

2020 IL App (1st) 191269-U

No. 1-19-1269

Order filed May 28, 2020

Fourth 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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAMAR C. CURTIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE DEPARTMENT OF EMPLOYMENT SECURITY,)	No. 19 L 50186
THE DIRECTOR OF EMPLOYMENT SECURITY, THE)	
BOARD OF REVIEW, and FULTON MARKET)	
KITCHEN, LLC c/o PERSONNEL PLANNERS DAVID)	
PROSNITZ,)	Honorable
)	James M. McGing,
Defendants-Appellees.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where plaintiff was discharged for misconduct connected with his work, the Board of Review's denial of unemployment insurance benefits is affirmed.
- ¶ 2 Plaintiff Lamar C. Curtis appeals *pro se* from an order of the circuit court of Cook County affirming a final administrative decision by defendant, the Board of Review of the Department of

Employment Security (Board). The Board found that plaintiff was discharged for misconduct connected with his work, and thus, ineligible for unemployment insurance benefits. On appeal, plaintiff challenges the denial of benefits. We affirm.¹

¶ 3 The record shows that plaintiff was employed as a server at the Fulton Market Kitchen restaurant from June 5, 2017, until November 3, 2018. On November 11, 2018, plaintiff applied to the Department of Employment Security (Department) for unemployment insurance benefits. The Department issued a “Notice of Claim to Benefit Chargeable Employer” to the restaurant which indicated that plaintiff’s reason for separation was that he had been laid off from his job due to a lack of work.

¶ 4 Fulton Market Kitchen protested plaintiff’s claim for benefits. Nina Fowler, a claims analyst and hearing representative with Personnel Planners, the restaurant’s authorized agent, submitted a written response to the Department stating that plaintiff had voluntarily quit his job. Fowler stated that plaintiff abandoned his job when he failed to report to work. She also stated that the restaurant had received several complaints about plaintiff’s behavior. Plaintiff was instructed to complete his checkout and wait for the general manager in the office so they could talk. Plaintiff checked out, but left the restaurant and did not return. Fowler indicated that continuing work was available at the restaurant, and that plaintiff did not take any actions to avoid quitting.

¶ 5 Attached to the written protest was a form completed by Joseph Catterson, director of operations for Fulton Market Kitchen. Catterson indicated that plaintiff had quit his job. Catterson stated that on November 3, the restaurant received complaints from customers about plaintiff’s

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

attitude, which was something plaintiff had been previously warned about. Plaintiff's supervisor, Stu Mitchell, instructed plaintiff to complete his checkout and wait in the office for Mitchell to speak with him. Plaintiff completed his checkout, then left the restaurant without speaking to Mitchell. Management did not schedule plaintiff to work the following week. Plaintiff never called the restaurant to question why. Consequently, Catterson determined that plaintiff had abandoned his job. Catterson also indicated that plaintiff had violated a known policy or rule. He noted that on October 27, 2018, plaintiff had been issued a verbal warning.

¶ 6 Also attached to the restaurant's protest was an "Employee Disciplinary Action Form" completed by Mitchell, general manager of Fulton Market Kitchen, on November 3. Mitchell indicated that plaintiff committed a "Work Quality" violation on November 3. Mitchell stated that plaintiff had received several previous warnings about his general attitude when on the restaurant floor, and "yet again," received complaints from several customers calling him "rude" and accusing him of being "short" with them. Mitchell stated that he confronted plaintiff outside the restaurant about the complaints and told plaintiff that he was transferring plaintiff's remaining tables. Mitchell instructed plaintiff to complete his checkout and wait for him downstairs where they could talk. Five minutes later, Mitchell went to the office, and plaintiff was gone. Mitchell also indicated that he had issued plaintiff a previous verbal warning on October 27.

