

No. 1-11-3748

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

YELENA PRAVICH,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 11 L 51050
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; BOARD OF)	
REVIEW; and CHICAGO FIRE COMMISSARY, INC.,)	Honorable
)	Robert Lopez Cepero,
Defendants-Appellees.)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* Where the record shows plaintiff was dismissed from her job for repeatedly violating her employer's tardiness policy, she was discharged for misconduct, and the Board of Review's final administrative decision denying her unemployment insurance benefits is affirmed.
- ¶ 2 *Pro se* plaintiff Yelena Pravich appeals from an order of the circuit court affirming a final administrative decision by defendant, the Board of Review of the Illinois Department of Employment Security (the Board). The Board found that plaintiff was discharged for misconduct

connected with her work, and thus, ineligible for unemployment insurance benefits because she repeatedly violated her employer's tardiness policy. On appeal, plaintiff challenges the denial of benefits. We affirm.

¶ 3 The record shows that plaintiff had been employed as a tailor of firefighter uniforms for Chicago Fire Commissary, Inc. (the Commissary) from November 3, 1996, until February 22, 2011, when she was discharged after arriving late for work. Plaintiff applied to the Illinois Department of Employment Security (IDES) for unemployment insurance benefits claiming she had been laid off from her job due to a lack of available work. The Commissary protested plaintiff's claim for benefits stating that plaintiff was discharged due to tardiness after she was "continuously warned" that she would be fired if she did not arrive to work on time. Attached to the Commissary's protest were two letters of warning addressed to plaintiff. The first letter, dated January 6, 2009, and signed by owner Robert Zwick, states, in relevant part: "Please be advised that the Commissary opens at 8:am. [*sic*] All employees are expected to be here at that time. You have been notified on many previous occasions that your tardiness is totally unacceptable. You continue to show up late. This is your final warning."

¶ 4 The second warning letter, dated September 2, 2010, and signed by company president, Sandra Esterman, states as follows:

"After numerous warnings, you continue to come to work late. Our hours are 8 AM to 4 PM. Starting immediately, you will be sent home if you are unable to show up on time. Your job is important to this organization. When you are late our customers, Chicago Fire Fighters, have to wait for service and your daily job responsibilities can not [*sic*] be done on time.

Unless your performance improves, we may be forced to terminate your employment."

The Commissary also attached copies of plaintiff's last seven time sheets, covering the time period of November 29, 2010, through February 22, 2011. These time sheets show that plaintiff arrived to work after 8 a.m. on 20 out of the 53 days she worked during that time period.

¶ 5 Plaintiff informed the IDES claims adjudicator that she was fired by her manager, Bob Zwick, because she was five minutes late for work that morning due to the snow. Plaintiff said she had no idea why she was fired because she was never tardy before, and no one ever told her that her job would be in jeopardy if she was late. She claimed she had never been sent home from work for being late. Plaintiff acknowledged that she was aware of the company policy, contained in the employee handbook, that employees must be on time for work and must call the Commissary if they are going to be late. Plaintiff also acknowledged that in January 2011, Zwick verbally warned her that she must arrive to work on time and that she would be discharged if she was late. Following that warning, plaintiff tried to arrive to work on time. Plaintiff did not recall what effect her tardiness had on the Commissary.

¶ 6 Sandra Esterman, president of the Commissary, told the claims adjudicator that plaintiff was discharged for arriving late to work after they "begged and warned her" to be on time. Esterman knew plaintiff had a cell phone, but plaintiff failed to call and notify the office that she was going to be late. Esterman noted that the time sheets showed that on January 10, 18 and 24, 2011, plaintiff was sent home at noon because she arrived late for work. Esterman described plaintiff's tardiness as "continuous" and believed plaintiff no longer cared about her job. Plaintiff claimed she was late because the sun was in her eyes or traffic was bad. The week before plaintiff was discharged, Esterman "begged" plaintiff to arrive on time. Plaintiff agreed, but then arrived to work at 8:30 a.m., half an hour late. Esterman stated that the employee handbook,

which was given to plaintiff when she began working at the Commissary in 1996, explains the company policy that all employees must arrive to work on time or call if they are going to be late. Esterman also noted the letter given to plaintiff in October 2010 in which plaintiff was warned she could be discharged for not complying with the company policy. Esterman explained that plaintiff's tardiness adversely affected the business because firemen had to wait for plaintiff to arrive to work.

