

2019 IL App (1st) 181041-U

No. 1-18-1041

Order filed March 15, 2019

Fifth Division

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 DISTRICT

MARIE C. TRINIDAD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE DEPARTMENT OF EMPLOYMENT SECURITY;)	No. 18 L 50008
THE DIRECTOR OF EMPLOYMENT SECURITY; THE)	
BOARD OF REVIEW; and MOUNT SINAI HOSPITAL)	
MEDICAL CENTER c/o HUMAN RESC-S. SULSH c/o)	
SEDGWICK BRUCE KIJEWski,)	Honorable
)	Alexander P. White,
Defendants-Appellees.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where plaintiff was discharged for misconduct, the Board of Review's denial of unemployment insurance benefits is affirmed.
- ¶ 2 Plaintiff Marie C. Trinidad appeals *pro se* from an order of the circuit court of Cook County affirming a final administrative decision by defendant, the Board of Review of the

Department of Employment Security (Board). The Board found that plaintiff was discharged for misconduct connected with her work, and thus, ineligible for unemployment insurance benefits. On appeal, plaintiff challenges the denial of benefits. We affirm.¹

¶ 3 The record shows that plaintiff was employed as a respiratory therapist at Mount Sinai Hospital Medical Center (Sinai) from March 2010 until August 7, 2017, when she was discharged. Plaintiff applied to the Department of Employment Security (Department) for unemployment insurance benefits. Plaintiff reported that she was unjustly terminated after being falsely accused of not performing her duties and disorderly conduct. Plaintiff explained that she was in the middle of “processing a job” and could not be in two places at once. She stated that she was unaware that she had violated a company policy.

¶ 4 Sinai protested plaintiff’s claim for benefits. Karen Berns, an unemployment coordinator with Sedgwick, Sinai’s representative, submitted a written response to the Department stating that plaintiff was discharged for committing multiple major violations of the hospital’s conduct policy on July 29 and 30, 2017. Berns stated that plaintiff refused to perform her duties as instructed, including failing to respond to a code yellow when called, and not providing therapist intervention when paged for a rapidly declining ventilator patient in respiratory distress.

¶ 5 Berns attached several documents from Sinai to the protest letter. The human resources action form indicated that plaintiff was “terminated for cause.” Plaintiff was issued a written notice of termination from Karl Wainwright, the clinical manager of respiratory care services, outlining the violations committed by plaintiff. The notice stated that at 7:30 p.m. on July 29, Danyelle Hoskins, the respiratory resource coordinator, filed a complaint stating that plaintiff

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

had called her and complained about the number of staff working that night. Three caregivers observed plaintiff yelling at Hoskins on the phone, asking why they were short-staffed and why she removed another therapist from the schedule. Plaintiff also stated “I don’t blame anybody for not wanting to work here” and “I should just go home now!” Plaintiff hung up on Hoskins. At 7:36 p.m., plaintiff failed to respond to a pediatric trauma, code yellow. Consequently, a therapist from the intensive care unit had to respond, leaving that unit without coverage. Plaintiff was found in the eighth floor critical care unit (CCU), which was not her assigned area. At 11 p.m., plaintiff did not respond to a page from a doctor ordering a STAT EKG, and another therapist had to complete the order. At 11:23 p.m., another therapist completed an order for a Bipap therapy on the fifth floor. Plaintiff falsely documented that she had cared for the patient, and was observed on the sixth floor documenting work remotely by two other therapists.

¶ 6 At 1 a.m., a doctor and nurse paged plaintiff multiple times to inform her that a ventilator patient in the emergency room was in respiratory distress and needed therapist intervention. Plaintiff told the nurse “I am not coming to ER. I have floor orders to do.” Consequently, the doctor went to the CCU to find another therapist, and asked her to leave her assigned area to assist with the rapidly declining patient. At 1:45 a.m., Hoskins arrived at the hospital after receiving a call regarding concerns with patient safety due to plaintiff’s patient care. Hoskins informed plaintiff that she was being sent home for refusing patient care, and was not to return to work without contacting her manager. Later that day, therapist Wendy McDonald called Wainwright and informed him that plaintiff arrived at work and demanded an assignment. Wainwright instructed McDonald to send plaintiff home.

¶ 7 The termination notice further provided that employees must comply with Sinai's policies and guidelines governing conduct. When Sinai determines that an employee's conduct is not in the best interest of patients, the facility, co-workers and others, or the conduct violates any of Sinai's rules of conduct, the employee may be subject to corrective action, including termination. Wainwright stated "[a]s we have clearly discussed in the past, Sinai Health Systems Policy HR #57 – Rules of Conduct clearly outlines the expectations of staff related to appropriate behaviors while at work. Additionally, reviewed yearly, are the expectations related to proper conduct and how it relates to the Sinai Health System core values of Quality, Teamwork, Integrity and Respect."

¶ 8 Wainwright stated that based on plaintiff's conduct, it was determined that she had committed four major violations of Sinai's conduct policy, HR #57, including: (1) failure or refusal to perform assigned duties or carry out instructions; (2) willfully jeopardizing the health and/or safety of patients, visitors, co-workers, supervisors, or others through acts of commission or omission; (3) dishonesty; and (4) intentionally giving false information to anyone who has any duty in preparing organization or patient records. Plaintiff also committed one minor conduct violation of insubordination. Wainwright concluded that plaintiff's behavior demonstrated a lack of commitment to Sinai's core values, therefore resulting in termination of her employment.

