

No. 1-15-1839

**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

JULIA L. SANDIFER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	No. 15 L 50248
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW;	)	
and SOUTH HOLLAND HOME LLC, c/o PERSONNEL	)	
PLANNERS DAVID PROSNITZ,	)	Honorable
	)	James M. McGing,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Determination of the Department of Employment Security affirmed where the agency determined that: (1) the claimant did not have good cause for failing to appear at the telephonic hearing; and (2) the claimant was ineligible for unemployment benefits when she was discharged because she failed to report to work without notifying her employer.

¶ 2 Plaintiff, Julia L. Sandifer *pro se*, 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

("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, Sandifer concedes that she failed to appear at the telephone hearing on her eligibility for unemployment benefits but argues that she should not have been denied benefits on that basis. Sandifer also contests the determination that she was ineligible for unemployment benefits based on the conduct for which she was discharged. We affirm.

¶ 3 Sandifer began working at South Holland Home LLC C/O Personnel Planners ("South Holland") as a certified nurse's assistant on June 30, 2014. She did not report to work on September 18, 2014, and she was one hour late the following day. She did not notify South Holland on either occasion and, as a result, was terminated on September 22, 2014.

¶ 4 Sandifer applied for unemployment insurance benefits from the Illinois Department of Employment Security ("Department"). A Department claims adjuster found that Sandifer was terminated for attendance but that the employer failed to provide information to support the discharge. The claims adjuster determined that she was not discharged for misconduct in connection with her work because her conduct did not violate a reasonable rule or policy. Sandifer was therefore eligible for unemployment benefits from December 14, 2014.

¶ 5 South Holland timely appealed the decision, and a telephonic hearing with a Department referee ("referee") was scheduled for 11 a.m. on January 27, 2015. The record contains a "Notice of Telephone Hearing" addressed to Sandifer and dated January 13, 2015. The notice includes instructions for requesting a continuance and states: "Your failure to answer the phone when the Administrative Law Judge calls may result in a finding against you."

¶ 6 The record reflects that on the day of the hearing the referee called Sandifer multiple times. He left messages at 11 a.m., 11:04 a.m., and 11:08 a.m. explaining who he was, where he was calling from, the nature of the call, and how to reach him. In the 11:08 a.m. message, the referee additionally stated, "I am going to have to go forward with just the Employer's testimony if I don't hear back from you soon." By 11:11 a.m. Sandifer had not responded and the referee conducted the hearing with South Holland in her absence.

¶ 7 At the hearing, Karen Sedwick, a business and human resources manager at South Holland, testified that Sandifer started working at South Holland as a part-time certified nurse's assistant on June 30, 2014. Sandifer did not come to work, as scheduled, on September 18, 2014, or notify South Holland that she would not be able to work her shift. South Holland had a written policy requiring notice from employees if they anticipate being absent from a scheduled shift. Sandifer received a handbook containing the policy when she was hired. This conduct termed "No call no show" was sometimes a terminable violation on the first offence and it was the reason for discharging Sandifer. She had no prior warnings for this offence. On the day following her "no call no show," Sandifer reported for her shift one hour late without notifying South Holland. This also played a role in the termination decision. Advance notice was important because South Holland needed to care for its residents "24/7" and Sandifer had to be replaced when she did not report to work as scheduled.

¶ 8 Gloria Heurta, a staffing and human resources coordinator for South Holland, testified that she was present when Sandifer arrived late for work on September 19, 2014. On that day, Sandifer provided a doctor's note stating that she had been under a doctor's care since September 15, 2014, and could return to work on September 20, 2014. Sandifer did not explain why she

failed to notify South Holland that she would be absent on the 18th or late the following day.

Heurta was shown a document submitted by South Holland in preparation for the hearing titled "corrective action notice rule violations[.]" Heurta confirmed that she was familiar with the document and that she and Sandifer signed it on September 22, 2014.

¶ 9 The document lists Sandifer's "No call no show" on September 18, 2014, and her arrival to work one hour late the following day without "notifying [the employer] in a timely manner." It also states, "MD – off till 9/20/14[.]" According to the document, the rule from the employee handbook section on corrective action that Sandifer violated was "Time [at] work" and termination was the "Action Taken[.]"

