2015 IL App (1st) 132992-U

SECOND DIVISION
April 21, 2015

No. 1-13-2992

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAGIC LITTLE, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF THE ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and CHICAGO TRANSIT AUTHORITY CTA MERCHANDISE MART PLAZA c/o NSN JERRY WEINSTEIN, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 97 CR No. 13 L 50563 Honorable Patrick J. Sherlock, Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the record shows plaintiff was dismissed from his job due to violations of his employer's attendance policy, he was discharged for misconduct in connection with his work and the Board of Review's decision denying him unemployment benefits is affirmed.

¶ 2 *Pro se* plaintiff Magic Little appeals from an order of the circuit court affirming the final administrative decision of defendant, the Board of Review of the Illinois Department of Employment Security (Board), that plaintiff was discharged for misconduct in connection with his work and was thus ineligible to receive unemployment benefits under section 602A of the Unemployment Insurance Act (Act) (820 ILCS 405/602A (West 2012)). On appeal, plaintiff contends that he had valid medical and family reasons for his tardiness. We affirm.

¶ 3 The record reveals that plaintiff worked for the Chicago Transit Authority (CTA) as a bus mechanic from November 26, 2001, until he was terminated on September 13, 2012.[1] Plaintiff then applied for unemployment benefits with the Illinois Department of Employment Security (IDES). The CTA contested the claim, alleging that plaintiff was on probation for absenteeism at the time of his termination and was terminated after he arrived late for work two days in a row without an explanation. The CTA relied in part upon "General Rule 18," which stated, in pertinent part, that tardiness was not permitted. An IDES claims adjudicator determined that plaintiff was ineligible for benefits and plaintiff appealed this decision.

¶ 4 A telephone hearing was held on November 19, 2012. Ms. Calhoun, an administrative manager with the CTA, testified that plaintiff was discharged on September 9, 2012 due to excessive absenteeism. Plaintiff, who was supposed to report for work at 7:30 a.m., arrived at 7:53 a.m. on September 3, 2012, and at 7:31 a.m. on September 4, 2012. He gave "no specific reason" for his tardiness. Calhoun further testified that at the time of plaintiff's termination, he was on a six-month probationary period due to prior absenteeism "issues." Specifically, plaintiff

[1] The record contains two dates of discharge for plaintiff, September 9, 2012, and September 13, 2012.

was on probation from August 3, 2012 through February 3, 2013, and that "any instance of chargeable absenteeism that was not [Family Medical Leave Act] covered" would put plaintiff "up for discharge." Plaintiff was previously on probation in October 2010 and December 2011.

¶ 5 Plaintiff testified that at the beginning of 2012, he had a serious eye infection and that some dates that he was "off" were covered by the Family Medical Leave Act (FMLA), but that others "slipped through the cracks," causing him to be written up at work. He explained that on September 3, 2012, he had medical problems, but was not "FMLA approved." He asserted that several of the instances that he was disciplined for were, or should have, been FMLA approved, due to his own health issues and those of his mother. Plaintiff recalled one probationary period from "years ago."

¶ 6 The referee determined that plaintiff was not eligible for unemployment benefits because he was discharged for misconduct connected with work when he had previously been warned about his attendance and placed on a six-month probationary period, yet was tardy for work two days in a row. Therefore, because plaintiff was scheduled to work and he failed to report to work as scheduled, his failure to report was a violation of the reasonable expectations and rules of the CTA, and was "deliberate and willful as it was not due to some compelling circumstance." The referee concluded that plaintiff's conduct amounted to misconduct as contemplated by section 602(A) of the Act. Plaintiff filed an appeal.

¶ 7 The Board affirmed the referee's decision denying plaintiff benefits, found it supported by the record and the law, and incorporated it into its decision. Plaintiff then filed a *pro se* complaint for administrative review, and the circuit court affirmed the Board's decision. Plaintiff now appeals *pro se*.

