2012 IL App (1st) 110683-U

THIRD DIVISION
May 16, 2012

No. 1-11-0683

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY TURNER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
THE DEPARTMENT OF EMPLOYMENT SECURITY, DIRECTOR OF EMPLOYMENT SECURITY, THE BOARD OF REVIEW,	)	No. 10 L 51724
	)	
Defendants-Appellees,	)	
	)	
and	)	
	)	
CSL PLASMA,	)	Honorable
	)	Elmer James Tolmaire III,
Defendant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

O R D E R

1. *Held*: Board's decision that the plaintiff, a plasma donor technician, was discharged for

misconduct connected with her work and was disqualified from receiving unemployment insurance benefits was not clearly erroneous where evidence showed that plaintiff re-evaluated a donor's unacceptable first test result and falsified documents in violation of the employer's reasonable rule or policy pertaining to the screening of plasma donors and the documentation of test results.

2. Defendant, CSL Plasma, the employer,[1] discharged the plaintiff, Mary Turner, from her job as a plasma donor technician because of alleged misconduct connected with her work within the meaning of section 602A of the Unemployment Insurance Act (Act). The defendant, Board of Review of the Department of Employment Security (Board) found that plaintiff was discharged for falsifying documents and re-evaluating a donor's test results, which constituted disqualifying misconduct under section 602A of the Act. The circuit court affirmed the Board's decision as neither against the manifest weight of the evidence nor contrary to law.

3. Plaintiff appeals *pro se* from the circuit court's order, contending that the Board's decision should be reversed because she did not engage in misconduct and instead had undergone the extraction of two teeth, had a swollen face and jaw, was in pain, and was under the influence of Tylenol with codeine.

4. The record discloses that plaintiff worked for the employer from December 22, 2008, to March 19, 2010, and earned $9 per hour. The employer suspended her on March 19, 2010, and discharged her on March 31, 2010.

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[1] The employer's name appears in the record as ZLB Plasma Services, ZLB Bioplasma, Inc., CSL Plasma, Inc., and CSL Plasma. We have used the name CSL Plasma in the case caption to conform to the notice of appeal.

5. In an April 10, 2010, letter to the representative for the state, the employer's agent reported the following. Plaintiff was discharged for misconduct, namely, falsification, and benefits should be denied. On Friday, March 19, 2010, a donor stated that her original reading was 37, but plaintiff reread the machine. The donor then passed with a reading of 41. Plaintiff admitted that she had reread the HCT (hematocrit). The HCT should never be reread because that could cause severe donor safety issues.

6. Excerpts from the employee handbook were attached to the above letter. The handbook reflected that falsification of documents, violation of company rules, or violation of company policies, may result in an employee's immediate termination. Employees were never to deviate from standard operating procedure on their own; they were obligated to report the problem. They could also write a variance. The corporate level could change standard operating procedures. The handbook listed various consequences of a failure to follow the standard operating procedures. The risk to the health and safety of individuals included the drawing of plasma from a donor who was physically unwell, or who was at high risk of transmitting infectious diseases, or selling plasma contaminated with infectious material that could be transmitted to the recipient. The risk to the employer consisted of a reportable error or accident to the FDA and a potential product recall, which meant a potential shortage of a life-saving product. An additional business risk was that a product recall could cost the employer millions of dollars if customers sought compensation, and millions of dollars in lost revenue from a loss of customer confidence. Thus, a deviation from the employer's written procedure could "compromise donor health and/or product quality." The sanction for an employee was immediate termination for falsifying records or for willfully disregarding written

procedures, and legal jeopardy if the FDA prosecuted.

7. Plaintiff acknowledged in writing on December 22, 2008, that she had received a copy of the employee handbook, and had read and understood its contents.

