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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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TRUSTY WARNS, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-MR-645
	)	
THE ILLINOIS DEPARTMENT OF	)	
EMPLOYMENT SECURITY, JAY ROWELL,	)	
as Director of Employment Security, and	)	
PAMELA MCDONALD,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court's order affirming the Illinois Department of Employment Security's decision that a claimant was not discharged for misconduct connected with her work was vacated, and the matter was remanded to the Board of Review, where the Board failed to make findings of fact and conclusions of law sufficient for appellate review on all matters before it.

¶ 2 Trusty Warns, Inc., appeals from the trial court's order affirming the Illinois Department of Employment Security's (Department) award of unemployment benefits to claimant Pamela McDonald. Trusty Warns argues that the Department's ruling that McDonald was not

discharged for misconduct pursuant to section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2012)) was clearly erroneous. For the reasons that follow, we vacate the trial court's order and remand the matter to the Board of Review for a ruling with additional findings of fact and conclusions of law regarding each of the bases asserted for McDonald's termination.

¶ 3

### I. BACKGROUND

¶ 4 Trusty Warns is a family business. Karl Neidermeyer, McDonald's father, was the majority shareholder of the company. According to the minutes of the 2011 annual meeting of the board of directors, John Savickas (John) was the president of the company, Joyce Ortis was the vice president, Carrie Savickas (Carrie) was the secretary, and McDonald was the chief financial officer/treasurer. The record also indicates that Sandy Neidermeyer (Sandy) was employed by the company and was responsible for manufacturing.

¶ 5 On January 25, 2012, Trusty Warns removed McDonald as an officer of the company. The termination letter specified the following reasons for her discharge:

“1. Ignoring the required (2) signature check and balance on all checks which was approved by and was voted on in the last Shareholders Meeting in March 2011.

2. Extending and delaying an Illinois State Audit without any authorization or notification to the Board or President of the company.

3. Without authorization hiring a document destruction company and having an off site storage unit for documents.

4. Taking company checks out of state to implement business without authorization.”

McDonald subsequently filed for unemployment benefits, and Trusty Warns protested the claim.

In its protest, Trusty Warns asserted that McDonald was discharged for misconduct connected with her work pursuant to section 602(A) of the Act for the reasons specified in the January 25, 2012, letter.

¶ 6 On February 27, 2012, an adjudicator determined that McDonald was eligible for benefits because Trusty Warns had not substantiated its allegations of misconduct. Trusty Warns appealed that determination and requested a hearing before a referee. Among the exhibits that Trusty Warns submitted for consideration at the first hearing were the minutes of its 2011 annual shareholders meeting and board of directors meeting. The minutes indicated that “John and Sandy would be placed as [a]dditional signatures” on company checks, that all checks required two signatures, and that any checks over \$2,500 were subject to a 24-hour review period. Among Trusty Warns’ other exhibits were: corporate checks demonstrating McDonald’s allegedly unauthorized expenditures; a statute of limitations waiver signed by McDonald as “VP/CFO” extending the period for completing a state audit; documents indicating that McDonald authorized the storage and destruction of company records; and an American Express statement reflecting an allegedly unauthorized change in the company’s billing address.

¶ 7 The first administrative hearing proceeded before a referee on April 12, 2012. John, the president of Trusty Warns, testified that McDonald violated the company’s 24-hour review period rule and/or the two-signature rule by issuing various checks with only her signature. He also testified that McDonald paid the rent for her personal residence in Arlington Heights with company checks, which she did not have authority to do. He added that McDonald, without authorization, wrote a check in the amount of \$1,470 to cash. Additionally, McDonald extended the statute of limitations for a state audit by signing a waiver, which John believed could have potentially harmed the company. To his knowledge, McDonald had not consulted with other

board members before signing the statute of limitations waiver. Moreover, John said that McDonald signed a contract with GRM Document Storage and Shredding without consulting him, even though Trusty Warns had never stored documents off-site. Nor, according to John, did McDonald consult him before authorizing the shredding of 176 pounds of documents. To that end, he testified that the company was “missing a lot of documentation” and that it had incurred unspecified expenses in attempting to reconstruct those files. Finally, he testified that the company’s American Express billing address had been changed to a location in South Dakota and that the billing statement was directed to McDonald.

¶ 8 Carrie, the corporate secretary, also testified at the April 12, 2012, hearing. She identified a company check in the amount of \$405 that McDonald wrote to her personal law firm. She also identified a check issued to “cash” that said “A to Z Transport” on the memo line. Carrie testified that the check was signed by McDonald and was used to ship McDonald’s personal vehicle to California. According to Carrie, McDonald did not have authority to do this.

