

2014 IL App (1st) 123057-U

THIRD DIVISION
April 9, 2014

No. 1-12-3057

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

RACHEL J. ARIAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW;)	No. 12 L 50867
)	
Defendants-Appellants,)	
)	
And)	
)	
CASH AMERICA NET HOLDINGS LLC,)	Honorable
)	Robert Lopez Cepero,
Defendant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Where the record shows that plaintiff failed to follow her employer's policies after being warned for previous violations of those same rules, the Board's

determination that plaintiff was discharged for misconduct and ineligible for unemployment benefits was proper, and the circuit court's order reversing the Board's decision is reversed.

¶ 2 Defendants, the Illinois Department of Employment Security (IDES), its director, and its Board of Review (the Board), appeal from an order of the circuit court reversing the Board's determination that plaintiff, Rachel Arias, was discharged from her employment due to misconduct, and ineligible for unemployment insurance benefits. On appeal, defendants contend the Board's factual findings were not against the manifest weight of the evidence, and the Board's determination that plaintiff was discharged for misconduct related to her work was not clearly erroneous. We agree and reverse the circuit court's judgment.

¶ 3 The record shows that plaintiff was employed as a collections representative with Cash America Net Holdings, LLC (Cash America) from June 2, 2008, until November 18, 2011, when she was terminated after her employer discovered she improperly disconnected telephone calls to customers and falsified the results of her calls when making notations in the customers' accounts. Three days later, plaintiff applied to IDES for unemployment insurance benefits stating she was discharged for incorrectly performing her work. She claimed, however, that she worked her accounts as she was instructed to do, and in the same manner as the other representatives. Plaintiff stated that there was no company policy or rule that caused her discharge, and she never received any prior warnings regarding similar conduct.

¶ 4 Cash America submitted a protest letter to IDES stating that plaintiff was discharged for violating a reasonable and known company policy. The letter explained that during a routine call monitoring/auditing process, Cash America discovered that in October 2011, plaintiff voluntarily

disconnected telephone calls and made improper notations on customer accounts. Plaintiff had been verbally warned about committing similar violations on June 6, 2011, and was issued a final written warning for disconnecting calls and falsifying accounts on August 8, 2011. Two managers met with plaintiff on October 24, 2011, to discuss her behavior, at which time plaintiff did not dispute her actions, nor did she offer an explanation as to why she continued violating company policy after she was issued the final written warning.

¶ 5 Attached to Cash America's protest letter was a "Corrective Action Review Form" issued when plaintiff was terminated for violating her employer's Code of Business Conduct. The form detailed 10 incidents between October 4 and October 17, 2011, where plaintiff either disconnected the call and/or made improper notations on the customer's account. In one incident, plaintiff called a customer, and when the customer answered, plaintiff hung up. Plaintiff then improperly noted on the customer's account that the call was a "pick up/hang up." The customer immediately called back and informed another representative that plaintiff hung up on her. Cash America concluded that plaintiff had disconnected the call without due cause and falsified company records. In three incidents, when an automated system answered plaintiff's call, plaintiff immediately disconnected the call despite being instructed that she needed to attempt to reach customers on automated systems. In three other incidents, plaintiff disconnected her call after allowing the telephone to ring only 18 seconds, 16 seconds and 3 seconds, despite being instructed that she must wait a minimum of 35 seconds before disconnecting a call. For four of the calls, plaintiff noted in the customer accounts that she had left voice mail messages, although no messages were left. Cash America stated that it was

committed to excellence in service and performance to its customers, and that it was constantly working to improve the misunderstood image of the industry. Cash America concluded that due to plaintiff's violation of its Code of Business Conduct relating to its commitment to its customers, her employment was being terminated immediately.

¶ 6 Also attached to the protest letter was the final written warning issued to plaintiff in August 2011 following seven incidents that occurred June 13 and June 15, 2011. The warning stated that plaintiff violated company policy when she deliberately created and used false records, provided poor customer service and disconnected customer calls. For several calls, fully detailed in the warning, plaintiff entered falsified notations on customer accounts "compromising the integrity of [Cash America]'s customer database." When plaintiff met with two managers regarding her actions, she claimed she rarely disconnected calls and suggested she may have experienced problems with her headset or accidentally pressed the escape key. The managers explained to plaintiff that calls could be disconnected only under four specific circumstances: foul language used by the customer, being placed on hold by the customer for longer than 45 seconds, no answer after 45 seconds of ringing, and dead air due to lack of response from the customer. The managers further advised plaintiff that the accuracy of her documentation was "crucial." The managers expressly informed plaintiff that "failure to follow the expectations addressed above regarding customer call etiquette, including but not limited to inappropriate customer hang ups and false notifications in the company systems, will result in further disciplinary action up to and including termination."

