

No. 1-11-3639

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

JACQUELINE BELL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY; and BOARD OF REVIEW;)	
)	No. 11 L 50455
Defendants-Appellants,)	
and)	
)	
BOULEVARD CARE NURSING & REHAB, LLC c/o)	
PERSONNEL PLANNERS,)	Honorable
)	Robert Lopez-Cepero,
Defendant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff's willful violation of a doctor's orders constituted misconduct in connection with her work and disqualified her from unemployment benefits, the circuit court's judgment was reversed.

¶ 2 The Board of Review of the Illinois Department of Employment Security (Board) found plaintiff, Jacqueline Bell, ineligible to receive unemployment benefits under section 602A of the

Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602A (West 2010). The circuit court reversed the Board's decision. On appeal, defendants (the Board and the Illinois Department of Employment Security (Department)) contend that the Board's finding that Bell was discharged for misconduct was not clearly erroneous. We agree with defendants and uphold the Board's decision.

¶ 3 Although Bell has not filed a brief, we will proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 4 The record shows that Bell worked as a licensed practical nurse at Boulevard Care Nursing & Rehab (Boulevard Care) from August 22, 2008 until August 17, 2010. Bell was discharged as a result of an incident that spanned the weekend of August 14 and 15, 2010. On both days, Bell worked double shifts, *i.e.*, from 3 p.m. to 11 p.m. and then from 11 p.m. to 7 a.m. According to Boulevard Care, Bell was instructed to carry out a doctor's orders with respect to a patient whose medication administration record directed that she was to be given a daily tube feeding from 4 p.m. to 10 a.m., with a six-hour resting period between feedings. However, the director of nursing, Felicia Chatman, indicated that when she made her rounds on Monday, August 16, the feeding bottle from the previous Friday was still hanging at the patient's bedside. Following her discharge on August 17, Bell applied for unemployment benefits with the Department, and the employer objected claiming that Bell was discharged for misconduct under the Act. On September 10, 2010, a claims adjudicator found Bell eligible for benefits because Bell's actions were not willful or deliberate.

¶ 5 The Department appealed, and on October 28, 2010, a telephone hearing was conducted by a Department referee. At this hearing, Felicia Chatman testified that Bell was hired on August 22, 2008 and discharged on August 17, 2010 for failing to follow a doctor's orders, *i.e.*, failing to infuse a patient on medication on August 14 and 15, 2010. Specifically, a patient at Boulevard

Care was receiving internal feeding through a "g-tube." Pursuant to a doctor's orders, Bell was to replace the patient's feeding bottle, which was hung at 4 p.m. on August 13, 2010. When Chatman made her rounds on Monday, August 16, she observed that the feeding bottle was never changed. On August 16, Chatman spoke to Bell on the phone and asked her how it was possible that the same feeding bottle that was hung on Friday was still hanging on Monday. Bell's response was only that "she hung the feeding." According to Chatman, Bell had been warned in the past for medication errors, but not this particular error.

¶ 6 Regina Cooper, the assistant director of nursing, testified that she discharged Bell. When she asked Bell why the feeding bottle had not been replaced, Bell again responded that she hung the feeding. Cooper showed Bell the last feeding bottle, but Bell did not offer any explanation as to why it still read "Friday." Cooper explained to Bell that she failed to follow a doctor's orders, did not feed the patient for two days, and that she was previously warned in March and November 2009, and in May 2010, for medication errors. Cooper noted that following the November 2009 incident, Bell was suspended.

¶ 7 Bell testified that Cooper and Cynthia Staine, the assistant administrator who was also present when Bell was discharged, told Bell that she was discharged for failing to follow a doctor's orders. Bell told Cooper and Staine that she hung the bottle properly and claimed that the bottle was dated August 14, which was consistent with her duties. Bell further claimed that it was the duty of the nurse working on the morning of August 16 to discard the previous bottle. In addition, Bell testified that the patient was overweight and feedings had been decreased, she only had to hang a new bottle after the old one was finished, it was impractical to expect the infusions to be completed in 18 hours, and she had no control over the patient's room because certified nursing assistants were coming in and out.

¶ 8 In reversing the local office determination that Bell was eligible for benefits, the referee found that Bell was discharged for misconduct and that her actions constituted a deliberate and willful disregard of the employer's interests. In so finding, the referee stated that the employer's witnesses offered credible, corroborating testimony regarding the events leading to Bell's discharge. In contrast, Bell failed to offer competent and compelling evidence in order to rebut the employer's witnesses and substantiate her own allegations.

