

FIRST DIVISION
May 16, 2016

No. 1-15-1110

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

KENISHA TURNER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 L 50953
)	
ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY, DIRECTOR)	
OF ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY, BOARD OF)	
REVIEW, and BOARD OF TRUSTEES)	
OF UNIVERSITY OF ILLINOIS AT)	
CHICAGO,)	Honorable
)	Robert Lopez Cepero,
Defendants-Appellees.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.

Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1

Held: Judgment of the circuit court of Cook County affirming the determination of the Department of Employment Security that claimant was ineligible for unemployment benefits because she was discharged for misconduct connected with her work affirmed.

¶ 2 *Pro se* plaintiff Kenisha Turner appeals from an order of the circuit court of Cook County affirming the ruling of the Board of Review of the Department of Employment Security (the Board) that she was ineligible for unemployment benefits because she was discharged for misconduct in connection with her work under section 602(A) of the Illinois Unemployment Insurance Act (the Act) (820 ILCS 405/602(A) (West 2014)). On appeal, Turner argues that her verbal altercation with a patient, which led to her discharge, was not misconduct mandating denial of benefits. We affirm the circuit court of Cook County.

¶ 3 The record shows that Turner was a customer service representative at the University of Illinois at Chicago Medical Center (the hospital) when she engaged in a verbal altercation with a patient on April 22, 2014, and was placed on paid administrative leave pending an investigation. She was employed at the hospital from October 4, 2005, until her discharge after a disciplinary hearing on August 1, 2014. She then applied for unemployment benefits, stating that the patient was verbally harassing her, and that things got a little bit out of hand. The hospital protested her claim. The claims administrator for the Department of Employment Security (the Department) denied Turner's request, finding that the verbal altercation with the patient was within Turner's control to avoid; therefore, she was discharged for "misconduct connected with the work[]" and consequentially ineligible for benefits. Turner requested reconsideration of the determination, claiming that the patient verbally harassed her and she did not physically attack or threaten the patient. Following a telephonic hearing on September 30, 2014, the Department referee confirmed the denial of benefits.

¶ 4 During that hearing, the hospital's human resources officer, Taneshia Calhoun, testified that the records reflected Turner was discharged for the following reasons: implied threat of violence toward a patient, engaging in an obscene verbal altercation with a patient, demeaning a patient, jeopardizing the well-being of a patient, and failure to regard the rights of the patient. Calhoun testified that she did not witness the altercation or speak with Turner about the charges.

¶ 5 Hospital employee relations specialist, Rebecca Henllan-Jones, testified that the altercation between Turner and the patient took place at the front desk of the hospital's patient care area. Turner was later informed of the initiation of discharge proceedings by mail while she was on paid administrative leave. Henllan-Jones also testified that she was present at Turner's disciplinary hearing where Turner answered questions regarding the altercation and denied the events as reported by multiple witnesses, but admitted that she told the patient to come outside with her.

¶ 6 Henllan-Jones further testified that employees encountering harassment from patients should contact a manager or other individuals. She said that if no such individual is available, the employee should remove themselves from the situation, but not engage the patient. Henllan-Jones relayed that an employee is never alone "on the unit" and it would be appropriate to "remove themselves from the area." She explained that in this situation, rather than engaging the patient, Turner could have gotten help. She could have used the call lights at the front desk or the "IP phones" carried by charge nurses, retrieved a nurse herself, redirected the patient, or walked away. Henllan-Jones stated that, at the time of the incident, the nurses were at lunch but primarily still on the unit and could easily have been asked to intervene with the patient.

¶ 7 Henllan-Jones testified that the hospital prioritizes patient well-being. She explained that the hospital looks out for the patient first—that should be the "high priority[,] and an issue arises when its employees prioritize other work. Turner had been previously disciplined for communication issues with her manager, supervisor, and other employees, but the sole basis for her discharge was the altercation with the patient.