8. A memorandum by James Pickens II, a center manager for the employer, reflected that on March 19, 2010, plaintiff screened a donor and falsified a reading to allow the donor to pass. Plaintiff did not document the first reading. Plaintiff admitted that she had reread the donor's HCT because she thought that she had read it incorrectly. Plaintiff explained that she was taking medication and that there was a possible bubble in the capillary tube, but she failed to provide an exact reason why she reread the result. After an unfavorable FDA audit on October 22, 2009, all staff, including plaintiff, had been retrained to perform proper donor screening practices, which included not retaking or rereading a donor's HCT values. Plaintiff's actions placed the donor at risk for possible severe health issues and complications. Pickens recommended that plaintiff's employment be terminated based on improper employee conduct and falsification of documentation after all of the training triggered by the audit.

9. The adjudication summary reflected that plaintiff said she was not feeling well on March 19, she was taking pain medication with codeine, and she had had two teeth pulled around three days earlier and was under the influence of medication. The adjudication summary further reflected that there was no company policy or rule, that plaintiff had not received warnings, and that she was not sure of the effect of her actions on the employer other than there "might be [a] safety issue." The summary indicated that plaintiff had been discharged because of falsification, she thought that she had incorrectly read the HCT machine the first time and therefore she reread the HCT machine,

which was a rule violation that could cause a safety issue.

10. On May 14, 2010, a service representative issued a written decision finding that plaintiff had been discharged because she had reread the HCT machine in violation of a known and reasonable company rule, thereby creating a safety hazard and constituting misconduct connected with her work. She was informed of this in a letter dated May 14, 2010.

11. A telephone hearing was held on June 22, 2010. There were two witnesses for the employer: Lana Niemeyer and James Pickens, both of whom were center managers.

12. Niemeyer testified that plaintiff worked for the employer from December 22, 2008, to March 19, 2001 [*sic*]. Plaintiff was a full-time reception technician, and was discharged on March 30, 2010, because of falsification of documentation. There was a policy concerning falsification of documentation, and all employees are given the policy to read and sign when they are hired. Plaintiff had never been warned for violating that policy. The policy is zero tolerance, for the FDA. Plaintiff was suspended after March 19, the day the incident occurred. On that day, when plaintiff read the hematocrit of a donor, the reading was out of range, preventing the donor from donating. The donor informed the company that plaintiff re-evaluated the test, which was totally contrary to company policy, and that she submitted a reading that would allow the donor to donate. Plaintiff admitted that she had done the foregoing. If someone fails the range, he or she is not allowed to donate that day, but can try to donate the next day. When Niemeyer told plaintiff that she was being discharged for this reason, plaintiff responded, "Okay, I understand." There was no other reason she was discharged.

13. Pickens testified that he was informed of the situation and that he documented it accordingly.

Prior to the falsification, they had gone through two months of training and topics were addressed concerning falsification of documentation. Plaintiff came up with several reasons why she decided to reread the hematocrit, including the presence of a bubble in the tube, she was on medication, and everything just was not lining up. If there was a bubble in the tube, she needed to get a manager to evaluate it. When plaintiff was asked again about the presence of a bubble in the tube, she said, "'Well, no, I was on, uh, medication.'" Pickens testified that the employer was not getting a clear understanding of plaintiff's conduct.

14. Plaintiff testified that she was suspended after the incident on March 19, 2010, and Niemeyer discharged her on March 30, 2010, during a telephone conversation. Plaintiff took a client's reading, "and it was not a bubble." There were specks of blood in the plasma, so plaintiff "just retook." Plaintiff was supposed to inform a supervisor that she had problems, but she did not because she was under the influence of Tylenol with codeine and she doubted herself. Plaintiff did not inform her employer about the medication because her employer knew that she had left work early on Wednesday to get two teeth pulled, and she returned on Friday still under the influence of medication. Plaintiff testified that she had been warned for violating this policy. She did not know the date, but she had attended two months of training and the warning was due to that training. Plaintiff was aware that the donor had to go to the nurse. If plaintiff wanted to have the donor pass, plaintiff would not have acted in a way that required the donor to go to the nurse. Plaintiff also would not have acted that way because she needed a job and still needed a job. It was not done to pass an individual.

15. Pickens stated that there were so many variations of the reasons for plaintiff's conduct, that

they terminated her employment based on falsification of documentation.

