FIFTH DIVISION
August 2, 2013

No. 1-12-3352

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SCHANA LOVE, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and RUSH-PRESBYTERIAN EMPLOYEE RELATIONS c/o MCHC KELLY RAY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 12 L 50816 Honorable Daniel T. Gillespie, Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 *Held*: Where plaintiff's willful violation of her employer's reasonable rule or policy for calling in a prescription constituted misconduct in connection with her work and disqualified her from unemployment benefits, the circuit court's judgment was affirmed.

¶ 2 Plaintiff Schana Love appeals *pro se* from the circuit court's order that affirmed the decision of the Board of Review of the Illinois Department of Employment Security (Board),

finding that she was discharged for misconduct and thus ineligible to receive unemployment benefits under section 602A of the Illinois Unemployment Insurance Act (Act). 820 ILCS 405/602A (West 2010). Plaintiff appeals *pro se*, contending that she did not intentionally violate a reasonable rule or policy. We affirm.

¶ 3 The record shows that plaintiff was employed as a Certified Medical Assistant for Rush University Medical Center (Rush) from 2006 or 2007 until she was terminated on August 3, 2011.[1] Plaintiff applied for unemployment benefits with the Illinois Department of Employment Security, and the employer objected, claiming that plaintiff was discharged for violating a known rule, "[g]ross misconduct and [p]racticing outside her job scope." The employer submitted a document entitled "RUMC Record of Employee Discipline," which was dated August 3, 2011. The document stated that on July 22, 2011, a Rush doctor had received a phone call from a pharmacist asking to verify a prescription for Vitamin D that had been called in by another medical assistant on plaintiff's behalf. The doctor did not know of any prescription he had approved for plaintiff. Plaintiff explained that another medical assistant had called in the prescription for plaintiff because plaintiff had not wanted to bother the doctor and thought asking the doctor was unnecessary as the prescription was "just [for] a vitamin." Plaintiff's actions violated the Rush Code of Conduct, and Rush submitted a cover page from the Rush Compliance Manual that plaintiff had signed on November 26, 2007. Plaintiff submitted a doctor's prescription for Vitamin D dated July 28, 2011. The claims adjudicator found plaintiff eligible for unemployment benefits because her action was not repeated following warnings or explicit instructions.

1 The record shows three different start dates for plaintiff: June 2006, February 2007, and November 2007.

¶ 4 Rush appealed, and on February 22, 2011, a telephone hearing was conducted by a referee. At this hearing, Jennifer Sydow, a nurse and practice manager at Rush, testified that plaintiff began working for Rush in November 2007 and was terminated on August 3, 2011 because she violated two Rush policies—engaging in conduct considered indecent or unlawful at the discretion of the medical center and forging, altering, or intentionally falsifying any medical center documents or other documents or information. On August 3, a Rush physician, Dr. Miguel Salas, told Sydow that he had received a phone call from a pharmacist on July 22, 2011 to verify a dose of Vitamin D for plaintiff, the patient, but he was unaware of this prescription and had not approved it. Upon further investigation, it was determined that plaintiff had called in the prescription for herself, and plaintiff and another medical assistant had also called in the prescription together. Plaintiff had explained that she called in the prescription because she did not want to bother the doctor and thought the doctor's assistance was unnecessary because the prescription was "just for a vitamin."

¶ 5 Sydow further testified that calling in a prescription under a doctor's name and without a doctor's knowledge or authorization is not permitted by law or Rush, regardless of whether the prescription is for a vitamin or any other type of drug. Plaintiff had been given a review of Rush's Code of Conduct upon her employment and had not received any prior warnings.

¶ 6 Plaintiff testified that she started working at Rush in June 2006, and Dr. Salas was both her boss and physician. She called the pharmacy on July 22 to learn the price of Vitamin D so that she could determine whether it would be covered by her insurance. The pharmacy told plaintiff that a prescription was needed to obtain the price and that she could not call in the prescription herself, a procedure she was not aware of. Plaintiff thought her actions were permitted because she was seeking a vitamin. Further, when she explained the situation to Dr. Salas that same day, he thanked her and called in the prescription. Plaintiff maintained she made

an honest mistake. However, plaintiff also acknowledged that medical assistants can call in refill prescriptions for patients only if approved by a physician, and that patients are not authorized to call in their own prescriptions.

¶ 7 In setting aside the local office determination that plaintiff was eligible for benefits, the referee found that plaintiff had called in a prescription for herself without consent or prior approval from the doctor, and had asked a co-worker to call in the prescription as well. Plaintiff's actions were brought to the attention of her employer because plaintiff had called in an amount exceeding the proper dosage. Plaintiff was not authorized to call in the prescription or ask anyone to do so, she was aware of the proper procedure, and her actions violated a known rule or reasonable policy of the employer. The referee concluded that plaintiff's actions constituted misconduct and, therefore, she was not eligible for benefits.

¶ 8 Plaintiff appealed the referee's decision to the Board, arguing that she had no intention of calling in a prescription, but merely wanted to learn the price of Vitamin D, and was told she could only learn the price if the prescription was called in. As plaintiff had never called in for a price before, she was not aware of the proper procedure. When she learned she could not call in the prescription herself, she asked a co-worker to call in the prescription for her because plaintiff could not leave her post at the time. Later, when plaintiff was able to speak with Dr. Salas, who had identified plaintiff's Vitamin D deficiency, he said, "No problem. Thanks for telling me."

