

No. 1-12-0677

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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RAUL CORDOVA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT	)	
SECURITY, DIRECTOR OF ILLINOIS DEPARTMENT	)	
OF EMPLOYMENT SECURITY; and BOARD OF	)	
REVIEW,	)	No. 11 L 51221
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
RYDER TRUCK RENTAL, INC., c/o UC EXPRESS,	)	Honorable
	)	Robert Lopez Cepero,
Defendant.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Quinn and Connors, JJ., concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where plaintiff's willful violation of employer's policy to inspect and prepare vehicles for rental constituted misconduct in connection with his work and disqualified him 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, Raul Cordova, ineligible to receive unemployment benefits under section 602A of the

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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 Cordova was discharged for misconduct was neither against the manifest weight of the evidence nor clearly erroneous. We agree with defendants and uphold the Board's decision.

¶ 3 The record shows that Cordova worked as a service employee at Ryder Truck Rental (Ryder) from January 25, 2001, until on or about April 21, 2011. Included in the record is the employer's policies concerning maintenance, Cordova's final warning, and his termination report. Ryder's policy manual stated, in part, that a vehicle's tires must be checked, seat covers must be in good repair, the rear door strap, handle, and latch must be clean and in proper working order, and lift gate platforms and loading ramps must be free of dirt and grease.

¶ 4 Cordova's final warning, which was in writing, indicated that he violated company policy regarding job performance on February 28, 2011, when he "performed a Road Ready inspection on [two] units. [He] checked off that [he] check[ed] the air pressure on the tires. After a 'Quality Inspection,' it was found that both unit[s] \*\*\* had flat tires. This unit did not meet the Company standards of our Road Ready **GUARANTEE**."

¶ 5 According to the termination report, Cordova was discharged as a result of an incident on April 14, 2011, where he allegedly certified that he completed an inspection of a vehicle, and that it was ready to be rented to a customer. However, upon inspection by the service manager, the same vehicle's seat was badly torn and there was a broken lift gate latch, which resulted in the vehicle failing the company's "Road Ready **GUARANTEE**." The termination report further stated that this incident, along with his prior incidents that occurred on February 8, 2011, and June 18, 2010, made this his third job performance related incident in the past year. Following his discharge on April 21, 2011, Cordova applied for unemployment benefits with the Department, and the employer objected claiming that Cordova was discharged for misconduct under the Act. On May 24, 2011, a claims adjudicator found Cordova eligible for benefits

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because, although Cordova's work performance did not meet the employer's expectations, it was not willful or deliberate.

¶ 6 The Department appealed, and on July 8, 2011, a telephone hearing was conducted by a Department referee. At this hearing, James Reitmaier, the senior service manager at Ryder, testified that Cordova was hired as a service employee on January 25, 2001, and his last day of employment was April 21, 2011. Reitmaier stated that he terminated Cordova on April 20 because Cordova failed to get a rental truck "road ready." When Reitmaier inspected the truck as part of a standard audit on April 15, 2011, he observed that the truck had a badly torn seat and a lift gate was not working properly. Reitmaier confronted Cordova with his findings, but Cordova stated that the seat and operating lift gate were "okay," and that they were working properly at the time he inspected them. No one used the vehicle between the time Cordova worked on it and the time Reitmaier inspected it. Due to the improper inspection performed by Cordova, Ryder was unable to rent that vehicle. Cordova had been previously warned about similar conduct. On February 28, 2011, Cordova received a written warning because he was "not correcting his behavior of road ready vehicles." On March 1, 2011, Cordova was verbally warned regarding a vehicle with a flat tire, and, on April 8, 2011, Cordova received a verbal warning for a vehicle with no brake lights.

¶ 7 Cordova testified that Reitmaier discharged him for not checking a truck correctly. When he was asked to respond to Reitmaier's claim about the condition of the vehicle, Cordova responded that:

"Well that the, with the seat \*\*\* he took that off later. He took that off when he spoke with the union they said that that cannot be like the proof \*\*\* but the lift gate - I raised it and lowered it. Because that was \*\*\* my job."

