

2019 IL App (1st) 180443-U

No. 1-18-0443

February 27, 2019

Third Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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KATRINA MANNNS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
	)	
v.	)	No. 17 L 51035
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY; and BOARD OF	)	Honorable
REVIEW,	)	James M. McGing,
	)	Judge Presiding.
Defendants-Appellees.		

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JUSTICE HOWSE delivered the judgment of the court.  
Justices Ellis and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where employee had numerous unexcused work absences and had knowledge of her employer's attendance policies, the Board's determination that the employee committed misconduct making her ineligible for unemployment benefits was not clearly erroneous.

¶ 2 Plaintiff Katrina Manns appeals *pro se* from the circuit court’s order affirming the decision of the Board of Review (the Board) of the Illinois Department of Employment Security (the Department) that she was not eligible for unemployment benefits due to repeated unauthorized absences from her job. On appeal, Manns seeks reversal of that decision, asserting she had valid reasons for her work absences. We affirm the decision of the Board denying unemployment benefits.

¶ 3 Manns was employed at the Ray Graham Association for People (the Association), a facility for developmentally disabled adults in Lisle. Manns worked as a direct support professional, providing medical and personal care to residents. Manns began working for the Association on October 31, 2016. She was suspended for one day without pay on June 5, 2017. She was discharged on July 10, 2017, but continued to work pending a termination meeting attended by a union representative. Her last day of work at the Association was on July 21, 2017.

¶ 4 In August 2017, Manns applied for unemployment benefits in Cook County, where she resided. The Association filed a timely protest, asserting Manns was ineligible for benefits because her employment was terminated due to her absenteeism.

¶ 5 A Department claims adjudicator conducted interviews with Manns and a representative of the Association. According to the claims adjudicator’s summary, Manns reported the cause of her discharge was that she had “missed too many days” and, after being injured at work, was on medication that made her “groggy” and “drowsy.” The claims adjudicator determined Manns’ conduct did not render her ineligible for benefits under section 602(A) of the Unemployment Insurance Act (the Act) (820 ILCS 405/602(A) (West 2016)) because her work absences were not deliberate or willful. The Association appealed that ruling.

¶ 6 On October 19, 2017, a Department referee conducted a telephone hearing with Dan Corrigan, the human resources manager; Erin Halden, who was Manns' supervisor and the assistant director of program support; and Manns. Corrigan testified Manns was discharged for missing work without accumulating sufficient leave time to cover those absences and for continued absences from work following two written reprimands. Corrigan described the disciplinary process as starting with oral warnings and progressing to written reprimands.

¶ 7 Halden testified Manns had told her verbally she could not come to work because someone in her family had a doctor's appointment or for a similar reason. Halden characterized those exchanges with Manns as not "in a manner of asking for permission" but "more just stating that she wouldn't be there." Due to the progressive nature of the discipline, Halden said Manns was "informed along the way that the potential was there for termination."

¶ 8 Manns testified she was aware the Association had an absenteeism policy and that points were assessed for absences from work. She stated she provided her employer with documentation of the appointments and thought her absences would be "dismissed" because they were not within her control. When the referee asked Manns if she understood she could be discharged for violating the attendance policy, Manns said it "wasn't really told to me" and denied receiving any warnings, stating that if she had been warned, she would not have missed more days.

¶ 9 Manns testified she missed work to take her daughter, who had diabetes, to the doctor and also to care for her husband, who had severe glaucoma and could not drive. Manns tried to speak to Halden on one occasion to say she would be late for work for five consecutive days to care for her daughter. Manns said she waited for Halden to meet with her but Halden "did not

come and ask” what Manns wanted to discuss. Manns said she had documentation regarding those days.

¶ 10 Manns further testified she was injured at work and placed on light duty. She took medication that made her groggy and missed days of work but called about those absences.

¶ 11 The Association submitted documents to the Department including its written attendance policy, a summary of Manns’ time cards, and records of the actions taken by the Association following Manns’ absences. The Association’s employee handbook contains an attendance policy, which states, in pertinent part:

“The employee must give notification of absence to his or her immediate supervisor or another individual designated by the immediate supervisor. Such notice should be given as soon as possible before the start of the employee’s work shift on the first day of absence and every day thereafter (unless this requirement is waived by [the Association]).”

