FIRST DIVISION
July 20, 2015

No. 1-14-2220
2015 IL App (1st) 142220-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KIM SIRIANN, Plaintiff-Appellant, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and FLAGG CREEK WATER RECLAMATION DISTRICT, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13 L 50468 Honorable Edward S. Harmening, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

Held: Board of Review's decision that plaintiff should not receive unemployment benefits due to her discharge based on misconduct was not clearly erroneous.

¶ 1 Plaintiff, Kim Siriann, was discharged by her employer, Flagg Creek Water Reclamation District (District), and filed a claim for unemployment insurance benefits with the Illinois

Department of Employment Security (Department). The Board of Review (Board) for the Department ultimately determined that plaintiff was discharged for misconduct under the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/100 *et seq*. (West 2012)), and thus was ineligible for benefits. The Board found that plaintiff's refusal to cooperate with the District's investigation of insurance reimbursement constituted misconduct under the Act. Plaintiff filed a complaint with the circuit court for administrative review. The circuit court affirmed the Board's order, and this appeal followed. On appeal, plaintiff contends that the Board's decision that plaintiff's refusal to cooperate with the District's investigation constituted misconduct under the Act was clearly erroneous. We disagree and affirm the circuit court's order affirming the Board's decision.

¶ 2 Plaintiff was discharged from her job as a part-time billing coordinator for the District on July 6, 2012. Thereafter, plaintiff filed a claim for unemployment insurance benefits. The Department's claims adjudicator found that plaintiff qualified for benefits, and the District appealed.

¶ 3 On October 10, 2012, a hearing was held via telephone conference. Robert Abraham, the District's general counsel, testified first. He testified that the District had a medical reimbursement plan whereby the District made payments to its employees for the cost of certain medical expenses incurred by the employee, the employee's spouse, or the employee's eligible children. Abraham testified that certain documents submitted by plaintiff revealed the possibility that between May 2008 and the early part of 2012, plaintiff was reimbursed by the District for medical expenses that had already been paid by other sources. Abraham testified that the documents revealed that the District may have overpaid plaintiff approximately $6,000 in medical expense reimbursements.

¶ 4 Abraham testified that plaintiff refused to sign certain forms that had been given to her. He testified that "we were not looking for the HIPAA [] release," and that "we had indicated that to her." Abraham also testified as to the email exchange that took place between himself and plaintiff leading up to her termination. On June 26, 2012, Abraham sent an email to plaintiff stating in part:

> "The HIPAA form was explained to you when we spoke on June 21, 2012. We discussed it against on June [25]. You were informed that the HIPAA form did not need to be returned now, but instead, after you provided information regarding your health care etc., as set forth in the forms given to you on June [21], then the HIPAA form would be filled out, and you would sign it."

¶ 5 Plaintiff responded to Abraham's email that same day, stating that he did not discuss the HIPAA form on Thursday, June 21, 2012, and that it was not until Monday, June 25, 2012, that the form was explained to her. Plaintiff stated that she might have to get an attorney to look at the documents, and that she would try her best to meet the short deadline of June 28, 2012, but asked what the repercussions would be if she did not sign the HIPAA release form.

¶ 6 Abraham responded, stating "[w]e are not asking you to sign the HIPAA form now. We are asking that you answer the questions on the sheet I gave you on Thursday, and to sign the other sheet verifying the answers to the questions."

¶ 7 Michael Lynch, the treasurer for the District, testified that he met with plaintiff and Abraham and explained to plaintiff that they wanted the first questionnaire signed and completed, and that they were not requiring her to sign the HIPAA form at that time, but that they might need it going forward "if we don't get satisfactory answers when we have the other

information in front of us." Lynch testified that on June 28, 2012, plaintiff called him and told him she was not going to "sign the form."

¶ 8 Plaintiff then testified at the hearing. She testified that she signed a document in February 2012 indicating that she had no other source of insurance coverage. She further testified that she did, however, have dental insurance through her husband, but never corrected her answers to the February 2012 document.

¶ 9 Plaintiff also testified that the District was clear that she had to sign the HIPAA form by June 28, 2012, but that she was not comfortable with the District having access to all of her family's medical records, so she refused.

