

2012 IL App (1st) 111088-U

FIFTH DIVISION
May 11, 2012

No. 1-11-1088

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

HENRY L. BRYANT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 10 L 51759
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF)	
REVIEW; and HOBBY LOBBY STORES, INC.)	
c/o UC EXPRESS,)	Honorable
)	Alexander P. White,
Defendants-Appellees.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* When an employee was terminated for leaving a worksite early without permission and then submitting a timesheet indicating that he had worked the requisite number of hours, he was properly deemed ineligible for unemployment benefits based upon work-related misconduct.

¶ 2 *Pro se* plaintiff Henry Bryant appeals from an order of the circuit court affirming an order of the Department of Employment Security Board of Review (Board) that he was ineligible for unemployment benefits from Hobby Lobby Stores, Inc. (Hobby Lobby) under section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2010)), because he was terminated for work-related misconduct. On appeal, plaintiff contends that he was improperly denied unemployment benefits because he did not willfully violate his employer's policy against falsifying timesheets. We affirm.

¶ 3 The record reveals that Bryant was employed by Hobby Lobby, as a carpenter in the construction division, from November 2008 until May 2010. As a member of the construction crew, he often worked on projects outside of his home state and was compensated for the time spent traveling from his home to the worksite. After Bryant was terminated, he applied for unemployment benefits. Hobby Lobby objected.

¶ 4 In its objection letter, Hobby Lobby contended that Bryant was terminated for the falsification of records. The letter explained that on May 21, 2010, Bryant was scheduled to work a 10-hour shift from 7 a.m. to 6 p.m. Although Bryant was scheduled to travel home that day, he should have been onsite for the arrival of a truck that morning as "computer aided travel routes" had indicated that it would take him five hours and forty minutes to drive the 381 miles to his home. The letter further indicated that Bryant had admitted that he left early, but asserted that he had worked one and one half hours that day, which would have meant he was onsite until 8:30 a.m. However when a truck arrived prior to that time no employee was available to unload it. The letter also indicated that when assistant superintendent in training Randy Reichling arrived at the jobsite at 8:50 a.m. no Hobby Lobby employees were present. Attached to the

letter was, *inter alia*, Bryant's timesheet indicating that he worked a 10-hour shift on the day in question.¹

¶ 5 Bryant was deemed ineligible for benefits because he was terminated for misconduct connected with his work, *i.e.*, the falsification of his timesheet and expense report.

¶ 6 Bryant then filed an administrative appeal. Prior to the appeal, Hobby Lobby filed certain documents including, *inter alia*, a copy of a note from Randy Reichling indicating that when he arrived at the jobsite "around" 8:30 a.m., no Hobby Lobby employees were present, that he called Jim Clark to inform him that no employees were present, and that he later received a call asking him to return to the jobsite to unload a truck. Bryant also submitted a Mapquest printout indicating that it would take him six hours and seventeen minutes to drive home. A Department referee then conducted a telephone hearing during which Bryant and Hobby Lobby employee Jim Clark testified. Hobby Lobby employees Bob Mackey and Jeff Crownover also participated in the hearing.

¶ 7 Clark testified that Bryant was employed as a carpenter by Hobby Lobby's construction division, and was supervised by site superintendent Bill Frowe. Hobby Lobby had a policy and procedure manual and Bryant was provided with a copy of that manual at the beginning of his employment.

¶ 8 Clark explained that normal work days on a jobsite were 10 hours. On "travel days," that is, those days when an employee would travel home from a jobsite or *vice versa*, travel time would be included in that 10-hour shift and the employee would be compensated for that time. The company used computer generated travel guides, including Mapquest, to determine mileage and travel times. This travel time would then be included in the employee's 10-hour shift.

¹ There is no indication how much of that time was travel time as opposed to time spent on the jobsite.

¶ 9 The day that Bryant left early, May 21, 2010, was a travel day. However, Bryant admittedly left the jobsite early, thus, his time worked plus his travel time did not equal a 10-hour day.