¶ 12 The policy states an absence that is not preceded by notification is considered unexcused “unless the employee can document extenuating circumstances that prevented him/her from contacting a supervisor.” After three consecutive days in which an employee does not appear for work or call regarding their absence, without evidence of a serious illness, the employee “will be subject to corrective action up to and including discharge.” The employee handbook sets out a process of an oral reprimand, followed by a written reprimand, suspension and discharge. Manns signed a form acknowledging her receipt of the employee handbook.

¶ 13 The summary of Manns’ time cards indicates she had work absences on November 11, December 2, December 12 and December 28, 2016, that were documented as “unpaid time off -

unexcused.” On January 26, 2017, Manns received an oral reprimand documented in a memo from Shanta Tinsley, program manager. That document was signed by Manns. The document cautioned Manns to “ensure that you have banked enough benefit time to use for those days when you need to call off.” The document further stated that when Manns was scheduled to work, she was “being counted on as coverage.”

¶ 14 On February 2, Manns reported a work injury. During the following week, Manns took sick time and had an excused absence. Upon returning to work, she was placed on light duty. From February 10 to March 3, Manns left work early five times: once for a physical therapy session, once for another medical appointment, twice “in pain,” as noted by Halden, and once “due to appt - did not return.” On February 22, Manns did not come to work and did not notify her supervisor of her absence.

¶ 15 A March 6 memo from Halden stated the Association’s expectations for Manns’ work while on light duty and asked Manns to “provide us with a list of scheduled doctor and PT appointments.” That document was signed by Manns. On March 14, Manns did not come to work and did not notify her supervisor of her absence.

¶ 16 On March 22, Manns received a second oral reprimand, which was documented in a memo from Tinsley and another manager. That memo stated that, although Manns was on light duty, she was required to notify a supervisor if she would miss her scheduled shift and of the reason for her absence. Tinsley indicated on the memo that Manns had “refused to sign.” Both of the memos documenting the oral reprimands stated Manns’ future failures to follow the Association’s policies would lead to disciplinary action up to and “including discharge.”

¶ 17 The summary of Manns' time cards further indicates that on March 24, she called in sick but did not have enough benefit time to cover that absence. She was late to work five times between March 28 and April 6. Manns had unexcused absences from work on April 10 and April 14. On April 10, the summary stated "called in - no water in area." On April 14, the summary indicated that Manns called in but the notes stated "Not sure [] what reason was given." On April 17 and 18, Manns provided advance notice and took two excused days off because her husband had surgery.

¶ 18 On April 26, the Association issued a written reprimand to Manns, noting her use of "unauthorized time off on multiple occasions" during the previous month. The reprimand stated Manns should "ensure that she has enough benefit time to cover absences" and that the failure to do so would result in suspension. Manns refused to sign the written reprimand.

¶ 19 The summary of Manns' time cards indicates that from May until mid-June, Manns provided advance notice of five absences, which were excused. However, during that period, Manns was late to work seven times and had three unexcused days off because she called in sick. Manns did not use benefit time to cover those absences or have sufficient time to account for all of her absences.

¶ 20 On June 6, the Association issued a second written reprimand, stating Manns had taken unauthorized time off on May 10, May 16 and May 19. The document also noted the prior oral and written reprimands issued to her. Manns was suspended from work for one day. The second written reprimand stated that Manns' failure to ensure that she had benefit time to cover her absences going forward would result in termination. Manns refused to sign the second written reprimand.

¶ 21 The summary of Manns' time cards for the rest of June and July indicate she had several excused work absences. However, the summary indicates at least 12 absences that were unexcused and for which she lacked sufficient benefit time to cover those absences.

¶ 22 On July 10, the Association terminated Manns' employment. The form documenting that action cited Manns' ongoing absences. Because a meeting was required to take place with a representative of an employee union present, Manns' last day of work at the Association was on July 21, 2017.

¶ 23 Following the telephone hearing, on October 20, 2017, the Department referee issued an order finding Manns ineligible to receive benefits under section 602(A)(3) of the Act (820 ILCS 405/602(A)(3) (West 2016)). The referee found Manns had notice of the Association's written absenteeism policy "by virtue of having received prior warning under the policy" and pursuant to that policy, employees could not exceed a certain number of absences. The referee determined Manns was discharged after being absent despite having received a written warning. The referee found Manns had missed work to take her family members to appointments instead of scheduling those appointments "around work or obtain[ing] permission to be absent." The referee concluded that because Manns had not made a reasonable effort to "remedy the reason or reasons for the violations" and did not show the reasons for her absences were outside her control, she engaged in misconduct related to her work based on repeated violations of the Association's attendance policy.