¶ 7 In a telephone interview, plaintiff informed an IDES claims adjudicator that she was discharged by her department manager, Indover Lal, due to poor work performance. Plaintiff was told that she did not allow the telephone to ring for at least 35 seconds, and instead, let it ring for only 16 seconds. She was also told that she did not make a correct notation on a customer account. Plaintiff claimed she performed her duties in the same manner over her four years of employment, but management had changed and she was not performing up to their standards. Plaintiff acknowledged she was aware of the company policy regarding making correct notations in customer accounts, and that she received a prior verbal warning about similar conduct. The claims adjudicator's two attempts to contact plaintiff's employer were unsuccessful. The claims adjudicator found that plaintiff was discharged because her work performance did not meet her employer's expectations. The adjudicator further found that plaintiff's actions which resulted in her discharge were not deliberate or willful, and on that basis, determined plaintiff was eligible to receive unemployment insurance benefits. Cash America appealed that decision.

¶ 8 At the March 26, 2012, telephone hearing, Kathleen McElhattan, Cash America's human resources representative, testified that plaintiff was discharged because she violated the coworker handbook and code of business conduct by creating and using false records. In August 2011, plaintiff had been given a final written warning for the same misconduct. During routine quality assurance monitoring for October 2011, plaintiff's manager discovered plaintiff was continuing to disconnect customer calls and making erroneous notations on customer accounts in the database. McElhattan stated that plaintiff's conduct was considered serious enough to warrant

termination without any prior written warnings, but plaintiff was previously warned and yet continued to engage in the misconduct.

¶ 9 Department manager Indover Lal testified that he informed plaintiff that the reason for her termination was because she continuously falsified customer records which could lead to a financial gain for plaintiff based on her collection efforts. Such behavior constituted a violation of Cash America's code of conduct. Lal listened to calls plaintiff made between October 4 and October 17, 2011, and heard several occurrences where plaintiff disconnected calls prematurely, then noted on the customer accounts that she had left messages when, in fact, she had not.

¶ 10 Plaintiff testified that when she received the warning in August 2011, she explained to her managers that she had been experiencing numerous issues with the phone system since April 2011, and believed that was the cause of the disconnections. She was also told that she had been making incorrect notations, for which she apologized, but she denied intentionally falsifying the accounts. Plaintiff said she had a tendency to copy and paste account information due to time constraints which may have caused typographical errors, and she may have mistakenly written that she left a message when she should have indicated there was no answer. Plaintiff had listened to the recordings of the questionable calls and thought they sounded as though no one answered. Plaintiff received an electronic copy of the employee handbook, but was never given a written copy. Plaintiff testified that she was doing her work as she was trained to do, and denied any intent to receive higher financial gain for herself. Plaintiff understood why she was discharged and acknowledged that her "performance was not up to par" and that she did not meet the job qualifications.

¶ 11 The administrative law judge (ALJ) who conducted the telephone hearing issued a written decision setting aside the decision of the claims adjudicator. The ALJ found that plaintiff was discharged for creating false records by incorrectly marking the files for her personal financial gain. The ALJ noted that plaintiff was warned about this same conduct in August 2011, and that she was aware that her job was in jeopardy. The ALJ found that plaintiff violated a known company policy and had been previously warned for violating that same policy. The ALJ further found that plaintiff's actions were willful and deliberate because she was aware that such actions were inappropriate, and she had the ability to refrain from such conduct. Based on these findings, the ALJ concluded that plaintiff was discharged for misconduct connected with her work, and therefore, was not eligible for unemployment insurance benefits.

¶ 12 Plaintiff appealed the ALJ's decision to the Board arguing that she experienced constant problems with the computer system and telephone which caused the disconnections. She further argued that the incorrect notations on the customer accounts were typing errors caused by her working at a rapid pace. She denied that her actions would have allowed her to receive any personal financial gain because she was not meeting her target goals. Plaintiff acknowledged that she signed a confirmation that she received the online coworker handbook, but claimed she was unable to access it on her computer and only signed because she was under the impression she would later receive a hard copy of the book, but never did.