16. Plaintiff stated that she did what she thought was best and that she informed other people at work (not Niemeyer or Pickens) that there were specks in the plasma.

17. The referee found as follows. Plaintiff was aware of the employer's falsification of documents policy that required her to inform a supervisor before doing any retesting so that the supervisor could evaluate the situation and approve the retest. Plaintiff also had been warned about violating the policy. The employer's policy was a reasonable rule and was known to plaintiff, who harmed the employer's best interest by retesting a donor whose result was out of range to donate, without informing a supervisor. Plaintiff had been warned about such conduct and had no compelling reason for her violation of the policy. Plaintiff committed a willful and deliberate act that harmed the employer's interest. Plaintiff's conduct constituted misconduct and she was disqualified from unemployment benefits.

18. Plaintiff appealed, alleging that the referee did not consider that she was under the influence of medication, that she needed her job, and therefore that she had not willfully violated the policy.

19. The Board affirmed the referee's decision, finding that the record was adequate and that further evidence was unnecessary. The Board concluded that the referee's decision was supported by the record and the law. The Board incorporated the referee's decision as part of the Board's decision and affirmed the referee's denial of plaintiff's claim for unemployment insurance benefits.

20. On administrative review (see 735 ILCS 5/3-101 *et seq*. (West 2010)), the circuit court affirmed the Board's decision because it was not against the manifest weight of the evidence nor contrary to law.

21. Defendants contend that the Board's decision that plaintiff was not eligible for unemployment insurance benefits must be upheld because it was neither contrary to the manifest weight of the evidence, nor clearly erroneous. Defendants maintain that plaintiff violated a reasonable work rule or policy prohibiting employees from rereading the machine or re-evaluating a donor's test results, that the Board's factual findings should be affirmed unless they contravened the manifest weight of the evidence, and that plaintiff deliberately and willfully violated the foregoing rule or policy. Defendants also contend that plaintiff forfeited the issue as to whether she engaged in misconduct because she failed to argue the point properly on appeal.

22. Initially, we note that plaintiff's *pro se* brief fails to conform to the requirements prescribed by Supreme Court Rules 341 (eff. July 1, 2008) and 342 (eff. January 1, 2005), fails to present a clear and coherent argument, fails to cite legal authority, and the plaintiff's failures are a sufficient basis for dismissing this appeal. See *In re Marriage of Snow*, 81 Ill. App. 3d 1148, 1149 (1980); *47th & State Currency Exchange, Inc. v. B. Coleman Corp.*, 56 Ill. App. 3d 229, 231-33 (1977). It is not the function of this court to research and argue the position of any party. *Vernon Hills III Ltd. Partnership v. St. Paul Fire & Marine Insurance Co.*, 287 Ill. App. 3d 303, 311 (1997); *In re Estate of Divine*, 263 Ill. App. 3d 799, 810 (1994); *Nicholl v. Scaletta*, 104 Ill. App. 3d 642, 647 (1982).

23. Plaintiff has also submitted information and documents in her *pro se* brief that she did not include in the record on appeal. Our review is limited to the documents certified in the record on appeal, and we cannot consider information or documents *dehors* the record. See *In re Marriage of Kohl*, 334 Ill. App. 3d 867, 874 (2002); *Bianchi v. Savino Del Bene International Freight Forwarders, Inc.*, 329 Ill. App. 3d 908, 929 (2002); *Harris v. Old Kent Bank*, 315 Ill. App. 3d 894,

898-99 (2000); *Regal Package Liquor, Inc. v. J.R.D., Inc.*, 125 Ill. App. 3d 689, 691 (1984); *Etten v. Lane*, 138 Ill. App. 3d 439, 442 (1985).

24. We recognize that plaintiff is a *pro se* litigant, but she is required to comply with the procedural rules of the Illinois Supreme Court governing appellate review, and her *pro se* status did not excuse her failure to do so. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001); *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462-63 (1993). Despite the deficiencies in plaintiff's brief, we have considered the merits of her appeal.