¶ 24 Manns appealed to the Board, which affirmed the referee's decision in a written decision on November 27, 2017. Manns submitted a written argument to the Board, asserting she was aware of her verbal reprimands but had been injured on the job and took medication that made

her lightheaded, causing her to call in sick at times. The Board acknowledged Manns' written contentions but stated those arguments would not be considered because Manns did not submit her documents to the Association as required by administrative hearing rules.

¶ 25 The Board determined Manns was terminated for excessive absenteeism and tardiness. The Board noted Manns' claim that her absences were due to illnesses of her husband and daughter and also due to her own injury and that Manns said she needed to take her family members to medical appointments. The Board found Manns had been informed of the Association's attendance policy, had received written warnings, did not seek excused absences and had not provided a compelling reason for her excessive absences and tardiness.

¶ 26 The Board noted Manns provided no medical verification to support her testimony and did not "arrange time off in advance for her medical appointments." The Board determined Manns' conduct resulted in a willful and deliberate violation of the Association's attendance policy and that Manns' misconduct, as defined by sections 602(A) and 602(A)(3) of the Act, had been shown by a preponderance of the evidence. Accordingly, the Board found Manns ineligible for unemployment benefits.

¶ 27 On December 13, 2017, Manns filed a *pro se* complaint for administrative review in the circuit court, which affirmed the Board's decision on February 28, 2018. Manns filed a timely notice of appeal to this court.

¶ 28 Initially, we note that Manns argues in her *pro se* brief that the administrative and circuit court decisions were unfair but does not include any legal argument or citations to the law. *Pro se* litigants are held to the same pleading and practice standards as litigants represented by counsel (*In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009)), and this reviewing court is



entitled to have the issues clearly defined, with relevant authority cited and a cohesive legal argument presented. See Ill. S. Ct. Rules 341(h)(6) and (h)(7) (eff. Jan. 1, 2016); *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. However, the substance of Manns' brief does not bar our review of this appeal, as she essentially disputes the conclusions reached by the Board, contends her absences were justified and asserts that she should not have been discharged from her employment.

¶ 29 The Act's main purpose is to alleviate the economic insecurity and burden caused by an involuntary loss of employment; thus, the Act is "intended to benefit only those persons who become unemployed through no fault of their own." 820 ILCS 405/100 (West 2016); *Jones v. Department of Employment Security*, 276 Ill. App. 3d 281, 284 (1995). Disqualification from receiving unemployment benefits is intended to exclude those who intentionally commit conduct which they know is likely to result in their termination. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 27. Although Manns contends she should not have lost her job, the discharge of her employment is not at issue here; this appeal involves the separate question of whether she is eligible to receive unemployment benefits. *Id.*; see also *Zuaznabar v. Department of Employment Security*, 257 Ill. App. 3d 354, 359 (1993) (noting that disqualification from benefits for misconduct under the Act is subject to a higher burden than proving that the employee was rightly discharged from employment). The employer has the burden of proving the misconduct that led to the employee's disqualification for benefits. *Petrovic*, 2016 IL 118562, ¶ 28.

¶ 30 The Board is the trier of fact in cases involving claims for unemployment compensation, and we review the findings of the Board, rather than the findings of the Department referee or the

circuit court. *Id.* ¶ 22. This court reviews questions of law *de novo*; however, the factual findings of the Board will be affirmed unless they are against the manifest weight of the evidence. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Whether an employee was disqualified from receiving unemployment benefits due to misconduct presents a mixed question of law and fact, to which this court applies a “clearly erroneous” standard of review. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). The Board’s decision is clearly erroneous only where a review of the record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *Id.*

¶ 31 In Illinois, employers have a right to expect a certain standard of conduct from employees in matters directly concerning their employment. *Selch v. Columbia Management*, 2012 IL App (1st) 111434, ¶ 43. Misconduct under the Act is defined as: (1) the deliberate and willful violation (2) of a reasonable rule or policy of the employer (3) that harms the employer or other employees or has been repeated by the former employee despite a warning or the employer’s explicit instructions. 820 ILCS 405/602(A) (West 2016); *Baker v. Department of Employment Security*, 2014 IL App (1st) 123669, ¶ 15.