¶ 8 Turner testified that when the patient first walked out of her hospital room, Turner contacted the patient's nurse on the IP phone, but the nurse was on break. The patient then emerged for a second time, was upset about her pain medication, and verbally abused and threatened Turner. One of the nurse technicians, Cheryl Brown, then left to contact the patient's nurse, who did not come right away. Turner denied swearing or making the patient uncomfortable and believed that the witnesses who reported that she used profanities and became threatening to the patient were "all working together." She admitted to telling a nurse to unhook the patient from her intravenous machine, and to stating that she would show the patient "how much of a bitch I am." When asked what she meant by the statement, she responded, "[n]othing. I just told her, I'll show her how much of a bitch I am. It wasn't no intentions of it." Turner confirmed that at least two nurse technicians were at the front desk with her, but asserted she did not attempt to remove herself from the situation because there was no one to cover her unit and she would have been in trouble for "leaving [her] place of work." She stated that during this time, she was sending a fax or making copies in accordance with her other employment duties.

¶ 9 The Department referee found that a preponderance of competent and compelling evidence proved that Turner willfully and deliberately conducted herself in a manner so as to

injure the employer's interest and that her conduct constituted misconduct connected with her work. She was, therefore, ineligible for unemployment benefits. Turner appealed the decision to the Board.

¶ 10 The Board affirmed, finding that Turner "was discharged for engaging in an altercation with a patient against the employer's policies." The Board explained that "[i]n all cases where a worker comes in contact with their employer's customers in the course of their work, the worker is under a duty to conduct himself in a manner so as not to injure the employer's interest. The use of hostile, intimidating and vulgar language intentionally and substantially disregards an employer's interest." The Board concluded that the record and the law supported the Department referee's decision.

¶ 11 The circuit court of Cook County affirmed the decision of the Board and this appeal followed.

¶ 12 Prior to reaching the merits of Turner's appeal, defendants point out the procedural deficiencies in her brief under Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013), and request that we strike the brief, and affirm on that basis alone. Defendants' observation that Turner failed to comply with the rules governing appellate briefs is correct. Ill. S. Ct. R. 341, 342 (eff. Feb. 6, 2013). Her brief consists of handwritten pages of narrative with no points of authorities, issue stated, or citation to the record or supporting authority. Although Turner's *pro se* status does not excuse her from complying with the procedural mandates, the deficiencies in her brief do not deprive us of jurisdiction to entertain her appeal where we have the benefit of defendants' cogent

brief and can understand the issue raised. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 13 Initially, we observe that our review of administrative proceedings is limited to the final decision of the agency, and not that of the circuit court. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15. The Board's decision that Turner was ineligible for unemployment benefits because she was discharged for misconduct in connection with her work presents a mixed question of law and fact to which we apply the clearly erroneous standard of review. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). The agency's final decision will be deemed clearly erroneous where review of the record leaves the reviewing court with the definite and firm conviction a mistake was committed. *Id.*

¶ 14 Receipt of unemployment benefits is conditioned on eligibility under the Act and the claimant has the burden of proving eligibility. *Childress v. Department of Employment Security*, 405 Ill. App. 3d 939, 943 (2010). Under section 602(A) of the Act (820 ILCS 405/602(A) (West 2014)), an employee discharged for her misconduct in connection with her work is ineligible to receive unemployment benefits. Misconduct is defined as: (1) a deliberate and willful violation of (2) a reasonable rule or policy (3) that either harms the employer or other employees or has been repeated by the former employee despite a previous warning or other explicit instruction from the employer. *Phistry*, 405 Ill. App. 3d at 607.

¶ 15 In this appeal, we apply the clearly erroneous standard of review to determine whether the Board erred in determining that Turner was discharged for misconduct within the meaning of section 602(A). The record shows, in relevant part, that the hospital introduced evidence, through

Henllan-Jones' testimony at the administrative hearing, of its policy prioritizing patient well-being. Turner admitted that, during a verbal altercation with a patient who was upset about her pain medication, she called a nurse to have the patient unhooked from her IV machine, and said, "I'll show her how much of a bitch I am." She denied calling the patient names and claimed that the witnesses who reported otherwise were "all working together."