¶ 9 Bell appealed the referee's decision to the Board. In the written argument Bell attached to her notice of appeal, she essentially argued that it was untrue that the patient had not been fed for two days. In affirming the referee's decision, the Board found that, after reviewing the record, Bell's actions amounted to a willful and deliberate violation of Boulevard Care's policies, and that her attempts at rebuttal, "consisted of little more than blanket denials of the employer's testimony and self justifications for her alleged actions or lack thereof." In so finding, the Board did not consider Bell's written argument because she failed to comply with an administrative rule making acceptance of it contingent on providing a certificate of mailing to show that it was served on her employer.

¶ 10 Bell filed a complaint for administrative review of the Board's decision in the circuit court. She subsequently filed, with the help of counsel, a memorandum of law arguing that the Board's decision was clearly erroneous because there was no evidence that her violation of Boulevard Care's policy was anything more than a mistake due to inadvertence or neglect. The circuit court agreed with Bell and reversed the Board's decision. In so finding, the circuit court concluded that the record did not show that Bell acted willfully in not performing her job. This appeal follows.

¶ 11 We review the final decision of the administrative agency and not the decision of the circuit court. *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d

522, 524-25 (2008). The applicable standard of review depends on the issue raised. This court reviews pure questions of law *de novo* (*Village Discount Outlet*, 384 Ill. App. 3d at 525), but the Board's findings of fact are governed by a different standard of review, *i.e.*, they are entitled to great deference and will be affirmed unless they are against the manifest weight of the evidence (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)).

¶ 12 The question of whether an employee was disqualified from unemployment benefits for misconduct presents a mixed question of law and fact and is subject to the "clearly erroneous" standard of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001). An agency's decision may be deemed clearly erroneous only where the reviewing court is left with the definite and firm conviction that a mistake has been made based on the entire record. *AFM Messenger Service*, 198 Ill. 2d at 395. For the reasons which follow, we find that this is not such a case.

¶ 13 To be ineligible for unemployment benefits under section 602A of the Act, a claimant's cause of discharge must be related to work misconduct, which deliberately and willfully violates a reasonable work rule or policy governing work-related behavior. 820 ILCS 405/602A (West 2010). Further, such violation must harm the employer or other employees, or must be repeated after a warning from the employer. 820 ILCS 405/602A (West 2010).

¶ 14 At the hearing, Chatman and Cooper testified that Bell was discharged for failing to follow a doctor's orders on August 14-15, 2010. When they confronted Bell about her failure to change a patient's feeding bottle on those dates, Bell responded only that she hung the feeding bottle. Bell never suggested at the hearing that her actions were anything but intentional. She claimed that she properly hung the feeding bottle, that she did so on August 14th, not the 13th as indicated by Chatman, and that the patient needed her feedings reduced because she was

overweight. Moreover, the record revealed that Bell had been previously warned for committing medication errors, and was suspended following a medication error in November 2009.

¶ 15 It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicting testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). Here, after considering the testimony of Chatman, Cooper, and Bell during the telephone hearing, the Board determined that Bell's testimony "consisted of little more than blanket denials of the employer's testimony and self justifications for her alleged actions or lack thereof," settled this issue in favor of the employer, and affirmed the referee's decision. In doing so, the Board found that Bell was discharged for misconduct when she failed to change a patient's feeding bottle. After reviewing the record in this case, and deferring to the Board's assessment, we cannot say that this conclusion was against the manifest weight of the evidence. *Caterpillar, Inc., v. Doherty*, 299 Ill. App. 3d 338, 344 (1998).

¶ 16 Considering the Board's findings as *prima facie* true and correct (*Horton v. Department of Employment Security*, 335 Ill. App. 3d 537, 540 (2002)), we find that the Board's determination that Bell was ineligible for unemployment benefits was not clearly erroneous (*AFM Messenger Service*, 198 Ill. 2d at 391). Bell knowingly violated a doctor's orders by deliberately failing to change a patient's feeding bottle after being warned on three separate occasions for similar conduct.

¶ 17 For the foregoing reasons, we reverse the circuit court's judgment and uphold the Board's decision disqualifying Bell from receiving unemployment benefits.

¶ 18 Judgment reversed.