¶ 8 Initially, this court notes that plaintiff has failed to comply with our supreme court's rules governing appellate review. See Ill. S. Ct. Rs. 341 (eff. Feb. 6, 2013), 342 (eff. Jan. 1, 2005). Most notably, plaintiff has failed to articulate an organized and cohesive legal argument, and his brief is completely devoid of any citation to legal authority. Plaintiff's *pro se* status does not relieve him of the burden of complying with the format for appeals as mandated by our supreme court's rules (*Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2001)), and his noncompliance with these rules subjects his appeal to dismissal (*LaGrange Memorial Hospital v. St. Paul Insurance Co*., 317 Ill. App. 3d 863, 876 (2000)). However, because the issue on appeal is straightforward and we have the benefit of a cogent appellee's brief (see *Twardowski*, 321 Ill. App. 3d at 511), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 9 In an appeal from an administrative review proceeding, this court reviews the decision of the Board rather than that of the circuit court. *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶ 14. The question of whether an employee was properly discharged for misconduct under the Act is a mixed question of law and fact, to which we apply 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 will be deemed clearly erroneous only where the record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *AFM Messenger Service Inc*., 198 Ill. 2d at 395.

¶ 10 Section 602(A) of the Act provides that employees discharged for misconduct are ineligible to receive unemployment insurance benefits. *Alternative Staffing, Inc. v. Illinois Department of Employment Security*, 2012 IL App (1st) 113332, ¶ 30; 820 ILCS 405/602(A)

(West 2012). Misconduct is defined as an employee's willful and deliberate violation of a reasonable policy or rule which harms the employer. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). Three elements must be proven to establish misconduct: "(1) there was a deliberate and willful violation of a rule or policy of the employing unit, (2) the rule or policy was reasonable, and (3) the violation either harmed the employer or was repeated by the employee despite a previous warning or other explicit instruction from the employing unit." *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 19, citing 820 ILCS 405/602(A) (West 2008).

¶ 11 Here, the Board's determination that plaintiff willfully and deliberately violated the CTA's attendance policy was not against the manifest weight of the evidence. The record reveals that at the time of his termination, plaintiff was serving a six-month probationary period due to prior absenteeism issues and was aware that any absences during the probationary period that were not covered by FMLA would make him eligible for discharge. It is undisputed that plaintiff was late for work on September 3, 2012, and that he admitted that his medical issue on that date was not covered by FMLA. Therefore, plaintiff willfully violated the CTA's attendance policy when he arrived late for work. See *Odie v. Department of Employment Security*, 377 Ill. App. 3d 710, 713 (2007) (an employee willfully violates a work rule when he is aware of the rule and consciously disregards it). Although plaintiff contends that he should not be denied benefits because he was late or absent from work due to family and health reasons "beyond his control," he does not dispute that he was on probation, or that he was late for work on September 3 and 4, 2012.

¶ 12 The CTA's attendance policy, requiring an employee to come to work in a timely manner when he is scheduled, is reasonable as it is in an employer's interest that employees actually come to work and absenteeism causes an employer harm. See *Phistry*, 405 Ill. App. 3d at 607 (a court may determine that a policy is reasonable by "a commonsense determination that certain conduct intentionally and substantially disregards an employer's interest"); 56 Ill. Adm. Code 2840.25(b)(3) (2012) ("[a]bsences and tardiness always cause harm to the employer, even if a worker is allowed to make up the time"). Having reviewed the record in the instant case, this court is not left with the definite conviction that the Board made a mistake (*AFM Messenger Service Inc*., 198 Ill. 2d at 395), when it concluded that plaintiff's tardiness constituted misconduct rendering him ineligible to receive unemployment benefits under the Act (*Alternative Staffing, Inc.*, 2012 IL App (1st) 113332, ¶ 30). Accordingly, we affirm the decision of the Board.

¶ 13 For the foregoing reasons, we affirm the order of the circuit court of Cook County affirming the decision of the Board.

¶ 14 Affirmed.