse because the antibiotic was available elsewhere. The claimant could have given it at noon. In any event, she knew she had to give this medication within 2

hours, that is, by 2:00. At 3:00 she discovered the resident's missing antibiotic medication elsewhere. Because this was at the end of her shift she asked the nurse coming in on the next shift if she should give it. The nurse said no because the resident was due to get his next antibiotic dose. If the claimant gave the resident his 12:00 dose he would have gotten 2 doses at the same time, which was too much."

Based on the aforementioned facts, the referee concluded as follows:

"She violated a known and reasonable rule of the employer requiring her to give the resident his antibiotic medication within 2 hours of when it was scheduled. Because she could have given the resident his medication at noon and had no reasonable excuse for waiting until 3:00, her violation of the rule was willful and deliberate. Her misconduct harmed the resident by risking infection by delaying the medication. She also harmed the employer who faced civil liability because it was responsible for the resident's well being."

The referee determined plaintiff's conduct amounted to misconduct within the meaning of section 602(A). Accordingly, the referee denied her claim for unemployment benefits.

¶ 15 Plaintiff appealed the referee's decision to the Board, asserting, *inter alia*, she was overwhelmed with urgent matters and unable to perform her assigned responsibilities. The Board affirmed the findings and conclusions of the referee. The Board noted the record before it was adequate and further taking of evidence was unnecessary and incorporated the referee's

decision as its own. Plaintiff filed a complaint for administrative review in the circuit court, arguing (1) she did not deliberately or willfully violate Parentech's medication policy, (2) Parentech was not harmed, and (3) the evidence was insufficient to show she was previously warned. See 735 ILCS 5/3-101 *et seq.* (West 2012). In a written order, the circuit court reversed the Board's decision, finding "Complainant did not engage in misconduct" and was "eligible to receive unemployment benefits."

¶ 16 This appeal followed.

## ¶ 17 II. ANALYSIS

¶ 18 The Board argues its determination plaintiff committed misconduct is not clearly erroneous because she deliberately and willfully violated Parentech's reasonable medication policy and caused harm to Parentech. Plaintiff contends the Board's decision was clearly erroneous because poor work performance and carelessness do not rise to the level of deliberate and willful conduct as required by section 602(A) of the Act (820 ILCS 405/602(A) (West 2012)). She further asserts circumstances beyond her control prevented her from complying with Parentech's medication policy. Finally, plaintiff argues Parentech was not harmed and the testimony was not sufficient to establish she was previously warned.

### ¶ 19 A. Standard of Review

¶ 20 In administrative-review cases, we review the decision of the Board rather than the circuit court or the referee. *Farris v. Department of Employment Security*, 2014 IL App (4th) 130391, ¶ 35, 8 N.E.3d 49. The issue of whether plaintiff was properly terminated for misconduct in connection with her work presents a mixed question of law and fact, to which the clearly erroneous standard of review applies. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392, 763 N.E.2d 272, 280 (2001). " '[A] mixed question is



one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or whether the rule of law as applied to the established facts is or is not violated.' " *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715, 873 N.E.2d 444, 450 (2007) (quoting *Moss v. Department of Employment Security*, 357 Ill. App. 3d 980, 984, 830 N.E.2d 663, 667 (2005)). The Board's decision is clearly erroneous where the reviewing court, based on the entirety of the record, is left with the definite and firm conviction that a mistake has been committed. *Id.* "A court of review will not reweigh the evidence or substitute its judgment for that of the Board." *Id.* To the extent plaintiff argues the evidence is insufficient and challenges the Board's factual findings, we review the decision under the manifest-weight-of-the-evidence standard. *Id.* at 714, 873 N.E.2d at 449.

¶ 21 B. Section 602(A) of the Act.

¶ 22 The Act provides economic relief to individuals who become involuntarily unemployed. *AFM*, 198 Ill. 2d at 396, 763 N.E.2d at 282. "[T]he individual claiming unemployment insurance benefits has the burden of establishing her eligibility." *Manning v. Illinois Department of Employment Security*, 365 Ill. App. 3d 553, 557, 850 N.E.2d 244, 248 (2006).

