SIXTH DIVISION
January 6, 2017

No. 1-15-3308

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DESERIE JEFFERS, Plaintiff-Appellee, v. ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY, and THE DEPARTMENT OF EMPLOYMENT SECURITY BOARD OF REVIEW, Defendants-Appellants (CNU ONLINE HOLDINGS LLC c/o EQUIFAX TALX UCM SERVICES, Defendant).	)	Appeal from the Circuit Court of Cook County. No. 15 L 50457 Honorable Carl Anthony Walker, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The Board of Review's decision that plaintiff was ineligible for unemployment benefits because she was discharged for misconduct—repeatedly and intentionally misrecording transactions to her benefit—was not clearly erroneous.

¶ 2 Plaintiff Deserie Jeffers filed a claim for benefits under the Unemployment Insurance Act (Act), 820 ILCS 405/100 *et seq.* (West 2014), after she was fired by "Cash America Net Holdings" (CNU). CNU protested Jeffers's claim, noting that she was discharged for misconduct which occurred during a customer telephone call on January 19, 2015. CNU claimed Jeffers:

> "received an outbound call on the dialer at 9:03 a.m. She was in the process of setting up payment arrangements with the customer when the call was lost at 9:08:54 a.m. The customer did not agree to the arrangements prior to the call being disconnected. The time stamp on the account shows that [plaintiff] set up the payment arrangements and noted on the account *** that they were agreed to by the customer at 9:12 a.m. This was a violation of the FDCPA, Fair Debt Collection Practices Act. It was regularly and clearly communicated to all associates the importance of adhering to FDCPA guidelines as well as company and departmental policies and procedures."

CNU's protest included a copy of an employee handbook and alleged that Jeffers had been made aware of CNU policy in writing and orally.

¶ 3 CNU also included a copy of a second written warning to Jeffers dated September 13, 2014, advising that she was using her cellphone on the call center floor against CNU policy. The written warning recited that she received a prior verbal warning in May 2014 for a "cellphone" violation and a written warning in September 2013 for a "dresscode" violation. The second written warning was signed by plaintiff in acknowledgement that "failure to meet and sustain the

above stated conduct expectations may result in further disciplinary actions up to and including termination."

¶ 4 CNU's protest also included a copy of Jeffers's February 11, 2015, termination notice, referencing an incident which occurred on January 16, 2015. The termination notice also recited the written warning of September 2013, the verbal warning of May 2014, the second written warning of September 2014, an October 2014 verbal warning for "account errors," and the January 19, 2015 incident. It also detailed that on January 16, 2015, Jeffers received a call at 9:56 a.m. where a customer "called in to verify that she had a regularly scheduled payment for 01/20/15. [Jeffers] confirmed this and advised that the payment would be automatically drafted from the customer's bank account. [Jeffers] then sent an email to management, had the regularly scheduled payment canceled and set it back up for the same contractual due date in her name." CNU claimed this was a violation of its guidelines.

¶ 5 Paul O'Dea of CNU testified before the referee for Illinois Department of Employment Security (Department) that CNU employed Jeffers as a collections representative from September 2007 to February 11, 2015, when she was terminated for "two incidents of payments being credited into her name that were outside of our policies in reference to collections representatives taking credit for payments and putting them in her name." O'Dea explained these incidents in detail. He stated that on January 19, Jeffers was processing a customer's arrangement for repaying a debt. The call was cut off before the customer agreed to the arrangement but Jeffers nonetheless recorded it as an agreed arrangement in a completed call. When the customer called again and was connected to another representative, that representative noticed that the arrangements were already recorded in Jeffers's name. The representative reported this

discrepancy to a supervisor, so O'Dea listened to a recording of the incomplete telephone call. The incident of January 16 was "a little bit different" in that there was no lost call. Instead, Jeffers confirmed for a customer that she had a regularly-scheduled payment on January 20, and advised her that the bank would withdraw the payment automatically. Though all Jeffers did was provide basic information to the customer, with "no negotiation [and] no collection activity," she emailed management to cancel the payment and then resubmitted the payment in her name so she would be credited for collecting it. This violated department guidelines that managers should cancel payments. O'Dea explained that call representatives have a monthly goal and receive monetary rewards for exceeding that goal. Jeffers had been warned for similarly canceling payments and then resubmitting them under her name.