¶ 10 The referee's decision was mailed on January 28, 2014. The referee noted that Sandifer had not responded by the time he wrote the decision. The referee found the testimony of Huerta and Sedwick to be credible. The referee found that South Holland had a written policy requiring employees to provide notice to their employer in the event of an anticipated absence from a scheduled shift. The referee explained that an employer has a right to expect its workers to report to work as scheduled and prompt notification of an absence, unless notification is prevented by some compelling reason. In addition, "Absences cause disruption to the general operations of any business." The referee determined that Sandifer was discharged for misconduct connected with her work and was therefore ineligible for unemployment benefits under section 602(A) of the Act.

¶ 11 The record contains a handwritten letter "To Administrative Law Judge" signed by Julia Sandifer, and dated February 27, 2015. It objects to the referee's decision on the basis that Sandifer did speak with the referee on the date of the hearing. The letter states, "you said to me

that you were going with the other party and there were nothing I could do." It does not indicate a time for the conversation. The letter requests an appeal and concludes: "I do have rights."

Sandifer filed an appeal of the decision with the Board on March 2, 2015.

¶ 12 On March 31, 2015, the Board affirmed the decision of the referee. The board found that Sandifer failed to make herself available for the hearing and that she did not provide a reason for this failure. Although Sandifer asserted that she spoke to the referee, "It appear[ed] that [she] contacted the referee after he drafted the decision and entered it into the Department's IBIS system." The Board found that she "did not have good cause for failing to appear at the scheduled hearing" and the referee was not obligated to reopen the matter and allow Sandifer to present evidence. "On the basis of the existing record, [the Board] [found] that the decision of the referee was well-founded and supported by the facts and the law." The Board incorporated the referee's decision by reference.

¶ 13 Sandifer filed an action for administrative review. The circuit court of Cook County affirmed the decision of the Board and this appeal followed.

¶ 14 On appeal, arguing that she failed to appear at the telephone hearing for medical reasons Sandifer contests the resulting determination that she was ineligible for unemployment benefits. Sandifer also maintains that her conduct should not have resulted in the denial of her claim for unemployment benefits.

¶ 15 "In reviewing a decision by an administrative agency, we must review the final decision of that agency. Thus, we review the decision by the [Board], which made the Department's final determination regarding [Sandifer's] claim, not the decision of the referee or the circuit court."

*Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 15.

The standard of review applicable to the agency's decision depends on whether the question presented is one of fact, law, or a mixed question of law and fact. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). If an argument, issue, or defense is not presented in an administrative hearing, it is considered procedurally defaulted and may not be raised for the first time on administrative review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008); *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 23.

¶ 16 Initially, we address contentions Sandifer has raised for the first time in this appeal. Sandifer explains that she failed to appear for the hearing because her blood pressure medication caused her to fall asleep. Sandifer also claims to have informed her employer, at some unspecified time, that her doctor wanted to see her for an x-ray and other tests. She purportedly told her employer that, "if all was okay [she] may be able to return on September 17, 2014." She also recounts the treatment she received relating to her high blood pressure. The record reflects that Sandifer did not raise any of these matters in the administrative proceedings. We therefore hold that her explanation for failing to answer the referee's call and her claim that she notified her employer are procedurally defaulted. *Pesoli*, 2012 IL App (1st) 111835, ¶ 23.

¶ 17 In this appeal, Sandifer nevertheless contests the determination that she was ineligible for unemployment benefits. The Board concluded that Sandifer was ineligible for unemployment benefits because she was terminated for misconduct connected with her work based on the record containing evidence presented at the hearing in Sandifer's absence. We therefore review the Board's findings that: (1) the referee was not required to reopen the matter and allow Sandifer to present evidence and; (2) Sandifer lacked good cause for failing to appear at the hearing.