¶ 23 "Individuals who are 'discharged for misconduct' are ineligible to receive unemployment benefits under the Act." *Id.* Three elements must be proved to establish misconduct: "(1) there was a deliberate and willful violation of a rule or policy of the employing unit, (2) the rule or policy was reasonable, and (3) the violation either harmed the employer or was repeated by the employee despite a previous warning or other explicit instruction from the employing unit." *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st)

101639, ¶ 19, 968 N.E.2d 1241 (citing 820 ILCS 405/602(A) (West 2008)). Here, plaintiff does not contest the reasonableness of Parentech's rule requiring medications to be delivered within two hours of the scheduled dose. Rather, she argues her carelessness and poor work performance do not rise to the level of deliberate and willful as required by section 602(A) of the Act (820 ILCS 405/602(A) (West 2012)). She further asserts her conduct did not harm Parentech. We disagree.

¶ 24 *1. Deliberate and Willful Violation*

¶ 25 The Act defines misconduct as "the deliberate and willful violation of a reasonable rule or policy of the employing unit." 820 ILCS 405/602(A) (West 2012). An employee willfully violates a work rule or policy when she is aware of the rule and consciously disregards it. *Odie v. Department of Employment Security*, 377 Ill. App. 3d 710, 713, 881 N.E.2d 358, 360-61 (2007).

¶ 26 In this case, plaintiff admitted she was aware of Parentech's policy requiring medications to be dispensed within two hours of the scheduled dose. She was also aware of the policy's purpose, which is to ensure medications maintain a therapeutic level in the blood. Moreover, plaintiff does not dispute she violated the policy. She stated on her misconduct questionnaire and testified at the hearing she violated the policy by failing to deliver two medications—an antibiotic and a diuretic—within two hours of the scheduled dose. Plaintiff offers a number of reasons for her conduct, including that (1) the medications were not located in the correct drawer; (2) she was attending other, more urgent matters; and (3) one of the residents refused to take the medication because it was late. The Board rejected plaintiff's claim that, despite her best efforts, she was unable to deliver the medications because she could not find the antibiotic and was busy attending to other, more urgent matters.

¶ 27 Although the parties presented conflicting testimony, the Board resolved these factual disputes in Parentech's favor, finding plaintiff could have administered the medications by noon. The Board's finding is supported by plaintiff's own testimony she accessed Parentech's stock medications and delivered all but one. It is also supported by Twardowski's testimony plaintiff had access to stock medications, which were located in convenience boxes, and there was no excuse for her to wait until 3 p.m. to deliver the medication. Given the Board functions as the fact finder (*Young-Gibson v. Board of Education of the City of Chicago*, 2011 IL App (1st) 103804, ¶ 56, 959 N.E.2d 751), this court will not disturb factual findings which are supported by the evidence. Thus, the Board's determination plaintiff willfully and deliberately violated Parentech's policy is not clearly erroneous where she was aware of the policy and consciously disregarded it.

¶ 28 Plaintiff concedes her carelessness and poor work performance justified her termination, but she argues carelessness and poor performance alone do not rise to the level of deliberate and willful misconduct. She cites several cases where an employee's conduct did not rise to the level of deliberate and willful. However, these cases are distinguishable.

¶ 29 For example, plaintiff cites *Wrobel v. Department of Employment Security*, 344 Ill. App. 3d 533, 801 N.E.2d 29 (2003). In *Wrobel*, the employee was terminated from his position at the Chicago Tribune because of attendance problems. *Id.* at 535, 801 N.E.2d at 32. The employee testified he called in late and explained to his supervisors he would be late for work because his alarm clock failed to sound as a result of a power outage. The Board concluded the circumstances causing his attendance violation were within his ability to control or avoid and because he did not take steps to ensure his alarm clocks would go off, his discharge was for misconduct. *Id.* at 536, 801 N.E.2d at 32. On appeal, the court reversed the Board's

determination. In doing so, the court found no conscious acts by the employee and nothing in the record to suggest he chose to sleep beyond the time needed to make it to work, or call in, on time. *Id.* at 538, 801 N.E.2d at 34-35. The *Wrobel* court reasoned:

"In faulting plaintiff for not taking better care to ensure that at least one of his alarm clocks would go off so he could make it to work on time, the Board addressed plaintiff's negligence, as opposed to any intentional conduct. For example, the Board noted that plaintiff forgot to set his windup, backup clock. One does not typically forget to do something intentionally; forgetting is a matter of carelessness." *Id.* at 537, 801 N.E.2d at 34.