¶ 16 Misconduct requires violation of an existing rule or policy. *Jackson v. Board of Review of Department of Labor*, 105 Ill. 2d 501, 512-13 (1985). An employer may prove the existence of a reasonable rule or policy "by a commonsense realization that certain conduct intentionally and substantially disregards an employer's interests." *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006). Such a rule or policy is not required to be written or otherwise formalized. *Id.*

¶ 17 The evidence supports the finding that the hospital had a reasonable policy prioritizing patient well-being over an employee's job responsibilities. At the administrative hearing, Henllan-Jones testified that patient well-being is the hospital's high priority. She also testified that, as the hospital prioritizes the patient, an issue arises when an employee prioritizes other work over patient well-being. Further, common sense implies that a hospital employee intentionally and substantially disregards an employer's interest through the use of hostile and intimidating language toward a patient. See *Id.* at 558 (finding that abusive language toward coworkers could adversely affect the work environment). A reasonable rule concerns standards of behavior that an employer has a right to expect. *Jackson*, 105 Ill. 2d at 512-13. In this hospital setting, the employer has a right to expect that its employees will be receptive to its patients'

needs, place patients' needs above all, and refrain from using hostile, intimidating, or vulgar language towards its patients. At a minimum, it is reasonable to require that a hospital customer service representative should not become hostile with a patient and imply removal of intravenous medical care.

¶ 18 There is no question Turner's conduct, which included an implied threat of violence toward a patient and a verbal altercation with that patient, jeopardized the patient's well-being, thus violating the hospital's policy requiring employees to prioritize patient well-being. She excused her failure to "remove herself from the situation" by claiming that she was "still doing her job, which was making a fax." However, this in itself is a violation of the hospital's policy that patient well-being takes precedence over work. Her use of hostile and intimidating language towards the patient disregarded fundamental tenets of patient care and clearly violated a reasonable hospital policy.

¶ 19 The rule or policy violation must be willful. *Phistry*, 405 Ill. App. 3d at 607. Conduct is deemed willful where it constitutes a conscious act made in knowing violation of company rules. *Id.* Turner was a customer service representative who worked at the hospital for nearly nine years. It is inconceivable that in those nine years she remained unaware that the priority for a hospital employee is the well-being of their patients.

¶ 20 Furthermore, Turner denied using profanities or making the patient uncomfortable but admitted that she told nurses to "unhook her from her machine" and "I'll show her how much of a bitch I am." She did not deny her duty to prioritize patient well-being. Instead, she argued that she did not intend to act on the threat, apparently implying that because she did not intend to

follow through with the threat, the patient's well-being was not negatively affected. However, Turner's intentional use of hostile and intimidating language toward a patient intentionally and substantially disregarded her employer's interest in protecting patient well-being. See *Manning*, 365 Ill. App. 3d at 558. By common sense and years of experience at the hospital, Turner knew that failing to prioritize patient well-being was contrary to hospital policy. The evidence therefore shows her violation of the policy was willful.

¶ 21 Lastly, misconduct requires harm to the employer. *Phistry*, 405 Ill. App. 3d at 607. Whether an employer was harmed by the employee's conduct is viewed in the context of potential harm and does not require actual harm. *Manning*, 365 Ill. App. 3d at 557. Damage or injury to the employer's operations or goodwill constitutes harm under the Act. 56 Ill. Admin. Code § 2840.25(b) (West 2014). Turner's conduct carried the potential to harm patient and physician confidence in the hospital's staff and threaten future financial loss. The threat of future financial loss caused by the conduct by an employee is harmful to an employer. *Bandemer v. Department of Employment Security*, 204 Ill. App. 3d 192, 195 (1990). Turner admitted to using the vulgar and threatening language in the patient care area and the Board heard testimony that several witnesses had reported the altercation. The Board found that such language intentionally and substantially disregards an employer's interests and no record evidence supports a contrary conclusion. *Manning*, 365 Ill. App. 3d at 558. The record, therefore, reflects that Turner's conduct harmed the hospital within the meaning of the Act.

¶ 22 The evidence supports finding Turner willfully violated a reasonable hospital policy thereby causing harm to the hospital. We therefore conclude that the final determination of the

agency finding Turner was ineligible for unemployment benefits because she was discharged from the hospital based on misconduct connected with her work was not clearly erroneous, and affirm the circuit court of Cook County.

¶ 23 Affirmed.