¶ 9 The Board affirmed the referee's decision, finding that the credible evidence showed that plaintiff admitted to calling in her own prescription in violation of the employer's policy, and that plaintiff's testimony that she merely called for a "price check" was not credible. Plaintiff's reason for her actions was that she did not want to "bother the doctor." By calling in her own prescription, plaintiff violated her employer's policies and her misconduct was established at the hearing. The Board incorporated the referee's decision and affirmed the denial of benefits.

Plaintiff filed a complaint for administrative review of the Board's decision in circuit court, and on September 19, 2012, the circuit court affirmed the Board's decision. This appeal follows.

¶ 10 We review the decision of the Board, rather than the circuit court or the referee. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). The applicable standard of review depends on the issue raised. This court reviews questions of law *de novo* (*Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 525 (2008)), but the Board's factual findings will be affirmed unless they are against the manifest weight of the evidence (*Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009)), which only occurs if the opposite conclusion is clearly evident (*Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16). The question of whether an employee was disqualified from unemployment benefits for misconduct presents a mixed question of law and fact, which 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 is clearly erroneous when the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). For the reasons below, we find that this is not such a case.

¶ 11 We see no basis to disturb the Board's factual findings. At the hearing, Sydow testified that plaintiff and another medical assistant called in a prescription for Vitamin D for plaintiff because plaintiff did not want to bother Dr. Salas and the prescription was for a vitamin. Dr. Salas then received a request from a pharmacist to verify plaintiff's dose, but Dr. Salas had neither approved nor knew of the prescription. Plaintiff had previously received a copy of the Rush Code of Conduct and calling in a prescription without a doctor's authorization was both illegal and a violation of Rush policy.

¶ 12 Plaintiff, however, testified that she called the pharmacy merely to check the price of Vitamin D. When the pharmacy told her she could not check the price without calling in a prescription, which she could not do herself, she asked a co-worker to do so, and later told Dr. Salas about the situation. Plaintiff was aware that medical assistants could call in prescriptions only after obtaining authorization from a physician and that patients could not call in their own prescriptions.

¶ 13 It is the responsibility of the administrative agency to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony. *Hurst*, 393 Ill. App. 3d at 329. Here, after considering the testimony of Sydow and plaintiff during the telephone hearing, the Board agreed with the referee's decision and found that plaintiff admitted to calling in her own prescription in violation of Rush policy. The Board further found that plaintiff's testimony that she merely called the pharmacy for a "price check" on the Vitamin D was not credible. The Board thus settled this issue in favor of the employer. 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).

¶ 14 Considering the Board's factual findings as *prima facie* true and correct (*Livingston v. Department of Employment Security*, 375 Ill. App. 3d 710, 714 (1007)), we find that the Board's determination that plaintiff was ineligible for unemployment benefits was not clearly erroneous (*AFM Messenger Service*, 198 Ill. 2d at 395). Under section 602A of the Act, misconduct is established by three elements. First, there must be a deliberate and willful violation of a rule or policy of the employer. 820 ILCS 405/602A (West 2010). Willful conduct stems from an employee's awareness of, and conscious disregard for, a company rule. *Livingston*, 375 Ill. App. 3d at 716. Second, the rule or policy must be reasonable. 820 ILCS 405/602A (West 2010). A reasonable rule concerns standards of behavior which an employer has a right to expect from an

employee. *Sudzus*, 393 Ill. App. 3d at 827. Third, the violation must have either harmed the employer or was repeated by the employee despite previous a warning or other explicit instruction. 820 ILCS 405/602A (West 2010). Harm to the employer is not limited to actual harm, but can be established by showing potential harm. *Pelosi v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 32.

¶ 15 All three elements of misconduct were met in this case. Plaintiff was aware that she was not permitted to call in a prescription for herself and that a medical assistant could not call in a prescription without a physician's authorization. In addition to being illegal, calling in her own prescription also violated Rush policy, and Rush has a right to expect that its employees will not take advantage of their positions to violate the law or the medical center's policies. Plaintiff's actions also threatened harm to Rush. Plaintiff could have exposed Rush to liability, especially where her initial requested dose was excessive. See *Pelosi*, 2012 IL App (1st) 111835 at ¶ 32 (accessing confidential health information could have resulted in lawsuits against a hospital and loss of business); *Hurst*, 393 Ill. App. 3d at 329 (not having a valid driver's license could have exposed the employer to liability resulting from any injuries caused by the plaintiff). Further, Rush was harmed by the loss of trust that had been placed in plaintiff. See *Phistry*, 405 Ill. App. 3d at 608.

¶ 16 In her brief, plaintiff contends that Rush used this incident as an excuse to discharge her, and she was actually terminated for personal issues. We note that as a general rule, issues or defenses not raised before the administrative agency will not be considered for the first time on administrative review. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97 (2002). Regardless, plaintiff's argument is unavailing. Section 602A of the Act does not indicate that misconduct must be the sole reason for the employee's discharge.

820 ILCS 405/602A (West 2010); *Woods*, 2012 IL App (1st) 101639 at ¶ 15. Here, the Board's finding that plaintiff was terminated due to misconduct was not clearly erroneous.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.