Therefore, the court held the employee's act of calling in late to work did not constitute misconduct. *Id.* at 538, 801 N.E.2d at 34. Here, however, plaintiff was aware of Parentech's medication policy and understood the 12 p.m. medications needed to be delivered by 2 p.m. She was also aware Parentech kept a stock supply of medications in a convenience box, but she chose not to access the stock antibiotics and thus, consciously disregarded the policy by waiting until 3 p.m. to deliver the medication. Thus, plaintiff's acts cannot be excused as unintentional, as they were in *Wrobel*.

¶ 30 Plaintiff also cites *Loveland Management Corp. v. Board of Review of the Department of Employment Security*, 166 Ill. App. 3d 698, 520 N.E.2d 1070 (1988), and *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, 954 N.E.2d 292, in support of her argument that circumstances beyond her control prevented her from delivering two of the medications. In particular, she claims she was attempting to perform her

job functions, but "got caught up in the numerous aspects of her responsibilities." We find *Loveland* and *Abbott* distinguishable.

¶ 31 In *Loveland*, 166 Ill. App. 3d at 699-702, 520 N.E.2d at 1071-72, the employee was discharged from his employment as the sole maintenance worker at a complex of 91 apartments and 30 townhomes because he was not able to perform all the assigned work. The employer testified he failed to cut the grass, remove garbage, report a broken fire alarm, fix 17 safety violations, "rod out" the sewer main, and clean the lobby and flooded apartments. The Board determined he was not discharged for misconduct because his inability to complete the assignments delegated to him did not rise to the level of willfulness or gross negligence. *Id.* at 701, 520 N.E.2d at 1072. In affirming Board's decision, the court noted the employee had no previous maintenance experience and was prepared to quit his job because of the amount of work involved, but the employer persuaded him to continue. *Id.* at 702, 520 N.E.2d at 1072. The court further noted, while the employee's poor work performance justified his termination, "the Board's conclusion that there was no evidence of wilfullness or gross negligence \*\*\* is not contrary to the manifest weight of the evidence." *Id.* at 702, 520 N.E.2d at 1072.

¶ 32 In *Abbott*, 2011 IL App (2d) 100610, ¶ 4, 954 N.E.2d 292, the employee was terminated from her employment as an apprentice plumber because she missed work or worked less than a full 8-hour day on 25 occasions during a 51-week period. The employee presented undisputed evidence she missed work because her mother was ill and she was the only family member available to provide care. The Board determined plaintiff qualified for unemployment benefits because no evidence was presented showing she acted in a deliberate manner to violate the employer's rules. *Id.* ¶ 10, 954 N.E.2d 292. Affirming the Board's decision, the court reasoned plaintiff's absences were caused by circumstances beyond her control—namely, her

mother's ill health and her inability to find anyone else to care for her mother. *Id.* ¶ 21, 954 N.E.2d 292. Since no evidence was presented showing she acted in a deliberate manner to violate the employer's rules, the court concluded the Board's decision was not clearly erroneous. *Id.* ¶ 21-22, 954 N.E.2d 292.

¶ 33 Unlike in *Loveland* and *Abbott*, the evidence in this case shows plaintiff's conduct was not merely careless or negligent, or due to circumstances beyond her control, but consisted of consciously disregarding Parentech's medication policy. Plaintiff's claim she was overwhelmed with urgent matters and unable to perform her assigned responsibilities is belied by her testimony—she admitted she accessed and timely delivered all but one of the stock medications. The Board considered, and rejected, her claim she was overwhelmed with her other job responsibilities. Instead, the Board determined plaintiff simply chose not to access the extra stock medicine available. Since the record contains evidence supporting the Board's conclusion plaintiff could have timely delivered the medications, we cannot say its findings are against the manifest weight of the evidence. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111, 1117 (1992). ( "If the record contains evidence to support the agency's decision, it should be affirmed." ). Moreover, plaintiff's reliance on *Loveland* and *Abbott* is misplaced because the decisions in those cases merely represented that the Board's findings of fact were not against the manifest weight of the evidence. In other words, of all the possible determinations the Board could have made to resolve the factual disputes in *Loveland* and *Abbott*, the Board's decision was supported by the evidence in the record. Here, the Board reviewed all of the evidence in the record, including the testimony of both plaintiff and Twardowski, and determined plaintiff willfully and deliberately violated Parentech's rule. The Board's factual findings are supported by the specific facts presented in the instant case.