¶ 7 A Department claims adjudicator conducted an initial telephone interview with plaintiff to assess his eligibility for benefits. During the interview, plaintiff stated that he was discharged by Mitchell on November 3. Plaintiff stated that he found out he was discharged when he was removed from the work schedule, and he was never given a reason for his discharge. Plaintiff stated that the final incident occurred on November 3 when a customer complained that he was

rude. At the beginning of a meal, a customer requested separate checks for her table of seven guests. Plaintiff informed her that the restaurant did not issue separate checks. At the end of the meal, the customer again requested separate checks. Plaintiff stated that he politely told her that the restaurant did not issue separate checks, and the customer became upset. She became further upset because gratuity was added to the check. The customer also complained that the wait for food and drinks was too long. The customer complained to management, which compensated the customer for part of her meal. Plaintiff stated that Mitchell directed him to check out and report to the office. In the office, plaintiff spoke with Catterson and Chris, the executive chef. Catterson told plaintiff that he had been rude to a customer. Plaintiff explained to Catterson that he was not rude, but instead, the customer did not like what plaintiff had told her.

¶ 8 Plaintiff told the claims adjudicator that the restaurant's policy provided that only one check is issued per table, and separate checks are not issued. The restaurant's policy further provided that a gratuity of 20% is added to the bill for tables with more than six guests. This policy is written on the menu and appears on the restaurant's website. Plaintiff stated that he helped the guests at the table determine how much each of them owed and ran their credit cards separately. Plaintiff stated that he did everything he could to accommodate the guests and also followed restaurant policy.

¶ 9 Plaintiff further stated that when Catterson stopped speaking to him and began working on his computer, plaintiff left the restaurant. Plaintiff stated that he was removed from the work schedule for the next week. About 10 days later, plaintiff attempted to login to the restaurant's computer to pick up a shift and could not login. Plaintiff then realized that he had been fired. Plaintiff acknowledged that he knew he could be discharged if he was rude to the guests.

¶ 10 After speaking with plaintiff, the claims adjudicator telephoned Fowler and left a message asking her to return the call with any further details regarding the final incident, warnings, policy violations, acknowledgment of the policy, and any action taken by plaintiff to remain employed. Fowler sent the claims adjudicator an email she received from Catterson. Catterson stated that on plaintiff's last night of employment, Mitchell instructed plaintiff to complete his end-of-night checkout and wait in the office to speak with him. Plaintiff completed his server report and left the restaurant without speaking to Mitchell. The restaurant had received previous complaints and had prior issues regarding plaintiff's attitude toward customers. Mitchell told Catterson that he intended to "write up" plaintiff and suspend him for one week. Mitchell did not have the opportunity to speak with plaintiff and did not discharge him. Catterson briefly spoke with plaintiff about the incident, but did not discharge him. Catterson stated that plaintiff "chose to insubordinately leave the restaurant." Consequently, Mitchell left plaintiff off the work schedule for the following week. When Mitchell and Catterson did not hear from plaintiff, they assumed he had chosen to leave his position. At least a week passed before plaintiff was switched to inactive status on the restaurant's computer, which would have blocked his access. The computer indicated that plaintiff last logged in on November 11, 2018. Presumably, plaintiff then saw that he had not been scheduled to work the following week as well.

¶ 11 The claims adjudicator issued a written determination finding that the evidence showed that plaintiff was discharged from Fulton Market Kitchen because he reported to the office as instructed and talked to the operations manager, but did not wait to speak with the general manager before leaving the restaurant. The adjudicator determined that plaintiff's conduct that resulted in his discharge was not deliberate or willful, and therefore, plaintiff was eligible to receive

unemployment insurance benefits. In addition, the adjudicator noted that after the investigation was complete, it was determined that the proper issue in this case was whether or not plaintiff was discharged for misconduct connected with his work pursuant to section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2018)). Accordingly, the adjudicator found that plaintiff could not be found ineligible for benefits for voluntarily leaving his job pursuant to section 601(A) of the Act.

¶ 12 Fulton Market Kitchen, through David Prosnitz of Personnel Planners, filed a written request for reconsideration of the claims adjudicator's determination and an appeal to the Department referee. After reconsideration, the claims adjudicator again concluded, based on her original factual findings and reasoning, that plaintiff was eligible to receive benefits. The restaurant's appeal was then filed with the Department referee for a telephone hearing.

