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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHELL HERNANDEZ,)	Petition for Review
)	of Order of the
Petitioner,)	Board of Education
)	of the City of Chicago
v.)	
)	No. 18-0124-RS9
THE BOARD OF EDUCATION OF THE)	
CITY OF CHICAGO, JANICE JACKSON,)	
Chief Executive Officer, LAWRENCE)	
COHEN, Hearing Officer and ILLINOIS)	
STATE BOARD OF EDUCATION,)	
)	
Respondents.)	

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The Board of Education of the City of Chicago properly discharged petitioner from her position for irremediable misconduct.

¶ 2 This direct appeal arises out of the Board of Education of the City of Chicago's (the Board) dismissal of Petitioner Michell Hernandez. The Board found that Hernandez engaged in irremediable misconduct when she improperly used the Chicago Public Schools' (CPS) tax

exemption for her personal use to avoid paying sales tax. In her petition, Hernandez argues that the Board erred in terminating her employment. We affirm.

¶ 3

I. BACKGROUND

¶ 4

The relevant facts are as follows. Hernandez worked for CPS for 16 years of which the last 11 were spent as a tenth grade math teacher at Kelly High School. During her employment at Kelly High School she was given a letter denoting a CPS tax exemption which enabled her to purchase items worth up to \$250 for classroom use without paying Illinois state sales tax. Hernandez used the letter to purchase instructional materials and was reimbursed by the Kelly High School administration. Hernandez additionally used the tax exemption letter to make purchases at Best Buy; however, Hernandez never sought reimbursement of those purchases.¹

¶ 5

Best Buy contacted the CPS Revenue Department to inform CPS that many CPS employees, including Hernandez, had tax exempt Best Buy Quick Cards that were about to expire. Thereafter, CPS obtained records from Best Buy which showed that Hernandez had purchased approximately \$9,700 in Best Buy items using her tax exempt card which resulted in \$770 of unpaid sales tax.

¶ 6

Hernandez's purchases at Best Buy became the subject of an investigation by the CPS Office of the Inspector General. Following the investigation, on June 20, 2016, the Board approved dismissal charges and specifications against Hernandez. The specifications stated, *inter alia*, that Hernandez engaged in irremediable misconduct when she "improperly used Chicago Public Schools' tax exempt items for [her] personal use to avoid paying used sales

¹ An individual who has a tax exemption letter can apply for a Best Buy Quick Card through an online application by attaching a copy of their tax exempt letter. Once approved that individual can use the Best Buy Quick Card to make purchases and not pay the sales tax. The record is unclear when Hernandez received her Best Buy Quick Card.

tax." Hernandez timely requested an administrative hearing. On July 17, 2017, CPS and Hernandez presented evidence at the hearing, and subsequently submitted post-hearing briefs on November 7, 2017.

¶ 7 At the hearing, Chief Investigator Tracy Larson stated that as a part of her investigation she interviewed Hernandez who verified purchasing a Sharp television which was delivered to her residence, an Apple iPad for her personal use, and an Apple Macbook that she used both at work and home. Larson further testified that Hernandez claimed to not know why she had not paid taxes on the personal items she purchased. Hernandez did not remember if she gave the sales person her tax exempt card. She also acknowledged purchasing two educational tablets at Best Buy for her children and she did not recall if she paid sales tax on the purchases.

¶ 8 Hernandez acknowledged during the hearing that she made the Best Buy purchases and did not pay a sales tax on those items. She testified that she used both the Macbook and the iPad at work, but she did not remember much about the Sharp television. She did recall making the initial television purchase, which included a sales tax. Her husband later returned the Sharp television because of a dispute with Best Buy as to the installation and delivery charges; however, she repurchased the television in a telephone conversation with a Best Buy sales representative. Her repurchase of the television did not include a sales tax. She claimed that she never produced the tax exempt card in making the subsequent television purchase and she has no idea as to how that purchase became tax-exempt. She further stated that she did not receive a receipt for the repurchase. In addition, Hernandez acknowledged that she kept the MacBook and iPad after she left Kelly High School

¶ 9 The hearing officer recommended that Hernandez be discharged. In reaching his decision, he found that Hernandez was aware that she improperly avoided paying \$770 in unpaid sales tax by misusing CPS's tax-exempt status. Furthermore, Hernandez's repurchase of the television without sales tax, after she had originally paid sales tax on that item, demonstrated that she intended to make that purchase tax free. Additionally, Hernandez was aware of the CPS tax-exempt policy and its limitations because she had previously used the tax exempt letter to make school-related purchases and sought reimbursement for those purchases. Hernandez knew that she could not use CPS's tax-exempt status to buy personal items such as a Sharp television. Lastly, the hearing officer acknowledged that it may be true that Hernandez did not have the card in her physical possession when she made some of the purchases however, he found that her statement was irrelevant because the receipts showed and Hernandez knew, at the time she bought the items or shortly after, that she had not paid sales tax on the items. The Board accepted the hearing officer's recommendation and discharged Hernandez. Hernandez timely filed a petition for direct review.