¶ 9 McDonald was the final witness at the April 12, 2012, hearing. She testified that her father, the company’s majority shareholder, brought her in as a consultant for Trusty Warns in 2008. She traveled back and forth between Illinois and California before becoming a full-time employee in January 2010. She testified that part of her job description was to sign checks. She never issued checks to herself or others that were not authorized by or for the benefit of Trusty Warns. She acknowledged the company’s two-signature requirement, but believed that the policy had been implemented at the 2010 board meeting rather than the 2011 meeting. As to why she issued checks with only her own signature, she testified that she made every effort to get the others to sign, but that her efforts were frustrated by poor communication in the office. Her routine was to leave checks on her desk for the others to sign. However, during the fall of 2011,

she sometimes did not see John or Sandy for days at a time, and the checks would go unsigned. If she could not get a second signature, she felt that it was her duty, as CFO, to pay the bills on time.

¶ 10 As to the checks issued for the residence in Arlington Heights, she testified that this was a corporate residence that she set up. Asked whether she had her father's permission to write company checks for the corporate residence, she said:

“Um, I talked to my father about, uh, my, uh, staying on to, uh, work through. I talked to my father about the issues, um, I did not speak to him specifically about, uh, I wanted actually to talk to him about staying with him. And that was not . . . he wanted me to do that, um, but because of the increasing hostility in the family, uh, among the sisters that surrounded my father, that was not going to be an option for me.”

Asked again whether her father understood that she was going to be maintaining the corporate residence, she said that she believed so. She also said that, to her knowledge, there was no objection from her father while she was maintaining the corporate residence. Later in her testimony, she explained that she had discussed with the corporate accountant whether the Arlington Heights residence would be part of her compensation package, but that the issue had not been decided. Although the lease on the Arlington Heights residence was not subject to a vote of the board or approved by any officer of the corporation, she believed that she was acting as an agent for her father. She signed the lease in her personal capacity rather than as CFO of Trusty Warns.

¶ 11 Furthermore, McDonald testified that she had authority from her father to pay A to Z transportation to move her husband's vehicle back to California. Specifically, her father “agreed that if things did not work out \*\*\* that relocation would be paid for.” Regarding the extension

of the statute of limitations for the audit, she stated that she was in charge of managing the audit for the company and that she signed the form to give the company more time to gather information. She did not consult with anyone at the company before signing the form, but did not feel that she was required to do so. As to the document storage and shredding, she testified that there was nothing that was destroyed without being scanned into a PDF file. Additionally, McDonald explained that the change in the billing address on the American Express statement was due to the switch to using an online bill payment service.

¶ 12 Finally, McDonald believed that she was terminated because of a conspiracy after she brought to the board's attention that her sister Carrie had taken "quite a bit of money" from their father's trust. She had called a family meeting to try to work out the issues, and she was terminated at that meeting. She believed that her father, as majority shareholder, was the only one who could call a meeting and decide whether to terminate her.

¶ 13 On April 13, 2012, the referee set aside the adjudicator's determination and concluded that McDonald was discharged for misconduct connected with her work. He explained that "[t]he employer released the claimant for a number of reasons, but primarily for violating its 2 signature check policy." He further concluded that McDonald was aware of the policy, having been part of the board meeting when the policy went into effect, and that the rule was reasonable. He also concluded that there was "no compelling reason for her failure to abide by" the policy and that her act constituted misconduct. He concluded that issuing single-signature checks harmed Trusty Warns' interests, but did not identify exactly how so. McDonald appealed to the Board of Review.

¶ 14 Before the Board issued a decision, McDonald filed a motion to allow additional evidence, specifically, evidence that other employees of the company—notably, John and

Sandy—also issued one-signature checks. On July 17, 2012, the Board decided that the record was inadequate and remanded for further proceedings. The referee was “specifically instructed to allow the claimant to introduce checks written by other corporate officers with only one signature.” Additionally, the referee was directed to “consider this additional evidence and include in his decision whether the two-signature rule for which the claimant was terminated was also violated by other corporate officers, and not strictly enforced by the employer.” The Board noted that “[e]vidence from any prior hearing in this matter shall be incorporated into, and made a part of the record before the Referee, and the Referee shall issue a decision based upon all the evidence of record.”

¶ 15 The matter proceeded to a second hearing before the referee on September 20, 2012, regarding the one-signature checks. McDonald once again testified that she would leave checks on her desk to be signed and that the process for the most part worked when it was initially implemented. However, during the fall of 2011, she noticed that checks were not being signed and that there was a “breakdown in communication.” During that time, she had to pay bills and “checks had to go out with only one signature.” As to her efforts to address the problem, McDonald said that she repeatedly requested that John make himself available more often at the office. She also testified regarding several checks that were sent out with only Sandy’s or John’s signature. She did not recall having an opportunity to be the second signatory on those checks and did not recall seeing them when they were issued.

