No. 1-10-1455

SECOND DIVISION
June 14, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BAXTER BLACKMON III, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; Defendants-Appellees, and TFE LOGISTICS GROUP, INC., Defendant.	)	Appeal from the Circuit Court of Cook County. No. 10 L 50143 Honorable James Tolmaire, III, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

O R D E R

HELD: Claimant properly held to be ineligible for unemployment benefits. It was not against the manifest weight of the evidence for the Board of Review to determine that claimant had violated employer's rules and procedures by obtaining one week medical leave of absence and then failing to return to work or to keep employer informed of his condition.

This is an appeal from an order of the circuit court of Cook County affirming the decision of the Board of Review (the Board) of the Illinois Department of Employment Security. The Board found plaintiff Baxter Blackmon III (claimant) ineligible for unemployment benefits because he was fired for misconduct in his job with TFE Logistics Group, Inc. (TFE).

We must first note that claimant in his briefs has failed in many respects to comply with Illinois Supreme Court Rule 341 (eff. Sept. 1, 2006) which sets out the requirements for appellate briefs. These failures are so comprehensive that they would justify dismissing the appeal or finding that claimant has waived all of his arguments. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009). Nor does the fact that claimant is proceeding *pro se* relieve him of these requirements. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001). In addition, his statement of facts contains new evidence never admitted in the hearings below, in derogation of statute. 735 ILCS 5/3-110 (West 2008). Based upon all of these violations and omissions we would be justified in dismissing this appeal. But even on the merits we find that the judgment should be affirmed.

Claimant worked for TFE as a truck driver. In 2008 he was injured in an automobile accident and asked TFE for one week of medical leave. This was granted, but claimant did not return to

work after that one week period. Claimant was discharged and later denied unemployment benefits.

TFE had reported to the claims adjudicator that:

> "[Claimant] was discharged after missing work, unauthorized, failing to return to work or to contact the employer regarding his medical capacity to return to work after an approved one week medical leave."

In his interview with the claims adjudicator, claimant stated that "The employer did not contact me and I did not contact them after being on leave for an accident which left me medically not able to work." But in the hearing before an Administrative Law Judge (ALJ), claimant asserted that he and his employer stayed in contact on a "week-to-week basis." When questioned by the ALJ about the statement to the claims adjudicator, claimant denied making it. In addition, he submitted a letter from his chiropractor, Dr. Stauffer, dated January 16, 2009, which stated that claimant was currently receiving treatment for injuries he sustained in an automobile accident. He had been under the doctor's care since August 20, 2008, and his projected release date was February 23, 2009. Thus the letter made no mention of claimant's inability to perform his work for TFE.

Subsequently, claimant attempted to submit to the Board a second letter from Dr. Stauffer. The letter is not dated, although the Board refers to it as "later-dated." It states that claimant had been a patient from August 25, 2008, through February 2, 2009, and because of his injuries, claimant "was not able to drive a truck for UPS [*sic*]." This letter was submitted because claimant asserted that the ALJ had misinterpreted the first letter. The second letter was rejected as evidence by the Board, which found that the original letter was clear in failing to set forth any restrictions on claimant working. It needed no explanation and therefore the sole reason given for submitting the second letter was invalid. This second letter also failed to explain why claimant had not reported regularly to TFE concerning his absence from work, as he was required to do.

Discrepancies in the record make it unclear whether claimant's accident occurred in August 2008 or October 2008. The Board noted this discrepancy, but it also found that claimant had informed TFE he had been in an accident and needed one week of medical leave. It further found that there was no evidence that claimant kept in contact with TFE to inform it of his medical condition. When he did not return after one week he was discharged. Based upon these findings and its review of the record, the Board affirmed the ALJ's decision as supported by the record and the law. The ALJ had found that claimant was

discharged from work for misconduct and therefore was ineligible for benefits until he again found work and then worked for at least four calendar weeks in which he earned at least the same amount as his weekly benefit amount. 820 ILCS 405/602(A) (West 2008).

On appeal to this court, claimant has attempted to introduce new evidence. He asserts that he has a certified letter from TFE confirming that it was contacted on a regular basis by claimant to keep it informed of his medical situation. He also asserts that he notified his "driver manager" of the accident, that individual told him to make routine progress updates of his condition, and in compliance he telephoned the driver manager two to four times a month while he was under a doctor's care. All of this represents new evidence, which cannot be considered by a court on administrative review. *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 773 (2001); *Jackson v. Department of Labor, Board of Review*, 168 Ill. App. 3d 494, 500 (1988); 735 ILCS 5/3-110 (West 2008). Accordingly we will not consider this evidence.

Claimant challenges only the factual findings below. He does not assert that the actions attributed to him would not constitute misconduct. We are limited to reviewing whether the Board's factual findings were contrary to the manifest weight of the evidence. *Acevedo*, 324 Ill. App. 3d at 771-772; *Grafner v.*

Department of Employment Security, 393 Ill. App. 3d 791, 796 (2009). Furthermore, it is the Board which has the responsibility of determining the credibility of the parties. *Grafner*, 393 Ill. App. 3d at 805. Based upon the record and the evidence we have summarized, we find that the decision of the Board, as adopted by the circuit court, was amply supported, and we therefore affirm it.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.