¶ 35 Plaintiff further asserts her conduct did not harm Parentech. As to whether an employer was harmed, the employee's conduct may be viewed in the context of potential harm, as well actual harm. *Livingston*, 375 Ill. App. 3d at 716, 873 N.E.2d at 451. However, "[W]here the potential for harm is remote or speculative, this potential will not satisfy the requirement of harm to the employer." *Wise v. Department of Employment Security*, 2015 IL App (5th) 130306, ¶ 18, 24 N.E.3d 20. In *Livingston*, the court found that harm to a nursing-home resident also harms the employer because the employee's misconduct interferes with the nursing home's ability to provide an environment free from neglect and exposes the nursing home to potential tort liability and damage to its reputation. *Livingston*, 375 Ill. App. 3d at 717-18, 873 N.E.2d at 452; see also 210 ILCS 45/2-107, 1-103 (West 2012) ("An \*\*\* employee or agent of a [nursing home] facility shall not abuse or neglect a resident."). Likewise, it exposes the nursing home to possible administrative penalties. See *Maplewood Care, Inc. v. Arnold*, 2013 IL App (1st) 120602, ¶ 3, 66, 991 N.E.2d 1 (nursing home fined \$20,000 for failing to conduct a background check and supervise a resident in violation of the Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300 (2007))); *Community Living Options, Inc. v. Department of Public Health*, 2013 IL App (4th) 121056, ¶¶ 1, 53-82, 2 N.E.3d 1118 (intermediate-care facility assessed a \$20,000 penalty for neglecting a resident when it failed to fasten the resident's seatbelt); *UDI #10, LLC v. Department of Public Health*, 2012 IL App (1st) 103476, ¶¶ 1, 5, 26, 964 N.E.2d 1268 (nursing home fined \$10,000 where its employees failed to perform cardiopulmonary resuscitation in violation of the Nursing Home Care Act (210 ILCS 45/3-101 *et seq.* (West 2008))); *Aurora Manor, Inc. v. Department of Public Health*, 2012 IL App (1st)

112775, ¶ 3, 978 N.E.2d 287 (nursing home assessed a \$5,000 fine where a resident exited the facility without the staff's knowledge).

¶ 36 Here, the Board concluded plaintiff's failure to timely administer medication not only harmed the resident by risking the spread of infection, but also harmed Parentech because her misconduct interfered with its ability to provide an environment free from neglect and exposed it to potential civil liability. Our review of the record does not leave this court with the firm impression a mistake has been made. Indeed, we find support in the record for the Board's conclusion.

¶ 37 Plaintiff maintains she is caught in a "catch-22" position because Parentech could be harmed if she ignored the residents who required immediate attention and focused exclusively on delivering medication. As already discussed, the Board considered and rejected her claim that urgent matters prevented her from timely delivering medication. In finding plaintiff could have dispensed the medications at noon, the Board implicitly determined she could have performed her other job responsibilities as well. The Board's factual findings are not against the manifest weight of the evidence.

¶ 38 Finally, plaintiff argues the testimony was not sufficient to establish she was previously warned. However, we need not address whether plaintiff's conduct continued despite being previously warned since we have already found her conduct harmed Parentech.

¶ 39 In sum, our review of the record as a whole does not leave this court with the definite and firm conviction the Board made a mistake. Accordingly, we conclude plaintiff was discharged for misconduct connected with her work, and the Board's determination she was ineligible for unemployment-insurance benefits is not clearly erroneous.

¶ 40

### III. CONCLUSION



¶ 41           Based on the foregoing reasons, we reverse the circuit court's judgment and  
reinstate the order of the Board disqualifying plaintiff from receiving unemployment benefits.

¶ 42           Reversed; administrative decision reinstated.