¶ 10 Clark knew that Bryant left early because a truck arrived at the jobsite and no employee was present to unload it. A supervisor then had to travel from a different jobsite to address this issue. Although the site superintendent had left the previous day, Bryant and the three other employees assigned to the project were supposed to work that day. Clark stated that he and other supervisors were available and Bryant could have called them to request approval to leave early. However, none of the supervisors received such a phone call.

¶ 11 Bryant was subsequently discharged after he submitted a timesheet indicating that he had worked 10 hours on May 21, 2010. Clark participated in the conference call during which Bryant was terminated.

¶ 12 Bryant testified that he was discharged after he was accused of falsifying his timesheet. He denied leaving the jobsite early. Bryant explained that on a "travel day" he was generally sent an itinerary by Hobby Lobby which detailed how long it would take him to return home. He indicated that when he told Mackey that Mapquest directions indicated that his trip home would take six and one-half hours, Mackey responded that driving 380 miles at 65 miles per hour should only take five hours. When questioned as to why he left early, Bryant told Mackey that the other superintendents had let him leave the jobsite early to go back to the hotel and clean up before traveling. Bryant was then informed that the supervisors were not supposed to let employees leave early.

¶ 13 Mackey was then given the opportunity to question Bryant. Although Bryant initially stated that he left early based upon what he was told by another superintendent, he then admitted that a superintendent was not on the jobsite that morning and that he did not call either a

superintendent or a project manager to ask if he could leave early. He explained that because the superintendent was not present and he had not received his travel itinerary telling him when to leave or how long it would take to drive home, he left at what he "felt" was an appropriate time based upon what he had previously been told by other superintendents.

¶ 14 The parties were then permitted to make closing arguments. Mackay indicated that Bryant and three other employees at the jobsite were all dismissed for the same reason, they left the jobsite early, and wrote down time that they had not worked. Bryant responded that he go to the jobsite that day, and if there were errors on his timesheet, he did not "do it" on purpose and it was a mistake.

¶ 15 The Referee found that although Bryant was aware of his actual hours worked he still submitted a timesheet for time he had not worked in violation of his employer's policy regarding accurate documentation. Accordingly, Bryant's violation of Hobby Lobby's known and reasonable policy constituted misconduct connected with work and he was subject to the disqualification provisions of section 602(A) of the Act. See 820 ILCS 405/602(A) (West 2010). Bryant then appealed to the Board.

¶ 16 On review, the Board first noted that Bryant had submitted a written argument attached to his appeal. However, the Board declined to consider the written argument as Bryant failed to serve a copy of the argument upon Hobby Lobby. The Board determined that the Referee's decision was supported by the record and law, incorporated it as part of the Board's decision, and affirmed the denial of benefits.

¶ 17 Bryant subsequently filed a *pro se* complaint for administrative review in the circuit court. The court affirmed the Board.

¶ 18 Bryant now appeals *pro se* contending that his actions did not constitute misconduct within the meaning of the statute because he did not willfully violate Hobby Lobby's policy

against falsifying timesheets when he acted according to customary travel procedures. He further contends that Hobby Lobby's policy was unreasonable when applied to the facts of the instant case and that Hobby Lobby was not harmed by his actions.

¶ 19 This court reviews the decision of the Board, rather than that of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Whether an employee was terminated for misconduct under the Act is a mixed question of law and fact (*Sudzus*, 393 Ill. App. 3d at 826), to which a reviewing court applies a "clearly erroneous" standard of review (*Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 16)).

An agency's decision is clearly erroneous when this court's review of the record leaves us with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc., v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001)); see also *Randolph Street Gallery v. Zehnder*, 315 Ill. App. 3d 1060, 1064 (2000) (a reviewing court should reverse only when "firmly convinced the agency has made a mistake").

¶ 20 Pursuant to section 602(A) of the Act (820 ILCS 405/602(A) (West 2010)), an employee who was discharged for misconduct connected to his work cannot receive unemployment benefits. An employee commits misconduct when he (1) deliberately and willfully violates, (2) an employer's reasonable rule or policy, (3) and the violation harms the employer, or other employees, or has been repeated by the former employee despite a warning or other explicit instructions from the employer. See 820 ILCS 405/602(A) (West 2010).