¶ 7 The claims adjudicator found that plaintiff was discharged from her job because she was tardy after being warned her job was in jeopardy due to her repeated tardiness. The adjudicator further found that plaintiff violated a known and reasonable company policy, and thus, she was discharged for misconduct connected with her work. Consequently, the claims adjudicator found plaintiff ineligible for unemployment insurance benefits. Plaintiff appealed that decision stating that she was proud of her 14 years of work at the Commissary, for which she received praise and gratitude from the firefighters, and she never received any complaints about her work.

¶ 8 At the April 27, 2011, telephone hearing, Sandra Esterman testified that plaintiff was discharged by Robert Zwick, owner of the Commissary, due to tardiness. Plaintiff was scheduled to start work at 8 a.m. every day. On the day she was discharged, plaintiff arrived to work at 8:30 a.m. after having been previously warned several times about arriving late for work. Plaintiff did not call the office or notify anyone ahead of time that she was going to be late, and when she arrived at work, she did not give an explanation for her tardiness. Plaintiff had a long history of being tardy at least twice a week. She was repeatedly warned about her tardiness both verbally and in writing. After being warned, her punctuality would improve, but after some time, she would again begin a pattern of tardiness. Esterman stated that the Commissary had a contract with the city of Chicago. She explained that there were firefighters waiting outside at 8 a.m. to have their uniforms tailored, and it was not fair to make them wait. The Friday before the

discharge, Esterman warned plaintiff that if she was late for work the following week, she would be fired. Esterman testified that they did not want to fire plaintiff and that doing so was an "extremely hard" thing to do, but it had reached the point where the company could no longer tolerate her tardiness.

¶ 9 Lieutenant Anthony Tobar, the Commissary foreman, testified that he heard Esterman warn plaintiff about her tardiness many times. He specifically recalled one week when Esterman was out of the office and plaintiff was late for work on Monday, Tuesday and Wednesday. Tobar advised plaintiff that Esterman would be in the following day, and asked plaintiff to arrive to work on time. Instead, plaintiff arrived to work at 8:30 a.m., half an hour late. Plaintiff never gave Tobar an explanation for why she was late.

¶ 10 Plaintiff testified that she was terminated from her employment without an explanation. She acknowledged that she was told that she needed to arrive to work on time, but said she lived very far and the snow made her drive to work horrible, which caused her to be late.

¶ 11 The IDES appeals referee issued a written decision affirming the denial of benefits to plaintiff. The referee found that plaintiff had been discharged for habitual tardiness, even after being given repeated warnings by her employer. He further found that plaintiff's "excessive" tardiness constituted misconduct connected with her employment, rendering her not eligible for unemployment insurance benefits.

¶ 12 Plaintiff appealed the referee's decision to the Board. Plaintiff acknowledged that she was sometimes late for work due to traffic or taking her son to school, but claimed she had an agreement with her manager that she could be late because she was an efficient worker and business was good. Plaintiff stated that over the last few years everything changed because business became slow, and her manager searched for reasons to discharge her. Plaintiff acknowledged receiving the two warning letters. She explained that she was usually 5 to 10

minutes late, and she did not call in to notify the office because using her cell phone while driving would be dangerous. Plaintiff also claimed that when she was 5 minutes late, the company marked her time sheet as being 15 minutes late.

¶ 13 The Board reviewed the entire record, including the transcript from the telephone hearing, and found that the referee's decision was supported by the record and the law. The Board also found that the further taking of evidence was unnecessary, and it affirmed the denial of benefits. Plaintiff appealed the Board's ruling to the circuit court of Cook County. The circuit court held a hearing, and affirmed the Board's decision denying plaintiff benefits. Plaintiff now appeals.

¶ 14 Initially, we observe that plaintiff's *pro se* brief fails to conform with the requirements stated in Supreme Court Rules 341(h) (eff. July 1, 2008) and 342 (eff. Jan. 1, 2005). Most notably, plaintiff has failed to articulate an organized and cohesive legal argument, and her brief is completely devoid of any citation to legal authority. Based upon plaintiff's noncompliance with these rules, her appeal is subject to dismissal. *Marzano v. Department of Employment Security*, 339 Ill. App. 3d 858, 861 (2003). However, because the issue is apparent, and we have the benefit of a cogent appellee's brief (see *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)), we choose to entertain the appeal (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 15 Although plaintiff has not stated an issue for review or specific request for relief, it is clear that she is challenging the denial of unemployment benefits. Plaintiff states that she is concerned that the appeal letter she sent to the Board, which included information that was not presented at the telephone hearing, was not taken into consideration when the Board made its decision. Plaintiff also makes several complaints about the manner in which the circuit court handled her appeal. Plaintiff claims the court did not give her an opportunity to fully present her statement, it refused to read her support letter, and it refused to allow her to take a break during

the hearing. Plaintiff acknowledges that she was "sometimes" late for work, and that she was warned twice, but maintains that she had an agreement with management that she could be late. She claims she was fired because business became slow.