¶ 13 The Board reviewed the record, and after due consideration, found that the ALJ's decision was supported by the record and the law. The Board incorporated the ALJ's ruling as part of its decision, and affirmed the denial of benefits.

¶ 14 Plaintiff appealed the Board's ruling to the circuit court of Cook County. Cash America filed an appearance and participated in the hearing before the circuit court. Following the hearing, the circuit court reversed the Board's decision.

¶ 15 On appeal, defendants contend that the Board's factual findings that plaintiff willfully and deliberately disconnected telephone calls she made to customers and falsified notations in the customer accounts were not against the manifest weight of the evidence. Defendants also contend that the Board's finding that plaintiff was discharged for misconduct was not clearly erroneous where plaintiff was aware that Cash America's policies prohibited such conduct, she was previously warned for violating the same policies, and her conduct harmed her employer.

¶ 16 Plaintiff has not filed a responsive brief. This court has elected to consider defendants' appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 17 This court reviews the final decision of the Board rather than that of the circuit court. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). 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). When reviewing an administrative agency decision, courts are precluded from reweighing the evidence, resolving conflicts in the testimony, or evaluating the credibility of the

witnesses. *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16. 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). A reviewing court is prohibited from substituting 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. Where the record contains any evidence that supports the Board's decision, that decision is not contrary to the manifest weight of the evidence and must be affirmed on review. *Woods*, 2012 IL App (1st) 101639, ¶ 16.

¶ 18 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. *AFM Messenger Service, Inc., v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001). The Board's decision is considered clearly erroneous where the court reviews the record and definitively concludes that a mistake has been made. *Id.* at 395. Under section 602(a) of the Illinois Unemployment Insurance Act (820 ILCS 405/602(A) (West 2010)), a person who is discharged by her employer for misconduct connected with her work is not eligible to receive unemployment insurance benefits. *Phistry*, 405 Ill. App. 3d at 607.

¶ 19 Misconduct is defined as an employee's willful and deliberate violation of a reasonable policy or rule which harms the employer. *Phistry*, 405 Ill. App. 3d at 607. An employee's conduct is considered willful when she is aware of a company policy and consciously disregards that policy. *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 716 (2007).

Carelessness and poor performance may justify termination, but standing alone, do not make an employee ineligible for unemployment benefits. *Wrobel v. Department of Employment Security*, 344 Ill. App. 3d 533, 537 (2003).

¶ 20 Here, we find that the Board's determination that plaintiff willfully and deliberately violated Cash America's policies and code of conduct when she disconnected customer calls and made false entries on customers' accounts was not against the manifest weight of the evidence. It is undisputed that plaintiff was aware of Cash America's company policy requiring its collection representatives to make accurate notations in the customer accounts. It is further undisputed that plaintiff received two prior warnings for violating this policy – a verbal warning on June 6, 2011, and a final written warning on August 8, 2011. Cash America provided documentation gathered during routine call monitoring/auditing processes which indicated 7 incidents in June 2011 and 10 incidents in October 2011 where plaintiff improperly disconnected customer calls and/or entered falsified notations on customer accounts. In the final written warning, Cash America explained that plaintiff's acts of entering false notations adversely affected its business because it compromised the integrity of its customer database. Plaintiff was advised that the accuracy of her documentation in the customer accounts was "crucial." She was also advised of the four specific circumstances under which she was permitted to disconnect customer calls. In addition, plaintiff was told that if she failed to adhere to company policies regarding the proper handling of customer calls and accurate entry of notations on customer accounts, she would face further disciplinary action, including termination.

¶ 21 The record shows that although plaintiff was aware of Cash America's policies and advised that she would be discharged if she further violated those policies, she continued to engage in the exact same misconduct for which she was previously warned. Plaintiff claimed that the disconnected calls were due to problems with the computer and telephone systems, and that the incorrect notations were typographical errors. It was the Board's responsibility to assess the credibility of the witnesses. Based on the Board's decision, it apparently found plaintiff's testimony not credible, and this court will not disturb that finding.

¶ 22 The Board reviewed all of the evidence in the record and determined that plaintiff deliberately and willfully violated Cash America's policies regarding work processes and its code of business conduct. Our review of the record reveals that an opposite conclusion is not clearly evident. Accordingly, we conclude that plaintiff was properly discharged for misconduct connected to her work, and the Board's determination that she was ineligible for unemployment insurance benefits was not clearly erroneous.

¶ 23 For these reasons, we reverse the judgment of the circuit court reversing the Board's decision.

¶ 24 Reversed.