¶ 10 On October 11, 2012, the Administrative Law Judge (ALJ) issued its decision and made the following findings of fact. Plaintiff had been employed part-time as a billing coordinator for the District since November 2, 2002. On February 28, 2012, plaintiff signed a statement under oath that she had no other health insurance available to her for payment of health, prescription, dental, vision, and hearing care expenses. Plaintiff was covered by the District's medical insurance and was reimbursed for dental and vision expenses. Plaintiff and her family were covered under her spouse's dental insurance up to $2,000 a year.

¶ 11 The District became concerned that plaintiff was receiving reimbursement for dental insurance at the same time as the dental provider was being paid under her spouse's dental insurance. The District met with plaintiff on June 21, 2012, and asked her to sign a document which asked her to identify all healthcare providers for herself, her spouse, and her family members; all healthcare providers furnishing coverage for herself, her spouse, and any family members; and the name of her spouse or family member's employer. In addition, plaintiff was advised that she must sign a HIPAA authorization form for each entity named.

¶ 12 On June 25, 2012, plaintiff requested and received a copy of the document signed by her on February 28, 2012. She was shown copies of various dental bills for which she had been reimbursed. At that meeting, plaintiff offered to provide anything the District might need to clear up the dental insurance issue, but the plaintiff was instead asked to sign "the document" on or before June 28, 2012. Claimant refused to sign the document and was discharged for insubordination on July 6, 2012.

¶ 13 The ALJ concluded that the request to sign "a document which exceeded the scope of the Districts [*sic*] investigation was not reasonable as the information requested from the claimant exceeded the scope of the Districts [*sic*] investigation." The ALJ further found that the document asked for information which far exceeded the issue being investigated, which was plaintiff's requests for reimbursement of dental and vision expenses. The ALJ found plaintiff to be eligible for benefits.

¶ 14 The District appealed the ALJ's finding, and the Board issued its decision on April 17, 2013. In that decision, the Board noted it reviewed the transcript of the testimony that was presented in October 2012, and considered the written arguments presented by the District. No further evidentiary proceedings were held.

¶ 15 The Board found that the evidence revealed that plaintiff "failed to comply with the request of the employer to fill out forms provided to her on June 21, 2012." It further found that "the forms" were "reasonable and necessary in order for the employer to perform and complete their [*sic*] investigation of whether the claimant had received double reimbursement for some dental and vision expenses." The Board found it worth noting that plaintiff had testified that she gave "incorrect answers on the form she filled out on February 28, 2012 which was part of the employer's investigation." The Board found that plaintiff's actions in "failing to fill out forms

provided to her on June 21, 2012 violated a reasonable mode of conduct which the employer had a right to control as well as the employer's policy concerning employee behavior." The Board concluded that plaintiff was not eligible for benefits.

¶ 16 Plaintiff appealed the Board's decision to the circuit court. The circuit court affirmed the Board's decision and this appeal followed. On appeal, plaintiff contends that the elements of misconduct were not shown.

¶ 17 We first note that "[o]n appeal from the circuit court, we review the findings of the Board, not the referee or circuit court." *Walls v. Department of Employment Security*, 2013 IL App (5th) 130069, ¶ 14. Because the Board's decision is a mixed question of law and fact, we will reverse the Board's decision only if it was clearly erroneous. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001); *Farris v. Department of Employment Security*, 2014 IL App (4th) 130391, ¶ 35 (Board's decision that plaintiff not eligible for unemployment benefits due to misconduct constitutes a mixed question of law and fact). "Under this standard, we will reverse the Board's decision only if, based on the entire record, we are left with the definite and firm conviction that a mistake has been committed." *Farris*, 2014 IL App (4th) 130391, ¶ 35.

¶ 18 Section 602(A) of the Act provides that employees discharged for misconduct shall not be eligible to receive unemployment benefits. *Id*. Misconduct is defined as follows:

> "[T]he 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 405/602(A) (West 2012).

¶ 19 Three main requirements must be met to establish misconduct under the Act. It must be proven that (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. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 557 (1998).

¶ 20 Here, plaintiff contends that none of the three requirements were met. We will analyze each in turn. In construing the first requirement that an employee's violation of the employer's rule must be "deliberate and willful," courts have held that this language reflects the General Assembly's intent that only those individuals who intentionally act contrary to their employers' rules should be disqualified on the basis of misconduct, while those who have been discharged because of their inadvertent or negligent acts, or their incapacity or inability to perform their assigned tasks, should receive benefits. *Abbott Industries, Inc. v. Department of Employment Security*, 2011 IL App (2d) 100610, ¶ 19.

