

1-10-3424

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ERIK L. DANIEL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 10 L 51170
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF REVIEW;)	
and COOK COUNTY, ILLINOIS,)	Honorable
)	Sanjay T. Tailor,
Defendants-Appellees.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Where evidence established that correctional officer who pled guilty to battery in altercation involving police officer violated employment rules and regulations requiring him to obey laws and cooperate with law enforcement agencies, the Board of Review of the Illinois Department of Employment Security's determination that employee committed misconduct thus making him ineligible for unemployment benefits was not clearly erroneous; the decision of the Board was affirmed.

¶ 2 Plaintiff Erik Daniel, proceeding *pro se*, appeals from the order of the circuit court of Cook County that affirmed the decision of the Board of Review (the Board) of the Illinois Department of Employment Security (the Department) that denied him unemployment benefits after he pled guilty to the battery of a Calumet City police officer. On appeal, plaintiff contends the evidence presented

does not support the Board's determination that he was discharged for misconduct related to his work. We affirm the judgment of the trial court.

¶ 3 The record establishes that beginning in 2003, plaintiff worked as a correctional officer for the Cook County Department of Corrections. On July 9, 2008, Calumet City police were called to plaintiff's home to investigate a neighbor's complaint about barking dogs. An altercation apparently ensued between plaintiff and the police.

¶ 4 As a result of that incident, plaintiff was charged with misdemeanor battery pursuant to section 12-3 of the Criminal Code of 1961 (the Code) (720 ILCS 5/12-3 (West 2008)) and resisting or obstructing a peace officer pursuant to section 31-1 of the Code (720 ILCS 5/31-1 (West 2008)). On November 10, 2008, plaintiff pled guilty to battery and was sentenced to one year of supervision and 75 hours of community service.

¶ 5 As a result of the plea, a complaint was filed before the Cook County Sheriff's Merit Board alleging that plaintiff pushed Calumet City police officer Paul Maletich and "struck him several times in the torso." The complaint further alleged that plaintiff falsely stated to Robert Miller, an investigator with the Cook County Sheriff's Office of Professional Review, that he did not push or strike Officer Maletich. According to the complaint, plaintiff violated several regulations of the Department of Corrections, including the requirements to: (1) "obey all federal, state, county and municipal laws"; (2) "respect the importance of agencies within the criminal justice system"; and (3) refrain from "engaging in off-duty behavior that would reflect negatively on the department." A separate rule barred the making of a false oral or written report. The Merit Board suspended plaintiff from his job on June 18, 2009, and plaintiff applied for unemployment benefits. On July 21, 2009, the Department found plaintiff eligible for benefits because the allegations against plaintiff were "not substantiated." The Department of Corrections appealed that ruling.

¶ 6 On May 6, 2010, a Department referee conducted a telephone hearing with plaintiff, investigator Miller and Sharon Little, who was the personnel manager for the Department of Corrections. Little testified that plaintiff had been suspended by the Merit Board since the date of the incident and arrest.

¶ 7 Plaintiff testified that he was cooperative when Calumet City police arrived to investigate the neighbor's complaint and showed the officers his garage where several dogs were kept in cages. When the officers said they wanted to take photographs of his property, plaintiff replied he did not want them to do that and asked them to leave. According to plaintiff, the officers said they were "going to do what they want." As plaintiff walked toward his house, two officers threw him against the side of the house and arrested him, while a third officer struck him with a baton. Plaintiff denied that he pushed or struck any officer or raised his voice, and stated that the officers' "attitude caused the whole incident to me."

¶ 8 Plaintiff said he pled guilty to battery because it was the "best thing for me to do in regards [to] my employer" and because he felt the judge in his proceeding was "pro-police." Plaintiff acknowledged Officer Maletich's testimony before the Merit Board that plaintiff struck him, however, the officer did not say whether plaintiff hit him from the neck up or the waist down. Plaintiff denied hitting the officer in the chest.

¶ 9 Miller testified that during his investigation of the complaint, plaintiff denied striking the officer or being uncooperative with police. Miller said plaintiff had been uncooperative on a previous occasion when officers were called to his house to investigate a complaint about dogs. The officers were therefore concerned, based on the prior incident, that plaintiff might retrieve a weapon if he was allowed to go into his house.

¶ 10 Plaintiff had no previous disciplinary history. When asked why plaintiff's actions warranted discharge as opposed to a lesser punishment, Miller stated that as a correctional officer, plaintiff was

required to cooperate with other police agencies. Miller pointed out that plaintiff's employer would not extend an offer of employment to an applicant with a battery conviction on his record.

¶ 11 On May 7, 2010, the Department referee issued an order disqualifying plaintiff from receiving unemployment benefits under section 602(A) of the Illinois Unemployment Insurance Act (the Act) (820 ILCS 405/602(A) (West 2008)). The order stated that plaintiff's employment was terminated because he pled guilty to battery, which constituted an admission of behavior that violated rules of his employment. Plaintiff appealed to the Board, which affirmed the denial of benefits. On November 15, 2010, the circuit court affirmed the decision of the Board.