¶ 10 II. JURISDICTION

¶ 11 Hernandez seeks review under section 34-85(a)(8) of the Illinois School Code ("the Code"). 105 ILCS 5/34-85, *et seq* (West 2016). Under the Code, the final decision of the Board of Education may be reviewed on direct appeal to this court in accordance with the Administrative Review Law. 105 ILCS 5/34-85(a)(8); see also Ill. S. Ct. R. 335 (eff. July 1, 2017). Accordingly, this court has jurisdiction to review her petition.

¶ 12 III. ANALYSIS

¶ 13 Hernandez argues that the Board did not have "cause" to terminate her employment because she made a reasonable and honest mistake where she was not aware of the CPS tax

exemption being applied to the purchases she made at Best Buy. Hernandez further contends that the Board failed to demonstrate her conduct was irremediable.

¶ 14 The Administrative Review Law provides that judicial review extends to all questions of law and fact presented by the entire record. 735 ILCS 5/3-110 (West 2018). The proper standard of review for this court to consider depends on whether the question presented is one of fact, one of law, or a mixed question of law and fact. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009). When an administrative agency's factual findings are contested, the court will only ascertain whether such findings of fact are against the manifest weight of the evidence. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 244 (2009). "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 15 Conversely, if the dispute is over an agency's conclusion on a point of law, the decision of the agency is subject to *de novo* review by the courts. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210-11 (2008). We review a mixed question of law and fact under clearly erroneous standard. *Id.* at 211. "Mixed questions of fact and law are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard or to put it another way, whether the rule of law as applied to the established facts is or is not violated." (Internal citations omitted.) *Exelon Corp.*, 234 Ill. 2d at 273. An administrative decision will be set aside as clearly erroneous only when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Id.* Under any standard of review, a plaintiff in an administrative proceeding bears the burden of proof, and relief will be denied

if the plaintiff fails to meet that burden. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 3d. 497, 532-33 (2006).

¶ 16 Hernandez contends that her case should be reviewed under the clearly erroneous standard. However, in her contention she acknowledges that "the operative factual finding at issue in this case is whether or not [she] was aware that she was not charged sales tax on the purchases made at Best Buy." As she has acknowledged by her own admission that she challenges the factual findings, we will review the Board's factual findings as to whether Hernandez was aware that she was not charged sales tax on her purchases under the manifest weight of the evidence standard. *Abrahamson*, 153 Ill. 2d at 88.

¶ 17 Our review of an administrative decision to discharge an employee requires a two-step approach. *Raitzik v. Board of Education of Chicago*, 356 Ill. App. 3d 813, 823 (2005). First, we must determine whether the Board's findings of fact and decision were against the manifest weight of evidence, and second we determine whether those findings sufficiently support the Board's conclusion that cause for discharge exists. *Id.*

¶ 18 A. Manifest Weight of the Evidence

¶ 19 Hernandez argues that she was not aware that she had improperly avoided paying sales tax, and that the Board erred in finding that she misused the CPS tax-exemption status when she made purchases at Best Buy.

¶ 20 The Board's findings are considered *prima facie* true and a reviewing court may not substitute its judgment for that of the Board unless its findings are against the manifest weight of the evidence. *Board of Education of the City of Chicago v. Box*, 191 Ill. App. 3d 31, 37 (1989). A reviewing court may affirm the Board's decision on any basis supported by

the record. *Younge v. Board of Education of the City of Chicago*, 338 Ill.App.3d 522, 530 (2003).

¶ 21 The record belies Hernandez's contention that she was not aware of her Best Buy purchases receiving the benefit of a tax exemption. Hernandez admitted she purchased an Apple Macbook and an Apple iPad. The hearing officer acknowledged that it may be true that she did not have the card in her physical possession when she made some of the purchases. However, he found that her excuse was irrelevant because the receipts showed and Hernandez knew, at the time she bought the items or shortly after, that she had not paid sales tax on the items. In addition, her initial purchase of the television was not tax exempt, however, once returned and the television was repurchased she did not pay a sales tax. Further, Hernandez took the MacBook and iPad with her after she left Kelly High School which indicates these items were purchased for personal use and not for school purposes.

¶ 22 Additionally, Hernandez contends that the Board's finding that she engaged in criminal conduct was incorrect. Citing to the criminal penalties section of the Retailer Occupation Act (35 ILCS 120/13(b) (West 2016)), she specifically argues that the Board erred in its finding that her conduct was criminal because it did not establish (1) that she knowingly attempted to evade the payment of sales tax and (2) that she took an affirmative act in furtherance of that evasion. However, Hernandez misperceives the requirements for dismissal under the Code. This is not a criminal case. "A teacher dismissal case requires proof by the preponderance of the evidence whereas proof beyond a reasonable doubt is required for conviction of criminal charges." *Younge*, 338 Ill. App. 3d at 534. As we discussed at length above, the overwhelming evidence shows that she was aware that she did not pay sales tax for her personal Best Buy purchases. Thus, we find that the Board had sufficient information to

prove by the preponderance of the evidence that she engaged in criminal conduct. Based on the record before us, we cannot say that the Board's findings were against the manifest weight of the evidence.