¶ 18 We review the Board's determination that the referee was not required to reopen the matter and allow Sandifer to present evidence for abuse of discretion. *Three Angels Broadcasting Network, Inc. v. Department of Revenue*, 381 Ill. App. 3d 679, 699 (2008). Decisions regarding the conduct of an administrative agency's hearing and the introduction of evidence are governed by an abuse of discretion standard and subject to reversal only if there is demonstrable prejudice to the party. *Id.* The procedures applicable when a party fails to answer the telephone when called for a hearing before a referee are codified in section 2720.255 of title 56 of the Illinois Administrative Code (56 Ill. Adm. Code 2720.255 (1997)). An appellee's failure to answer the telephone at the number provided to the referee "will cause the referee to issue a decision based on the evidence introduced by the appellant at the hearing and the evidence in the record." 56 Ill. Adm. Code 2720.255(b), (c) (1997).

¶ 19 Sandifer concedes that she failed to appear at the telephone hearing. The referee left three messages for Sandifer on the day of the hearing. The last message, warned Sandifer that the hearing would be conducted in her absence if she did not respond. By 11:11 a.m. Sandifer had not responded. In accordance with agency regulations, the referee conducted the hearing with South Holland and rendered a decision in light of the evidence presented. See 56 Ill. Adm. Code 2720.255(b) (1997). Accordingly, the record supports finding that the Board did not abuse its discretion in determining that the referee was not required to reopen the matter and allow Sandifer to present evidence.

¶ 20 The Board found that Sandifer did not explain why she failed appear for the hearing, and determined that she lacked good cause for that failure. Sandifer's appeal to the Board required her to "set forth the parts of the decision with which [she] disagree[d] and the specific reasons for

that disagreement." 56 Ill. Adm. Code 2720.300(b)(3) (1997). In that appeal, Sandifer's only contention was that she spoke with the referee on the day of the hearing. However, it appeared to the Board that she "contacted the referee after he drafted the decision and entered it into the Department's IBIS system." This finding is supported by Sandifer's letter in her appeal to the Board. It indicates that when she called the referee he stated that he was "going with the other party." Thus, the evidence supports the Board's determination that Sandifer had not explained her failure to appear at the hearing.

¶ 21 The record further reflects that Sandifer received notice of the hearing which included instructions for requesting a continuance and explained that her failure to appear could result in an adverse determination. In the absence of any explanation from Sandifer, we find that the Board did not commit reversible error when it concluded that Sandifer lacked good cause for failing to appear at the scheduled hearing and then rendered a determination based on the existing record. See *Tiggens v. Department of Employment Security*, 2013 IL App (1st) 121677, ¶14 (finding dismissal of plaintiff's appeal was not an abuse of discretion in light of plaintiff's failure to provide any explanation for not appearing at the hearing and failing to request a continuance or a rehearing).

¶ 22 We now address the Board's disposition of the merits of Sandifer's claim. The Board's decision that Sandifer 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.*

¶ 23 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.

¶ 24 An employee's conduct is deemed willful where the employee consciously acts in knowing violation of company rules. *Id.* A rule or policy governing the conduct of an employee which directly concerns the employment constitutes a reasonable rule or policy. *Jackson v. Board of Review of Department of Labor*, 105 Ill. 2d 501, 512 (1985). "[R]ules regarding absences from work without notifying the employer are reasonably related to employment and satisfy an element of misconduct." *Bandemer v. Department of Employment Security*, 204 Ill. App. 3d 192, 195 (1990). Harm to the employer can be shown where an employee's conduct causes the threat of future financial loss. *Id.*

¶ 25 The record shows, in relevant part, that Sandifer was discharged for two incidents. She failed to notify her employer that she would be absent from her scheduled shift. The following day, she arrived one hour late for her shift without notifying her employer in a timely manner. At the administrative hearing, Sedwick testified that South Holland had a written policy requiring

notice if employees anticipated being absent from a scheduled shift. She testified that the employee handbook provided to Sandifer when she was hired contained the policy. Sedwick testified that advance notice was important because South Holland served its residents "24/7" and Sandifer needed to be replaced when she did not report to work as scheduled. This evidence supports a finding that Sandifer willfully violated a reasonable policy thereby causing harm to her employer. We therefore conclude that the final determination of the agency finding Sandifer ineligible for unemployment benefits because she was discharged for misconduct connected with her work was not clearly erroneous.

¶ 26 Accordingly, we affirm the determination of the Board and the judgment of the circuit court of Cook County.

¶ 27 Affirmed.