¶ 13 An administrative law judge (ALJ) conducted a telephone hearing to consider Fulton Market Kitchen's appeal. In her opening remarks, the ALJ stated that the issue presented in this case was whether plaintiff was discharged for misconduct pursuant to section 602(A) of the Act. Mitchell testified under oath that it was his "impression" that plaintiff had voluntarily left his job. On November 3, near the end of plaintiff's shift, Mitchell transferred plaintiff's tables to another server and told plaintiff to meet him downstairs to discuss his behavior that night. When Mitchell went downstairs, plaintiff had already left the restaurant. Mitchell had no contact with plaintiff after that date. Mitchell never told plaintiff that he was discharged. Mitchell testified that he intended to suspend plaintiff for a week, and thereafter, meet with plaintiff to discuss the complaints and attempt to reach a resolution. If plaintiff had stayed and met with Mitchell, his job would have been available for him. Plaintiff had received several prior warnings for similar

behavior. The only documented warning occurred on October 27 when plaintiff was given a verbal warning due to complaints that he was being rude to guests during an event at the restaurant. Mitchell drafted a written warning on November 3, but it was never issued to plaintiff because he left the restaurant before meeting with Mitchell.

¶ 14 Catterson testified at the hearing that he never spoke with plaintiff after November 3.

¶ 15 Plaintiff testified that he was currently employed and had been working for six weeks. Plaintiff testified that he was removed from the schedule at Fulton Market Kitchen “due to lack of work.” Plaintiff had been working five shifts per week at the restaurant. On November 3, plaintiff worked his entire shift. Plaintiff was told that he was going to be removed from the floor and that his tables were going to be transferred to another server, but that never happened because he completed his shift. Mitchell told plaintiff that he and Catterson wanted to meet with plaintiff. Plaintiff testified that “at the end of the shift I was not told to go downstairs, I was told they wanted to meet with me.” Moments later, plaintiff testified that after he completed his “cash-out,” he went outside and saw Mitchell, who “told me to go meet Joe downstairs.” Plaintiff went downstairs and asked Catterson what the complaint was about. Catterson replied that it was a “general complaint” that the food and drinks took too long, that the guests could not receive separate checks, and that they had to pay a gratuity. Catterson also told plaintiff that the guests felt that he was being “snippy” with them. Plaintiff asked Catterson to be more specific. Catterson declined to elaborate and said that was what the complaint was about. Catterson then stopped talking. Plaintiff testified that he finished his cash-out, clocked out, and left the restaurant. Catterson did not say anything to plaintiff about his employment status.

¶ 16 The following day, plaintiff looked at the work schedule for the next week and saw that his name was not on it. Plaintiff texted Mitchell and Catterson and asked that another server or bartender pick up his paycheck for him. Neither Mitchell nor Catterson responded to him. Plaintiff also asked a bartender, Fidel, to pick up his check, and he did. Another server, Alison Hochs, emailed plaintiff to ask if he could work one of her shifts. Plaintiff logged into the restaurant's database to pick up the shift and saw that his name had been removed from the computer. Plaintiff made no further attempts to contact Mitchell or Catterson. He surmised that if he was no longer on the work schedule, he no longer worked there. Plaintiff further testified that he "was under the impression" that he was being fired during his meeting with Catterson. Plaintiff acknowledged that "[e]verything was left up in the air" and he did not know his work status.

¶ 17 On cross-examination, plaintiff testified that he could not recall the date that he attempted to login to the computer to pick up Hochs' shift, but believed it was around November 10 or 11. He further testified that, during their discussion, Catterson never mentioned that he or Mitchell wanted to speak with plaintiff that night.

¶ 18 In rebuttal, Mitchell testified that he did not direct plaintiff to speak with Catterson. Mitchell sent plaintiff downstairs to complete his checkout with Catterson, but told plaintiff that both he and Catterson would meet with him downstairs. Mitchell acknowledged that plaintiff was replaced on the work schedule for the following week. Mitchell explained that because plaintiff did not reach out to him or Catterson about the final incident, plaintiff's name remained on the schedule site as inactive for a couple of weeks. Mitchell did not recall receiving a text message from plaintiff asking to discuss the matter or requesting his paycheck. Plaintiff texted Mitchell stating that he was allowing Fidel to pick up his check, but did not say anything else.