¶ 16 John testified in rebuttal at the September 20, 2012, hearing. He learned at the end of 2011 that checks had been going out with only one signature. He said that it was McDonald’s responsibility to make sure that there were two signatures on each check. Specifically, he would leave signed checks on McDonald’s desk, and McDonald was responsible for ensuring that there

was a second signature before the check went out the door. He disagreed with McDonald that there was any breakdown in communication within the company. When he began to testify that some of the checks at issue were for McDonald's personal benefit, the referee agreed with McDonald's counsel that the content of the checks that McDonald sent out was addressed at the prior hearing. John then added that, "among other things \*\*\* that were discussed in the prior hearing," McDonald was terminated "for sending out a number of these checks that were single signature in violation of the company rules."

¶ 17 Sandy also testified at the September 20, 2012, hearing. She testified that there was never a problem with McDonald getting others to sign the checks. She agreed with John that it was McDonald's responsibility to make sure that the checks had two signatures. If something required Sandy's signature, she would sign the check and put it on McDonald's desk. She said that there was never any breakdown in communication regarding signing the checks. As to the checks that were sent out with only her signature, Sandy testified that she signed those checks thinking McDonald would sign them and send them out.

¶ 18 Carrie also testified at the September 20, 2012, hearing. She conducted an investigation of the company's checking records and found that in 2011 there were 1,361 corporate checks written, 345 of which went out with just McDonald's signature. Counsel for Trusty Warns attempted to elicit Carrie's opinion that \$33,630.67 from McDonald's one-signature checks was for McDonald's personal gain, but the referee agreed with McDonald's counsel that the content of these checks had already been explored—presumably at the first hearing.

¶ 19 In rebuttal, McDonald disputed John and Sandy's testimony that they would leave checks on her desk and expect her to co-sign. McDonald insisted that she issued the majority of the checks and that they would sit on her desk waiting for a second signature.

¶ 20 On September 21, 2012, the referee again concluded that McDonald was discharged for misconduct connected with her work within the meaning of section 602(A) of the Act. As he stated in his first decision, the referee again found that “[t]he employer released the claimant for a number of reasons, but primarily for violating its 2 signature check policy.” This time he also noted that McDonald issued 345 checks out of about 1,100 with only her signature, even though she was aware of the two-signature policy. The referee once again concluded that McDonald’s actions in “issuing single signature checks when she knew they required two signatures was an act that harmed [Trusty Warns’] best interest.”

¶ 21 McDonald again appealed to the Board. On March 26, 2013, the Board set aside the referee’s decision and found that McDonald was not discharged for misconduct connected with her work. The Board stated that it had “reviewed the record of the evidence in this matter, including the transcript of the testimony submitted at the hearing [*sic*] Springfield, Illinois, 09/20/2012, at which the claimant and employer appeared and testified.” However, in its written decision the Board explicitly addressed only the issue of whether McDonald’s violation of the two-signature rule constituted misconduct under the Act. The Board found that a preponderance of the evidence failed to establish misconduct, noting that McDonald “was not warned that the further issuing of checks with only her signature would result in her discharge.” The Board also found that a showing of harm to Trusty Warns was not implicit in this case. McDonald “credibly testified that she issued single signature checks to timely pay vendors,” which “can be seen as a benefit and not a harm to the employer.” The Board found that her actions as CFO were reasonable and did not constitute harm under the statute.

¶ 22 Trusty Warns filed a complaint for administrative review, contending, in part, that “[t]he Board completely disregarded the transcript of testimonies from the April 12, 2012 hearing in

arriving at its Decision.” The trial court affirmed the Board’s decision, and Trusty Warns timely appeals.

¶ 23

## II. ANALYSIS

¶ 24 Trusty Warns raises three principal arguments on appeal. It first argues that McDonald’s misconduct violated two express company rules—the two-signature rule and the 24-hour review period rule for checks over \$2,500—and that the Board’s decision did not even address the 24-hour review period rule. It argues that it suffered both actual and potential harm from such misconduct, including the fact that \$33,630.67 of the single-signature checks was for McDonald’s personal use. Additionally, it argues that McDonald’s misappropriation of corporate funds for personal use, shredding 176 pounds of company documents, and signing a waiver of the statute of limitations were all intentional acts in substantial disregard of the company’s interests that disqualify her from benefits. Finally, it argues that the Board’s reduction of the entirety of McDonald’s misconduct to her disregard of the two-signature rule ignored the January 25, 2012, termination letter. The Department, Director, and Board address the substance of Trusty Warns’ arguments regarding the two-signature rule, contracting with a document management company, and the statute of limitations waiver. However, they contend that Trusty Warns has forfeited all other arguments.