¶ 12 On appeal, plaintiff challenges the rulings of the Board and the circuit court that he is not entitled to unemployment benefits. The individual claiming unemployment insurance benefits has the burden of establishing his eligibility, and an employee discharged for misconduct is ineligible to receive those benefits. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009).

¶ 13 Misconduct under the Act involves the violation of a rule or policy that governs the individual's behavior in performance of his work. Three elements of misconduct must be established. They are "(1) a deliberate and willful violation of (2) a reasonable rule or policy (3) that harms the employer or other employees or has been repeated by the former employee despite a warning or other explicit instructions from the employer." *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010); 820 ILCS 405/602(A) (West 2008).

¶ 14 Whether an employee was properly terminated for misconduct in connection with his work involves a mixed question of law and fact, to which we apply the clearly erroneous standard of review. *Hurst*, 393 Ill. App. 3d at 327. An agency decision is clearly erroneous where a review of the entire record leaves the court with the definite and firm conviction that a mistake has been committed. *Phistry*, 405 Ill. App. 3d at 607.

¶ 15 Here, the record supports the Board's determination that plaintiff's actions constituted misconduct under section 602(A) of the Act. An employee willfully or deliberately violates a work rule or policy by being aware of, and consciously disregarding, that rule or policy. *Hurst*, 393 Ill. App. 3d at 328-29. The complaint before the Merit Board set out various rules and regulations of the Department of Corrections and the Merit Board requiring plaintiff to obey all laws, cooperate with other law enforcement agencies and refrain from acting in a manner that would reflect negatively on the Department of Corrections and the rules apply even when plaintiff is not on duty. Plaintiff did not contend before the Department referee, nor does he assert in this appeal, that those rules do not apply to him. The evidence established plaintiff violated those policies. Plaintiff's guilty plea to battery constituted a knowing admission of guilt of the criminal act charged. "A guilty plea ends the controversy and removes the prosecution's burden of proof, as it supplies both the evidence and the verdict." *People v. Rhoades*, 323 Ill. App. 3d 644, 651 (2001).

¶ 16 The rule or policy of the employer must also be reasonable, meaning it must concern the standards of behavior which an employer has a right to expect from its employee. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 827 (2009). It is reasonable to expect employees of the Department of Corrections, who are charged with maintaining order among criminal offenders, to adhere to the law and cooperate with other law enforcement agencies. These rules reasonably relate to plaintiff's workplace. See generally *Sudzus*, 393 Ill. App. 3d at 827-28 (apprentice electrician's dismantling and theft of heating and cooling units from his employer's customer during work hours when employer had contracted with another company to remove units violated employer's reasonable rules).

¶ 17 Plaintiff emphasizes the fact that the conduct that resulted in his battery conviction occurred at his home and not at his workplace and he argues no one was harmed by his actions. On the first point, as we have noted, the violation of employment rules that resulted in the termination of

plaintiff's employment required him to maintain a professional demeanor even while off-duty and to refrain from breaking any laws either at or away from the workplace. Moreover, in this analysis, harm to an employer can be established by potential harm and is not limited to actual harm. *Hurst*, 393 Ill. App. 3d at 329 (and cases cited therein). As the Board points out, plaintiff's act of criminal conduct, particularly as directed at a police officer, damaged the reputation of the Department of Corrections, which has the duty to enforce, not violate, the law.

¶ 18 Plaintiff's additional arguments on appeal are not well-developed. Although plaintiff asserts the "most relevant case" to the instant proceeding is *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849 (2009), he discusses only the general propositions of law from that decision and other cases involving unemployment benefits and fails to offer any analogies between those cases and the facts now before this court.

¶ 19 Plaintiff also points out that the Department initially found him eligible for unemployment benefits in July 2009 before the Department held a hearing on the matter. While that is true, plaintiff fails to recognize the procedure inherent in that decision. The order to which plaintiff refers goes on to state that "the employer who is a party to the determination has thirty (30) days in which to appeal." Plaintiff's employer, the Department of Corrections, appealed that determination and a hearing then was held which resulted in a denial of plaintiff's application for benefits.

¶ 20 Lastly, plaintiff presents undeveloped assertions that the Department referee "misunderstood the legislative intent" of the Act and that his neighbor's complaints to the Calumet City police were racially motivated. The record includes no evidence to support either of those contentions. The Board is the trier of fact in cases involving claims for unemployment compensation and we review the findings of the Board, rather than the findings of the Department referee or the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008). It is the Board's role to weigh the evidence, determine the credibility of witnesses and resolve

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conflicts in testimony. *Hurst*, 393 Ill. App. 3d at 329. The Board's determination that plaintiff should be denied unemployment benefits as a result of his misconduct was not clearly erroneous.

¶ 21 Accordingly, the decision of the Board is affirmed.

¶ 22 Affirmed.