¶ 19 Catterson testified in rebuttal that his conversation with plaintiff was not the meeting for which plaintiff was asked to remain at the restaurant. Mitchell told Catterson that he had asked plaintiff to wait downstairs to speak with him. Catterson was sitting at his desk working when plaintiff came downstairs to do his checkout. Plaintiff then asked Catterson some questions about the customer's complaint. Catterson's expectation was that they would be meeting with Mitchell. Catterson did not recall telling plaintiff that they were waiting for Mitchell.

¶ 20 In closing, Fowler argued that plaintiff was given a directive by his manager, Mitchell, to meet with him downstairs to discuss the complaints received that day. She argued that plaintiff chose not to stay, and Mitchell did not hear from him until he requested his paycheck. Fowler argued that plaintiff's request for unemployment benefits should be denied.

¶ 21 The ALJ issued a written decision affirming the claims adjudicator's determination, and finding plaintiff eligible to receive unemployment insurance benefits. The ALJ found that it was not established by a preponderance of the evidence that plaintiff was discharged for misconduct as defined under section 602(A) of the Act. The ALJ found that plaintiff credibly testified about the chronology of events which led to his separation from employment. Specifically, the ALJ found that plaintiff did not know that he was supposed to speak with both Mitchell and Catterson. The ALJ stated that plaintiff left the meeting with Catterson after Catterson completed his warning to plaintiff and returned to work. The ALJ stated that if plaintiff needed to take additional steps, the employer should have told him during the meeting or responded to his text messages. The ALJ noted that plaintiff was removed from the work schedule and no longer had access to the restaurant's computer, and therefore, found that plaintiff was discharged by his employer. The ALJ further found that the employer did not present any testimony or evidence that warranted reversal

of the adjudicator's determination. The ALJ found that plaintiff's actions did not constitute a deliberate and willful disregard of the employer's interests. Accordingly, the ALJ concluded that plaintiff's discharge was not due to misconduct connected with his work, and therefore, he was eligible to receive benefits. The ALJ further noted that the "new provisions" of section 602(A) subsections (1) through (8) did not apply in this case.

¶ 22 Fulton Market Kitchen appealed the ALJ's decision to the Board. The restaurant argued that management intended to suspend plaintiff for one week, and had no intention to discharge him on the date of the incident. The restaurant argued that plaintiff was not discharged from employment, but instead, quit after he left the restaurant and did not contact his employer. Consequently, the restaurant argued that plaintiff should be denied benefits.

¶ 23 The Board reviewed the record, including the transcript from the telephone hearing. It found that the record adequately set forth the evidence, and that no further evidentiary proceedings were necessary. The Board found that plaintiff was discharged by his employer due to his failure to meet with Mitchell on November 3. In its factual findings, the Board stated that the employer had received complaints from guests about plaintiff's behavior. The general manager instructed plaintiff that, due to his behavior at work that day, he wanted to meet with plaintiff. The Board found that plaintiff failed to meet with the general manager as instructed, and thereafter, was removed from the schedule. The Board pointed out that plaintiff initially testified that he was supposed to meet with Mitchell and Catterson, but subsequently testified that he was supposed to meet with Catterson only, and did so. The Board found that plaintiff's testimony as to who he was supposed to meet with was not credible in light of the inconsistencies. The Board further found that Mitchell credibly testified that he instructed plaintiff to meet with him, and that plaintiff failed

to comply with that instruction. The Board found that the evidence showed that the employer's instruction to plaintiff was reasonable and lawful, and that plaintiff's refusal to comply was not due to a lack of ability, skills or training, nor would obeying the instruction have resulted in an unsafe act. The Board concluded that the evidence supported a finding of misconduct pursuant to section 602(A)(5) of the Act. Accordingly, the Board set aside the ALJ's decision and ruled that plaintiff was not eligible to receive unemployment insurance benefits.

¶ 24 Plaintiff appealed the Board's ruling to the circuit court of Cook County. On June 14, 2019, the circuit court entered a written order affirming the Board's decision. The court noted that the employer initially claimed that plaintiff had voluntarily left his job, but that the Board correctly determined that this case involved an issue of misconduct. The court further noted that, although it would have ruled differently, the Board found plaintiff's testimony not credible. Thus, the court found that based on the evidence in the record, the Board's decision was not clearly erroneous.