¶ 25 Individuals seeking unemployment benefits have the burden of establishing their eligibility. *Hurst v. Illinois Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). Section 602(A) of the Act renders workers who are “discharged for misconduct connected with [their] work” ineligible to receive benefits. 820 ILCS 405/602(A) (West 2012). 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 2012). We review the decision of the Board, not the decision of the circuit court or the referee. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). Determining whether an employee was discharged for misconduct connected with his or her work involves a mixed question of law and fact, and we review the Board’s decision under the clearly erroneous standard. *Phistry*, 405 Ill. App. 3d at 607. Under this standard of review, we will not reverse the Board’s decision unless, after examining the entire record, we are “ ‘left with the definite and firm conviction that a mistake has been committed.’ ” *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 26 “The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct.” 735 ILCS 5/3-110 (West 2012). To that end, “[i]t is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony.” *Hurst*, 393 Ill. App. 3d at 329. The Department’s final decision must comply with the Illinois Administrative Procedure Act (Procedure Act) (5 ILCS 100/1-1 *et seq.* (West 2012)). See 5 ILCS 100/1-5(a) (West 2012) (“This Act applies to every agency as defined in this Act.”); 5 ILCS 100/1-20 (West 2012) (“ ‘Agency’ means \*\*\* each officer, department, board, commission, [and] agency \*\*\* of the State”); 20 ILCS 5/5-15 (West 2012) (creating the Department of Employment Security as a department of State government.) Section 10-50(a) of the Procedure Act provides, in part:

“A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and

explicit statement of the underlying facts supporting the findings.” 5 ILCS 100/10-50(a) (West 2012).

Accordingly, “while an agency is not required to make a finding on each evidentiary fact or claim, its findings must be specific enough to permit an intelligent review of its decision.” *Lucie B. v. Department of Human Services*, 2012 IL App (2d) 101284, ¶ 17. Reviewing courts “decline to supply a theoretical justification of the Board’s decision” (*Medina Nursing Center, Inc. v. Health Facilities & Services Review Board*, 2013 IL App (4th) 120554, ¶ 26), because doing so would require courts to speculate about what the Board “could have found” or “might have reasonably decided” (*Medina Nursing Center, Inc.*, 2013 IL App (4th) 120554, ¶ 26). Instead of speculating about the Department’s reasoning, “[t]he better course is to have the Board issue a reasoned opinion so as to make possible a meaningful judicial review.” *Medina Nursing Center, Inc.*, 2013 IL App (4th) 120554, ¶ 27.

¶ 27 We cannot fully and intelligently review the Board’s decision here, because the Board failed to make findings of fact and conclusions of law regarding all of Trusty Warns’ purported bases for discharging McDonald. We emphasize that this is not a case where the Board simply neglected to address a particular evidentiary fact or tangential arguments raised by the parties. Instead, each of Trusty Warns’ alleged bases for discharging McDonald were founded on separate operative facts and required independent consideration. Specifically, the January 25, 2012, termination letter listed four reasons for McDonald’s termination, any one of which may have theoretically constituted “misconduct” under section 602(A): 1) ignoring the two-signature “check and balance on all checks”; 2) extending the State audit without authorization; 3) hiring a document destruction company and storing documents off-site without authorization; and 4)

taking company checks out of state to implement business without authorization. Yet, the Board's March 26, 2013, decision explicitly addressed only Trusty Warns' first basis.

¶ 28 Additionally, Trusty Warns argued as part of the first basis that it was harmed by McDonald's alleged misappropriation of company funds. The record reflects McDonald's testimony that she claimed to have received permission from her father, the majority shareholder, for the disputed expenditures. However, the Board made no findings concerning McDonald's actions in this regard. This precludes us from fully and intelligently reviewing the Board's decision as to whether Trusty Warns was harmed by McDonald's violation of the two-signature rule.

¶ 29 Accordingly, pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we vacate the trial court's order and remand the matter to the Board with directions to issue a decision with findings of fact and conclusions of law, based on the entire record, and regarding each of the proposed bases in the January 25, 2012, letter for McDonald's discharge. See *Medina Nursing Center, Inc.*, 2013 IL App (4th) 120554, ¶ 27 (remanding to the Illinois Health Facilities and Services Review Board to provide "a reasoned explanation for its decision," along with its "findings and conclusions" (quoting 735 ILCS 5/3-110 (West 2010))); *Lucie B.*, 2012 IL App (2d) 101284, ¶¶ 20, 24 (cause remanded to the Illinois Department of Human Services "for further review, evaluation, findings, and decision" where "the Department's findings were insufficient for judicial review"). As to the violation of the two-signature rule, the Board is further directed to consider, as an indication of harm suffered by Trusty Warns, whether McDonald misappropriated company funds.

¶ 30

### III. CONCLUSION

¶ 31 The judgment of the circuit court of Du Page County is vacated, and the cause is remanded to the Board of Review with directions.

¶ 32 Vacated and remanded with directions.