¶ 16 This court reviews the final decision of the Board rather than that of the circuit court. *Phistry v. Department of Employment Security*, 405 Ill. App. 3d 604, 607 (2010). The Board's factual findings are considered *prima facie* true and correct, and will not be disturbed unless they are against the manifest weight of the evidence. *520 South Michigan Avenue Associates v. Department of Employment Security*, 404 Ill. App. 3d 304, 312 (2010). Under this standard, the Board's factual findings "must stand unless 'the opposite conclusion is clearly evident.'" *Id.* at 313, quoting *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). When reviewing an administrative agency decision, courts are precluded from reweighing the evidence, resolving conflicts in the testimony, or evaluating the credibility of the witnesses. *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16. It is the Board's responsibility to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). A reviewing court is prohibited from substituting its judgment for that of the Board. *520 South Michigan Avenue*, 404 Ill. App. 3d at 317. Where the record contains any evidence that supports the Board's decision, that decision is not contrary to the manifest weight of the evidence and must be affirmed on review. *Woods*, 2012 IL App (1st) 101639, ¶ 16.

¶ 17 Whether an employee was properly terminated due to misconduct, and thus, ineligible for unemployment benefits, is a mixed question of law and fact that is reviewed under the clearly erroneous standard. *AFM Messenger Service, Inc., v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001). The Board's decision is considered clearly erroneous where the court

reviews the record and definitively concludes that a mistake has been made. *Id.* at 395. Under Section 602(a) of the Illinois Unemployment Insurance Act (820 ILCS 405/602(A) (West 2010)), a person who is discharged by her employer for misconduct connected with her work is not eligible to receive unemployment insurance benefits. *Phistry*, 405 Ill. App. 3d at 607.

¶ 18 Misconduct is defined as an employee's willful and deliberate violation of a reasonable policy or rule which harms the employer. *Phistry*, 405 Ill. App. 3d at 607. The court may determine that a policy or rule is reasonable by "a commonsense determination that certain conduct intentionally and substantially disregards an employer's interest." *Id.* In addition, IDES regulations explain that "harm" includes damage or injury to the employer's operations or goodwill. 56 Ill. Adm. Code 2840.25(b) (2012); *Woods*, 2012 IL App (1st) 101639, ¶ 21. The regulations expressly state that "[a]bsences and tardiness always cause harm to the employer, even if a worker is allowed to make up the time. This is because absences and tardiness cause disruption to the general operations of any business." 56 Ill. Adm. Code 2840.25(b)(3) (2012); *Woods*, 2012 IL App (1st) 101639, ¶ 21.

¶ 19 Here, the record shows that the Board's determination that plaintiff willfully and deliberately violated the Commissary's policy regarding tardiness was not against the manifest weight of the evidence. It is undisputed that plaintiff was aware of the Commissary's written policy, contained in the employee handbook, that all employees must arrive to work on time or call if they are going to be late. It is also undisputed that plaintiff was repeatedly late for work and did not call the Commissary to notify them of her late arrival. Esterman and Tobar both testified that plaintiff did not provide explanations for her tardiness, and plaintiff testified that she was late because she had a long commute that was complicated by inclement weather. It is further undisputed that plaintiff was issued two written warnings advising her that her repeated tardiness was unacceptable, and that she may be terminated if it did not improve. Esterman

testified that she continuously asked plaintiff to arrive at work on time. In addition, Esterman testified that the Commissary suffered harm from plaintiff's habitual tardiness as firefighters were forced to wait for plaintiff to arrive to work to have their uniforms tailored. Such conduct easily could have placed the Commissary's contract with the City of Chicago in jeopardy.

¶ 20 The Board reviewed all of the evidence in the record, specifically the testimony from the telephone hearing, and determined that plaintiff violated the Commissary's tardiness policy. Our review of the record reveals that an opposite conclusion is not clearly evident. As noted above, we review the Board's decision, not that of the circuit court. *Phistry*, 405 Ill. App. 3d at 607. Thus, plaintiff's complaints about the manner in which the circuit court conducted its hearing have no impact on this court's decision.

¶ 21 Based on these findings, we conclude that plaintiff deliberately violated the Commissary's reasonable policy against tardiness, and was discharged for misconduct connected to her work. The Board's determination that plaintiff was ineligible for unemployment insurance benefits was not clearly erroneous.

¶ 22 For these reasons, we affirm the judgment of the circuit court of Cook County affirming the Board's decision.

¶ 23 Affirmed.