¶ 25 On appeal, plaintiff, *pro se*, challenges the denial of benefits by the Board. Plaintiff argues that the trial court erred because it failed to review the entire common law record and relied only on the Board's decision. Plaintiff contends the court's ruling was against the manifest weight of the evidence and not supported by the record. Plaintiff also argues that the trial court was incorrect when it stated that his employer "initially" claimed that he voluntarily left his job because throughout the proceedings his employer always maintained that he had quit. Plaintiff claims that the trial court's review of the facts was erroneous, and that the Board's decision denying him benefits should be overturned. Plaintiff acknowledges that the Board found his testimony not credible, but asserts that the Board could not have reached that conclusion if all five of its members had read the entire record. He argues that he followed Mitchell's instruction and went downstairs

to the office and met with Catterson. Plaintiff further argues that the only misconduct reported by his employer involved guest complaints, which related to his job performance or quality of his work, and thus, did not disqualify him from receiving benefits. Plaintiff requests that his case be remanded to the Board to conduct a fact-finding hearing to determine if his separation from work was voluntarily or involuntary, and if the reason he left work was because he was terminated due to guest complaints, terminated for failing to follow his manager's directive, or he voluntarily quit.

¶ 26 Defendants respond that the Board's decision that plaintiff was discharged for misconduct pursuant to section 602(A)(5) of the Act was not against the manifest weight of the evidence or clearly erroneous where the evidence showed that plaintiff did not obey Mitchell's reasonable instruction to meet with him. Defendants point out that this court does not review errors allegedly made by the trial court, but instead, reviews the decision of the Board. Defendants also assert that it is the Board, not the employer, who determines whether a claimant voluntarily left his job or was discharged. Defendants argue that throughout the record the employer consistently stated that plaintiff was told to report to the office to meet with Mitchell, not Catterson, and that plaintiff left the restaurant without doing so. Defendants further argue that the Board correctly found that plaintiff's testimony was inconsistent, and therefore, not credible, and that the employer's evidence was consistent throughout the record and credible.

¶ 27 Plaintiff is challenging the denial of unemployment insurance benefits. This court reviews the final decision of the Board rather than that of the circuit court. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 22. The Board's factual findings are considered *prima facie* true and correct, and will not be disturbed unless they are against the manifest weight of the evidence. *520 South Michigan Avenue Associates v. Department of Employment Security*, 404 Ill.

App. 3d 304, 312 (2010). Under this standard, the Board’s factual findings “must stand unless ‘the opposite conclusion is clearly evident.’ ” *Id.* at 313 (quoting *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998)). Where the record contains any evidence that supports the Board’s factual findings, they are not against the manifest weight of the evidence and must be sustained. *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16.

¶ 28 It is the Board’s responsibility to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Reviewing courts are precluded from reweighing the evidence, resolving conflicts in the testimony, or evaluating the credibility of the witnesses. *Woods*, 2012 IL App (1st) 101639, ¶ 16. Nor may a reviewing court substitute its judgment for that of the Board. *520 South Michigan Avenue*, 404 Ill. App. 3d at 317. If the issue on review merely involves conflicting testimony and witness credibility, the Board’s determination should be sustained. *Id.* at 318.

¶ 29 Whether an employee was properly terminated due to misconduct, and thus, ineligible for unemployment benefits, is a mixed question of law and fact that is reviewed under the clearly erroneous standard. *Petrovic*, 2016 IL 118562, ¶ 21. The Board’s decision is clearly erroneous where the court reviews the record and definitively concludes that a mistake has been made. *Id.*

¶ 30 Under section 602(A) of the Act, a person who is discharged by his employer for misconduct connected with his work is not eligible to receive unemployment insurance benefits. *Id.* ¶ 25. The Act defines “misconduct” as:

“the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual’s behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.” 820 ILCS 405/602(A) (West 2018); *Petrovic*, 2016 IL 118562, ¶ 25.