25. Section 602A of the Act provides in part:

> "An individual shall be ineligible for benefits for the week in which he has been discharged for misconduct connected with his work and, thereafter, until he has become reemployed ***. For purposes of this subsection, the term 'misconduct' means 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 405/602A (West 2010); see also *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (2006).

26. A reasonable rule concerns "standards of behavior which an employer has a right to expect" from an employee. *Bandemer v. Department of Employment Security*, 204 Ill. App. 3d 192, 195

(1990). Willful conduct stems from an employee's awareness of a company rule that is consciously disregarded by the employee. *Wrobel v. Illinois Department of Employment Security*, 344 Ill. App. 3d 533, 538 (2003); *Lachenmyer v. Didrickson*, 263 Ill. App. 3d 382, 389 (1994). Harm need not be actual harm and can consist instead of potential harm. *Greenlaw v. Department of Employment Security*, 299 Ill. App. 3d 446, 448 (1998); *Brodde v. Didrickson*, 269 Ill. App. 3d 309, 311 (1995).

27. This court reviews the Board's decision, not the decision of the referee or the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 524-25 (2008); *Perto v. Board of Review*, 274 Ill. App. 3d 485, 491-92 (1995). The Board is the trier of fact. *Nykaza v. Department of Employment Security*, 364 Ill. App. 3d 624, 628 (2006). The Board's factual findings are "prima facie true and correct" (see *Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002); 735 ILCS 5/3-110 (West 2010); and will not be reversed unless they are against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 56 (2005). The issue of misconduct is a mixed question of law and fact. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 826 (2009). The Board's decision on a mixed question of law and fact will not be disturbed unless it was clearly erroneous. *Sudzus*, 393 Ill. App. 3d at 826; *Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 715 (2007). The Board's decision is clearly erroneous only if the appellate court "definitely and firmly believes that a mistake has occurred." *Livingston*, 375 Ill. App. 3d at 715.

28. Here, it was neither against the manifest weight of the evidence nor clearly erroneous for the Board to have found that plaintiff had reread or re-evaluated a donor's results and had documented only the second result, without informing a supervisor in violation of a reasonable rule or policy

prohibiting employees from re-evaluating donors' results. Plaintiff alleged that she reread the results because there was a bubble in the tube the first time, things did not line up, she was ill, she was under the influence of Tylenol with codeine, she noticed specks of blood in the donor's plasma, and, as she alleges in her brief, she did not understand how to read the score and her face and jaw were swollen. Plaintiff's conduct was willful and deliberate because she admitted she knew that the employer's policy prohibited her from re-evaluating a score and documenting a new score. Given these facts, it was not against the manifest weight of the evidence for the Board to conclude that plaintiff had re-evaluated a donor's HCT result.

29. The next issue is whether plaintiff's actions constituted misconduct that disqualified her from receiving unemployment insurance benefits. Plaintiff testified that she previously had been warned about similar conduct, but Niemeyer testified that plaintiff had not been warned. Even assuming that plaintiff had not been warned, it was not clearly erroneous for the Board to have found that plaintiff had engaged in misconduct and was not eligible for unemployment insurance benefits. Plaintiff engaged in disqualifying misconduct because she was aware of, and consciously disregarded, a reasonable rule or policy not to re-evaluate a donor's results. The rule or policy was reasonable because the violation of a company rule or policy concerning the plasma donation process could result in transmitting infectious diseases, could expose the employer to liability, and could require the employer to report the error to the government and to recall the product, which could result in a shortage of life-saving plasma and cost the employer lost revenue. Although plaintiff alleges that she had undergone dental work and was in pain and on medication, she does not contend that the pain or the medication made her unaware of the above rule or policy or prevented her from

complying with it. We note that she provided numerous other reasons why she retested the donor.

30. We find that the Board's finding, that plaintiff acted deliberately and willfully in violating the company's rule or policy against re-evaluating donors, was not clearly erroneous, therefore, plaintiff was ineligible for benefits because of misconduct connected with her work.

31. Accordingly, because we do not believe the Board erred when it made its decision, we affirm the judgment of the circuit court.

32. Affirmed.