¶ 32 The current version of the Act, which took effect in January 2016, includes that definition of misconduct. 820 ILCS 405/602(A) (West 2016). Section 602(A) further states that in addition to that definition, there are eight circumstances that shall constitute misconduct, with one being an employee’s knowing violation of an employer’s attendance policies. 820 ILCS 405/602(A)(3) (West 2016). Subsection 602(A)(3) provides that the employee’s knowing violation of attendance policies constitutes misconduct if it follows a written warning for an attendance violation “unless the individual can demonstrate that he or she has made a reasonable effort to

remedy the reason or reasons for the violations or that the reason or reasons for the violations were out of the individual's control." *Id.*

¶ 33 Here, the Board found Manns' violation of attendance policies satisfied the standard set out in section 602(A)(3). Under the definition in the Act, that determination was not clearly erroneous, as evidence was presented that Manns had received written reprimands.

¶ 34 The Board also found that Manns' conduct met the broader definition of misconduct in section 602(A). That standard requires the employee's act or omission to involve a reasonable rule or policy. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 173-74 (2008). A rule or policy is reasonable when it contains standards of behavior that an employer has a right to expect. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006). An employee's failure to abide by an employer's reasonable rules may justify termination. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 25.

¶ 35 Attendance policies that prohibit excessive absenteeism and tardiness have been deemed reasonable under the Act. *Nichols v. Department of Employment Security*, 218 Ill. App. 3d 803, 811 (1991) (and cases cited therein). Here, the Association presented evidence of its attendance policy and procedures for receiving excused time off from work, as stated in its employee handbook, including its "Attendance Expectations." That section provides that employees "are expected to arrive at work on time and be ready to start working as soon as their shift begins." It further states that employees can accrue sick leave time as a benefit and are required to notify a supervisor of any absence as soon as possible before the start of the employee's work shift. Absences that resulted from the failure to notify a supervisor or appear at work were considered

unexcused. The Association presented evidence of its reasonable rules and policies regarding work attendance.

¶ 36 Moving to the next element of misconduct under the Act, an employee willfully violates a work rule or policy when the employee is aware of and consciously disregards that rule. *Petrovic*, 2016 IL 118562, ¶ 36. Although such a rule or policy need not be written or otherwise formalized, as was the case here, the rule or policy must have been clearly expressed to the employee such that the employee is on notice that she could be fired for violating it. *Id.* ¶ 27; *Caterpillar, Inc. v. Department of Employment Security*, 313 Ill. App. 3d 645, 654 (2000). Here, along with its employee handbook, the Association presented a form signed by Manns acknowledging her receipt of the handbook. Thus, evidence was offered that Manns was aware of the attendance policies.

¶ 37 In addition, Manns received progressive discipline including oral reprimands, written reprimands and suspension prior to her ultimate termination. Although Manns refused to sign some of the documents that memorialized that process, she must have been aware of the discipline imposed against her. As part of that discipline, Manns was reminded numerous times that she had to accumulate sufficient leave time to apply to any work absences. Manns did request, and was granted, several days off and received excused absences using the correct procedure. Still, on numerous occasions as set out above, Manns was late, missed work without an excuse or called in to seek time off without having accumulated enough leave time. Thus, Manns was aware of the Association's rules and policies and deliberately and willfully violated those rules.

¶ 38 The third and final requirement of misconduct under the general definition in the Act is that the violation either must have either (1) harmed the employer; or (2) been repeated by the employee despite previous warnings. *Czajka*, 387 Ill. App. 3d at 176. Although only one of those standards must be met, we find they are both met here. Absences and tardiness always harm an employer because they “cause disruption to the general operations of any business.” 56 Ill. Admin. Code § 2840.25(b). Moreover, Manns was repeatedly absent and did not follow the Association’s procedures for excused absences even after being reprimanded orally and in writing and being issued a one-day suspension.

¶ 39 In conclusion, the Board’s decision to deny Manns unemployment benefits, both under section 602(A)(3) of the Act or the general definition of “misconduct” in section 602(A) of the Act, was not clearly erroneous. Accordingly, the judgment of the Board is affirmed.

¶ 40 Affirmed.