¶ 21 A reasonable rule or policy encompasses those standards of behavior that an employer has the right to expect from an employee. *Czajka v. Department of Employment Security*, 387 Ill. App. 3d 168, 176-77 (2008). However, a company rule does not need to be reduced to writing (*Czajka*, 387 Ill. App 3d at 177), and this court does not need direct evidence of a rule in every case; rather, we may make a commonsense determination that a defendant's conduct intentionally

and substantially disregarded his employer's interest. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607-08 (2010); see also *Ray v. Department of Employment Security Board of Review*, 244 Ill. App. 3d 233, 236 (1993) (finding, for example, that it is implicit in the employee-employer relationship that an employee does not steal from his employer). Conduct is willful when it is a conscious act that knowingly disregards an employer's rules. *Phistry*, 405 Ill. App. 3d at 607.

¶ 22 Initially, this court notes that Bryant submitted an appendix containing certain federal regulations and a collective bargaining agreement entered into by the American Postal Workers Union which he argues support his position on appeal. However, as a court of appeal, we are limited to reviewing the issues presented below and the documents contained in the record before us. 735 ILCS 5/3-110 (West 2010); see also *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004) (a court cannot consider evidence outside of the record of the administrative appeal). Accordingly, as these documents are not included in the record, they will not be considered.

¶ 23 Here, the parties agree that Hobby Lobby had a policy against falsifying timesheets. However, Bryant contends that he did not willfully violate this policy because he followed the customary practice at the jobsite, *i.e.*, employees were generally permitted to leave early in order to clean up before travel. He argues that in the absence of an express policy governing travel, he cannot be faulted for assuming that this customary practice would continue to be followed. We disagree.

¶ 24 In the instant case, the relevant issue is not whether Bryant believed he was entitled to leave early based upon a customary practice at the jobsite, but whether he could leave early in the absence of a supervisor's permission to do so. The record reveals, and Bryant admitted during the telephone hearing, that on those previous occasions when he left early it was because a

supervisor permitted him to leave the jobsite "early" in order to clean up before his drive. On the day in question, Bryant was faced with the admittedly "unprecedented" circumstance of no onsite supervisor and no company provided travel itinerary. Ultimately, Bryant's conduct was willful when, in the absence of an onsite supervisor, he chose to leave the jobsite at a time that he "felt" was appropriate based upon his own travel calculations rather than those provided by Hobby Lobby and then submitted a timesheet indicating that he had worked a full 10-hour shift.² *Sudzus*, 393 Ill. App. 3d at 826. The evidence further showed that Hobby Lobby was harmed by Bryant's actions. Mackay indicated that when a truck arrived at the jobsite no employees were present to unload it, and a supervisor had to travel to the jobsite to deal with the issue caused by the lack of onsite employees. It is reasonable to infer that Hobby Lobby was harmed when it had to remove an employee from one jobsite and redirect him to another in order to compensate for Bryant's absence. See *Phistry*, 405 Ill. App. 3d at 608 (determining that the employee's conduct harmed the employer through the loss of trust that had been placed in the employee by the employer and the financial loss suffered because of the employee's actions and the cost of training a replacement).

¶ 25 This court's review of the record has not left us with the conviction that the Board made a mistake when it deemed Bryant ineligible for benefits based upon work-related misconduct. *Randolph Street Gallery*, 315 Ill. App. 3d at 1064. As the Board's decision was not clearly erroneous (*AFM Messenger Service, Inc.*, 198 Ill. 2d at 395), we affirm the circuit court's ruling.

¶ 26 Affirmed.

² Hobby Lobby's calculations indicated that Bryant's drive home should take five hours and forty minutes, whereas Bryant's calculations indicated that it should take six hours and seventeen minutes. The timesheet at issue does not indicate when Bryant actually left the jobsite or differentiate between "work" time and "travel" time.

1-11-1088