¶ 21 In this case, the Board found that there was evidence that plaintiff intentionally violated the District's rule requiring plaintiff to fill out certain forms pertaining to its investigation of insurance reimbursement fraud. Plaintiff does not dispute that she refused to sign the forms, but rather contends that she had compelling reason not to sign them, and thus is excused from violating the rule imposed by the District.

¶ 22 We first note that plaintiff's arguments regarding misconduct hinge upon the proposition that the District discharged her for failing to fill out the HIPAA release form. The District, on the other hand, maintains that plaintiff's insubordination stemmed from her failure to fill out the questionnaire that accompanied the HIPAA release form. The ALJ's decision specifically

analyzed plaintiff's failure to fill out the HIPAA release form, while the Board's decision merely discussed the "forms" that were given to plaintiff on June 21, 2012, and does not distinguish between the HIPAA release form and the questionnaire. This distinction is not necessary for our review, however. Plaintiff admits that she refused to fill out both forms, which adequately satisfies the "deliberate and willful violation of a rule or policy" component of misconduct. See *Abbott Industries*, 2011 IL App (2d) 100610, ¶ 19.

¶ 23 Accordingly, the question becomes whether this distinction matters when analyzing the next part of the test for misconduct, which is whether the rule or policy of the employer was reasonable. See *Manning*, 365 Ill. App. 3d at 557. Certainly this distinction matters here because the ALJ specifically found that the HIPAA release form exceeded the scope of the District's investigation, and thus the rule that plaintiff had to return the HIPAA form to the District was found to be unreasonable. However, the ALJ's decision did not discuss the reasonableness of the accompanying questionnaire. The Board of Review, on the other hand, merely discussed the "forms" that plaintiff was required to fill out, and found that they were reasonable.

¶ 24 We find ample evidence in the record to support a finding that plaintiff's insubordination stemmed from her refusal to sign the questionnaire, and not from her refusal to sign the HIPAA release form. The evidence presented at the hearing indicated that the District became aware of a potential "double reimbursement" problem amongst its employees, including plaintiff. In February 2012, the District had all employees fill out a survey regarding other medical insurance providers. Plaintiff specifically answered "no" to the question of whether she had a dental insurance provider, despite the fact that she was covered up to a certain amount on her husband's insurance plan. Plaintiff admitted that she never corrected her answer to that survey. The

District subsequently asked all employees to fill out a questionnaire, as well as a HIPAA release form. Plaintiff refused to fill out the forms. Plaintiff testified that she did not want to fill out the HIPAA release form because she did not want the District to have access to her and her family's medical records. Accordingly, she inquired about what would happen if she did not fill that form out. Abraham specifically stated in an email to her, "[w]e are not asking you to sign the HIPAA form now. We are asking that you answer the questions on the sheet I gave you on Thursday, and to sign the other sheet verifying the answers to the questions." Lynch testified at trial that if the District did not get satisfactory answers on that questionnaire, then it would have asked for the HIPAA release form to be signed.

¶ 25 Accordingly, finding ample support for the proposition that plaintiff's insubordination resulted from her failure to fill out the questionnaire, we find that such a request to answer the questionnaire was not unreasonable. Such a questionnaire was distributed in order to aid in an internal investigation regarding double reimbursement. See *Mattson v. Department of Labor*, 118 Ill. App. 3d 724, 726 (1983) (misconduct upheld after claimant's discharge for failure to cooperate in employer's internal investigation). Plaintiff points to no authority which suggests that disbursement of a questionnaire to aid in an internal investigation is unreasonable, and we can find none.

¶ 26 Finally, we find that the District was harmed by plaintiff's refusal to fill out the questionnaire. "In determining whether an employer was harmed, the employee's conduct should be viewed in the context of potential harm, and not in the context of actual harm." *Manning*, 365 Ill. App. 3d at 557. Here, plaintiff's failure to cooperate with the District's investigation by failing to fill out and submit the questionnaire deprived the District of discovering whether it sustained a financial loss or not. Abraham testified that the District

suspected plaintiff of double reimbursement in the amount of $6,000. Accordingly, we find sufficient evidence in the record to support the Board's finding of harm. For the foregoing reasons, we find that the Board's finding of misconduct on the part of plaintiff was not clearly erroneous, as we are not left with a definite and firm conviction that a mistake has been committed.

¶ 27 We affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.