¶ 6 Jeffers testified that she was told she was being terminated for the above-stated reasons but disagreed that the incidents occurred as stated. Regarding the January 19 call, she claimed that the customer had agreed to the arrangement, but the call dropped and the "system froze" before she could recapitulate or summarize the agreement. She reported this to a supervisor at the time, who told her not to worry because the customer called back and finalized the arrangements made with Jeffers with a different call representative. O'Dea later told her that she would not receive the credit due to the dropped call, but did not tell her she would be terminated for it. Regarding the January 16 call, Jeffers replied that she had "no idea" why she sought to cancel the payment but noted that the computer system was constantly updating at the time. She admitted that she made an error, but denied that it was intentional, as demonstrated by the fact that she forwarded a request for cancellation to management. She maintained that the payment was cancelled by management, not by herself, and recalled merely confirming the customer's information. When asked why she

would then submit a cancellation request, she replied that she "didn't understand how that happened" and denied that she would request a cancellation just to resubmit payment in her name. She generally attributed any such misrecorded transactions to frequent "system issues."

¶ 7 The referee found that Jeffers was discharged due to conduct occurring with respect to these two customer calls. He concluded that plaintiff deliberately violated known and reasonable rules, harmed CNU by putting it in violation of the FDCPA and exaggerating her credits, and was thus discharged for misconduct and was ineligible for benefits. The Board made findings similar to those of the referee, and affirmed his decision.

¶ 8 Jeffers timely filed this administrative review action. The circuit court reversed the Board's decision. It found that Jeffers may have violated CNU's reasonable rules and harmed CNU in light of the FDCPA, but it also found no evidence to support a finding that plaintiff did so deliberately or willfully. In so concluding, the court credited plaintiff's testimony as to "system issues" and inadvertence. The defendants, the Department, its Director, and Board of Review (Board) (collectively, the State Parties) appealed.

¶ 9 Jeffers has not filed an appellee's brief. Accordingly, we consider the appeal on the State Parties' brief alone. *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 13. We review the decision of the Board, not the circuit court. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 22. The Board is the trier of fact in cases under the Act, and its findings of fact are considered *prima facie* true and correct. *Williams v. Department of Employment Security*, 2016 IL App (1st) 142376, ¶ 53. We do not reweigh the evidence or substitute our judgment for that of the Board. *Id.* The Board's decision as to whether an employee was discharged from employment for misconduct under the Act presents a mixed question of law and fact reviewed for

clear error. *Petrovic,* 2016 IL 118562, ¶¶ 21, 26. The Board's decision is clearly erroneous only if, after reviewing the entire record, we definitely and firmly believe that a mistake has occurred. *Id.* ¶¶ 21-22.

¶ 10 On appeal, the State Parties contend that the Board's decision that plaintiff was discharged for misconduct under the Act was not clearly erroneous. Section 602(A) of the Act provides that a person is ineligible for unemployment insurance benefits when he was "discharged for misconduct connected with his work." 820 ILCS 405/602(A) (West 2014). Misconduct is:

> "the 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 2014).

¶ 11 The disqualification for misconduct is not intended to encompass all rightful terminations of employment but to exclude claimants who intentionally commit conduct that they know is likely to result in their termination, on the assumption that an employee who deliberately violates a known rule does so knowing that unemployment will likely result. *Petrovic*, 2016 IL 118562, ¶ 27. The elements of misconduct are: (1) the claimant deliberately and willfully violated a rule or policy of the employer, (2) the rule or policy was reasonable, and (3) the violation either harmed the employer or was repeated despite warnings. *Id.* ¶ 26. A claimant's conduct was willful or deliberate if she was aware of but consciously disregarded a rule of the employer. *Id.* ¶ 30.

Potential as well as actual harm may underlie misconduct. *Williams*, 2016 IL App (1st) 142376, ¶ 64.

¶ 12 Here, the evidence that plaintiff violated known and reasonable employer rules governing properly recording transactions was clear. Notably, the two transactions at issue were misrecorded to Jeffers's benefit in that they increased her credit for collecting debts and thus her potential bonus. There was also evidence that she did so after warnings, and that CNU was harmed regarding FDCPA compliance and the honest and correct operation of its bonus system. Although plaintiff testified otherwise, and the circuit court found otherwise, we find the evidence was sufficient for the Board to conclude that plaintiff deliberately, rather than inadvertently, misrecorded the two transactions. The Board was entitled to discredit Jeffers's testimony, or to find it less credible than the contrary evidence. Accordingly, after reviewing the record, we are not left with a definite and firm belief that the referee and Board erred. Thus, the Board's conclusion that plaintiff was discharged for misconduct was not clearly erroneous.

¶ 13 We reverse the judgment of the circuit court and confirm the decision of the Board.

¶ 14 Circuit court reversed; Board of Review confirmed.