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Cordova acknowledged that he received a final written warning on February 28 for failing to service a truck with a flat tire, and he understood that a subsequent warning could result in his termination.

¶ 8 In reversing the local office determination that Cordova was eligible for benefits, the referee found that Cordova was discharged for misconduct and that his actions constituted a deliberate and willful disregard of the employer's interests. In so finding, the referee stated that the employer credibly testified about the events which led to Cordova's discharge and that Cordova failed to offer competent and compelling evidence to rebut the employer's statements and substantiate his own allegations. The referee further found that Cordova's testimony was self-serving and not credible.

¶ 9 Cordova appealed the referee's decision to the Board. On October 25, 2011, the Board affirmed the referee's decision, concluding that it was supported by the record and the law, and incorporated it as part of the Board's decision.

¶ 10 On October 27, 2011, Cordova filed a complaint for administrative review of the Board's decision in the circuit court. On February 1, 2012, the circuit court reversed the Board's decision. 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

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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, Reitmaier testified that he terminated Cordova because Cordova failed to properly get a rental truck "road ready." Reitmaier specifically stated that he inspected the truck Cordova indicated was road ready, and observed that the truck had a badly torn seat and a lift gate was not working. Reitmaier confronted Cordova with his findings, but Cordova stated that the seat and operating lift gate were "okay," and that they were working properly at the time he inspected them. Reitmaier further testified that because of Cordova's failure to get the vehicle road ready, Ryder was unable to rent that vehicle. Additionally, Cordova had been previously warned about similar conduct via a written warning on February 28, 2011, and verbal warnings on March 1, and April 8, 2011. Cordova never suggested at the hearing that his actions were anything but intentional. He seemed to indicate in his testimony that the torn seat was unimportant and that the lift gate was functioning properly.

¶ 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 Reitmaier and Cordova during the telephone hearing, the Board incorporated the referee's decision as part of its decision, which found that Cordova's testimony was "self-serving and not credible," and settled this issue in favor of the employer. After reviewing the record, and deferring to the

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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 In reaching this conclusion, we find *Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill. App. 3d 849 (2009) and *Zuaznabar v. Board of Review of Department of Employment Security*, 257 Ill. App. 3d 354 (1993), relied on by Cordova for the proposition that his conduct was merely negligent, factually distinguishable from the case at bar. In both cases cited by Cordova, this court held that carelessness and poor performance, standing alone, do not make an employee ineligible for unemployment benefits. See *Messer & Stilp, Ltd.*, 392 Ill. App. 3d at 862 (affirming the Board's judgment rejecting the referee's decision to deny unemployment benefits to an attorney where the attorney's work was careless, negligent, and substandard, but was not willful and deliberate); *Zuaznabar*, 257 Ill. App. 3d at 356-58 (reversing the Board's decision denying the plaintiff unemployment benefits where the misconduct consisted of negligent and careless driving that did not actually harm the employer or occur after explicit warnings).

¶ 17 Here, by contrast, the evidence showed that Cordova's conduct was willful and deliberate where Cordova designated the vehicle was road ready despite it having a torn seat and broken lift gate, he had a history of designating vehicles as ready for rental when they were not, and Cordova never testified that his conduct was negligent, instead, insisting that he checked the lift gate by raising and lowering it. Moreover, Cordova was previously warned about his conduct and injured his employer because it could not rent out the vehicle he inspected.

¶ 18 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 Cordova was ineligible for unemployment benefits was not clearly erroneous (*AFM Messenger Service*, 198 Ill. 2d at 391). Cordova knowingly violated a company policy by failing to properly conduct an inspection of a vehicle after being warned on previous occasions for similar conduct.

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

¶ 20 Judgment reversed.