¶ 23

B. Cause for Dismissal

¶ 24

Hernandez next contends that the Board did not demonstrate sufficient cause to terminate her contract.

¶ 25

The second step in reviewing the propriety of the Board's dismissal decision is to determine whether its findings of fact sufficiently support its conclusion that cause for her dismissal exists. *Raitzik*, 356 Ill. App. 3d at 831. Although "cause" is not specifically defined by the Code, 105 ILCS 5/1-1 *et seq.* (West 2016), "it has been defined as 'that which law and public policy deem as some substantial shortcoming which renders a teacher's continued employment detrimental to discipline and effectiveness [citation] or 'something which the law and sound public opinion recognize as a good reason for the teacher to no longer occupy his position' [citation]." *James v. Board of Education of the City of Chicago*, 2015 IL App (1st) 141481, ¶ 16. There must be present a logical nexus between the actions alleged as cause for dismissal and the individual's fitness to perform as an educator. *Davis v. Board of Education of City of Chicago*, 267 Ill. App. 3d 693, 697 (1995). Accordingly, the Board's finding of cause is given substantial deference, and a reviewing court may not substitute its judgment for that of the Board. *Raitzik*, 356 Ill. App. 3d at 831 The Board's finding for cause can only be overturned if it is arbitrary, unreasonable, or unrelated to the requirements of service. *Id.*

¶ 26

Here, the record demonstrates that Hernandez used the tax exempt card for personal purchases at Best Buy and evaded payment of over \$700 in sales taxes. Hernandez had made

previous purchases at stores other than Best Buy and was reimbursed by CPS. The fact that she did not seek reimbursement for the \$9,700 in Best Buy purchases shows that she knew that these purchases did not qualify for tax exemption. Hernandez's disregard of the law and attempts to evade payment of over \$700 in sales tax provides a logical nexus for the Board's dismissal of her and support the Board's allegations of cause. Under these facts, we reject Hernandez's contention that the Board failed to establish that it had cause to terminate her employment. Thus, we find that the Board's determination that cause existed for Hernandez's dismissal was not unreasonable, arbitrary or capricious. See *Raitzik*, 356 Ill. App. 3d at 831.

¶ 27 C. Hernandez's Remaining Contention

¶ 28 Lastly, Hernandez contends that the Board failed to demonstrate her conduct was irremediable and that under *Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143 (1977) dismissal was improper. She further contends that she never received a written warning informing her that the receipt of tax-free goods would subject her to termination, and therefore the Board lacked jurisdiction to terminate her.

¶ 29 In *Gilliland*, a school board requested a teacher to resign, when the teacher refused the board provided her with written notice that she was to be dismissed for cause. 67 Ill. 2d at 147. The teacher requested a hearing on the charges. *Id.* After the hearing, the board decided to dismiss the teacher. *Id.* at 153. On appeal, the appellate court reversed the board's decision holding that the board's findings were against the manifest weight of the evidence. *Id.* Our supreme court reversed the appellate court and affirmed the board's decision. *Id.* at 157. In so doing, the court set forth a two pronged test for determining whether a cause for dismissal is irremediable: (1) whether damage was done to students, the faculty, or the school and (2)

whether the conduct could not have been corrected had superiors warned the individual charged. *Id.* at 153.

¶ 30 Contrary to Hernandez's assertion, we need not apply the test from *Gilliland* to determine whether petitioner's conduct was irremediable. In 1995 the Illinois legislature amended section 34-85 of the Code (105 ILCS 34-85 (West 1996)) to include language that "explicitly provides that certain types of conduct are deemed *per se* irremediable, thereby eliminating the need to apply the *Gilliland* test to those particular types of conduct." *James*, 2015 IL App (1st) 141481, ¶ 20. Conduct that is deemed irremediable includes "cruel, immoral, negligent, or criminal or that in any way causes psychological or physical harm or injury to a student." 105 ILCS 5/34-85(West 2016). In such cases a written warning is not required. *Id.* Here, Hernandez was charged with engaging in *per se* irremediable conduct, thus she was not entitled to a written warning before her dismissal.

¶ 31 IV. CONCLUSION

¶ 32 Accordingly, we find that the Board's decision to dismiss Hernandez for irremediable misconduct was not against the manifest weight of the evidence, and the findings sufficiently supported the Board's conclusion that cause existed for her dismissal.

¶ 33 Affirmed.