¶ 31 In 2016, the legislature amended section 602(A) by adding an enumerated list of eight work-related circumstances under which an employee is disqualified from receiving benefits. *Petrovic*, 2016 IL 118562, ¶ 37, n.3 (citing Pub. Act 99-488 (eff. Jan. 3, 2016)). In addition to the above definition, the statute now further provides:

“The previous definition notwithstanding, ‘misconduct’ shall include any of the following work-related circumstances:

* * *

5. Refusal to obey an employer’s reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act.” 820 ILCS 405/602(A)(5).

¶ 32 Here, we find that the Board’s determination that plaintiff refused to obey a reasonable instruction from his employer was not against the manifest weight of the evidence. Documents in the record and testimony at the telephone hearing from Mitchell and Catterson show that on the night of November 3, guests at Fulton Market Kitchen complained to restaurant management that plaintiff had been rude and short with them. The restaurant had received several prior complaints about plaintiff’s behavior, and management had previously warned defendant several times about his attitude towards the guests. One week earlier, on October 27, Mitchell issued plaintiff a verbal

warning regarding his behavior after guests attending an event at the restaurant complained that plaintiff was being rude. After receiving complaints “yet again” on November 3, Mitchell instructed plaintiff to complete his checkout and wait for him in the office so they could discuss the complaints. The record shows that when plaintiff went downstairs to the office, he encountered Catterson, who was working. Plaintiff completed his checkout, then questioned Catterson about the complaints. After a brief general discussion about the substance of the complaints, Catterson stopped speaking with plaintiff and returned to his work. There was no discussion between plaintiff and Catterson regarding plaintiff’s work status. Plaintiff then left the restaurant without speaking with Mitchell. When Mitchell arrived at the office five minutes after asking plaintiff to meet him there, plaintiff was already gone. Mitchell removed plaintiff from the work schedule for the following week, intending to suspend him for one week. However, when management did not hear from plaintiff, except to request his paycheck, he was changed to inactive status. Neither Mitchell nor Catterson had any further contact with plaintiff. During his interview with the adjudicator, plaintiff acknowledged that he knew he could be discharged if he was rude to the guests. The record therefore reveals that the Board’s decision that plaintiff was discharged for misconduct due to his failure to follow his employer’s reasonable instruction to meet with him was supported by the evidence. *Woods*, 2012 IL App (1st) 101639, ¶ 16.

¶ 33 Plaintiff’s arguments that the circuit court failed to review the entire record, that its review of the facts was erroneous, and that the court’s ruling was against the manifest weight of the evidence are without merit. In administrative review cases involving eligibility for unemployment benefits, this court does not review the findings or order of the circuit court, but instead, reviews the final decision of the Board. *Petrovic*, 2016 IL 118562, ¶ 22.

¶ 34 In addition, plaintiff's challenge to the Board's finding that his testimony was inconsistent and not credible is unpersuasive. The Board found that, at the telephone hearing, plaintiff initially testified that he was supposed to meet with Mitchell and Catterson, but subsequently testified that he was supposed to meet with Catterson only, and did so. In light of the inconsistency, the Board found plaintiff's testimony not credible. The record shows that the Board's review of plaintiff's testimony was accurate. Further, the Board found that Mitchell's testimony that he instructed plaintiff to meet with him, and that plaintiff failed to comply with that instruction, was credible. It was the Board's responsibility to determine the credibility of plaintiff, Mitchell and Catterson, and this court will not disturb that determination. *Woods*, 2012 IL App (1st) 101639, ¶ 16; *520 South Michigan Avenue*, 404 Ill. App. 3d at 318.

¶ 35 The Board found that Mitchell's instruction to plaintiff was reasonable and lawful, and that plaintiff's refusal to comply was not due to a lack of ability, skills or training, nor would obeying the instruction have resulted in an unsafe act. Consequently, the Board concluded that plaintiff's actions constituted misconduct as defined by section 602(A)(5) of the Act.

¶ 36 Our review of the record reveals that an opposite conclusion is not clearly evident, and therefore, we will not disturb the Board's findings. *520 South Michigan Avenue*, 404 Ill. App. 3d at 313. Accordingly, the Board's determination that plaintiff was discharged for misconduct and not eligible for unemployment insurance benefits was not clearly erroneous. *Petrovic*, 2016 IL 118562, ¶ 21.

¶ 37 For these reasons, we affirm the judgment of the circuit court of Cook County affirming the Board's decision.

¶ 38 Affirmed.