¶ 9 Other documents attached to Sinai's protest letter included a 2015 written notice of a verbal warning to plaintiff for violation of the attendance policy, a policy and procedures quiz completed by plaintiff during her new employee orientation, a copy of Sinai's Rules of Conduct signed by plaintiff, and Sinai's policy #57 Rules of Conduct. Berns subsequently forwarded additional documentation to the Department including several emails sent to Wainwright from

Hoskins and other respiratory therapists describing plaintiff's conduct on the night of July 29, as detailed in the termination notice.

¶ 10 Also included was a written rebuttal plaintiff submitted to Sinai. Plaintiff stated that on July 29 she was assigned to the emergency room and the fifth and sixth floors, which was too heavy of an assignment given that the emergency room is very busy on Saturday nights. Plaintiff admitted that she called Hoskins and inquired about the staffing, but claimed Hoskins was condescending to her. Plaintiff stated that she was performing a procedure on a patient when she received a page asking her to come to the emergency room to suction a vented patient. Plaintiff replied that she was unable to come down because she was in the middle of a procedure. Plaintiff suggested that a nurse could suction the patient, and the person she was speaking with hung up on her. Plaintiff did not answer a page from McDonald because she was in the middle of setting up a ventilator at the time. McDonald later told plaintiff that an EKG was ordered on the fifth floor. Plaintiff replied that she could not do the EKG because she had to treat a patient on the sixth floor, and the nurse could either do it herself or ask another therapist. Plaintiff also told McDonald that she was too busy on the sixth floor, and that McDonald would need to cover the fifth floor. Plaintiff stated that at 2 a.m. Hoskins paged her to come to the office. Hoskins asked plaintiff if she was okay. Plaintiff replied that she was upset that Hoskins scheduled only four therapists to work that night. Hoskins told plaintiff to go home, but did not tell her why. Plaintiff asked Hoskins if she was supposed to work later that day. Hoskins replied that Wainwright would call plaintiff and let her know. Wainwright never called, so plaintiff went to work. Shortly after she arrived, McDonald told plaintiff to go home, but did not state why.

¶ 11 Plaintiff further stated that on July 31 she met with Loren Chandler, a hospital administrator, and told him what happened over the weekend. Chandler said he would speak with Wainwright. The next day, Wainwright asked plaintiff why she went to the administration. Plaintiff replied because she was sent home twice without being told why, and because Wainwright never called to tell her if she should report to work. Wainwright told plaintiff to take the day off. On August 4, plaintiff went to work and was told she had been suspended. Plaintiff emailed Wainwright and asked to be transferred to the day shift due to health reasons. Wainwright asked plaintiff to meet him on August 7 to discuss her request. When plaintiff arrived at his office, Wainwright handed her the termination notice. Plaintiff claimed that the accusations in the notice were all false. Plaintiff stated that she was in the bathroom when the pediatric trauma was called. When she later responded, McDonald told her the trauma patient was okay, and they both left the emergency room. Plaintiff denied receiving a page requesting an EKG. She also denied receiving pages from the emergency room about a vented patient being in distress.

¶ 12 Berns also forwarded to the Department a letter sent to plaintiff following her termination from Marisa Robertson, a Sinai employee relations consultant. Robertson stated that a follow-up investigation determined that the hospital's paging system was working properly on the night of July 29. It was further determined that the hospital's Vocerra communications device assigned to plaintiff on July 29 was not turned on to retrieve the calls made to her that night.

¶ 13 A Department claims adjudicator conducted an initial telephone interview with plaintiff to assess her eligibility for benefits. During the interview, plaintiff stated that she was discharged because she was paged a couple of times and refused to do a procedure. She explained that when

the emergency room paged her to suction a patient, she told them that she could not do it because she was in the middle of a blood procedure on another patient. The blood procedure takes about half an hour. Plaintiff told the caller that a nurse could suction the patient. Plaintiff was not told that the patient was in distress. Plaintiff later checked on the emergency room patient, and the patient was fine. Plaintiff stated that she had not seen a company policy regarding insubordination, and she had not received any prior warnings about this type or similar conduct.

¶ 14 After speaking with plaintiff, the claims adjudicator telephoned Berns and left a message asking her to respond to plaintiff's discharge details, and plaintiff's claim that she was doing another procedure when paged. The adjudicator's summary indicates that the requested information was not provided, and that the adjudicator's determination was based on the documentation previously provided with Sinai's protest.

¶ 15 The claims adjudicator issued a written determination finding that plaintiff was discharged because she refused to obey her employer's reasonable and lawful instruction when she failed to respond to a code yellow, and failed to provide therapist intervention when paged. The adjudicator determined that plaintiff's conduct constituted misconduct under section 602(A)(5) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A)(5) (West 2016)). Consequently, the claims adjudicator concluded that plaintiff was ineligible to receive unemployment insurance benefits.

¶ 16 Plaintiff filed a written request for reconsideration of the claims adjudicator's determination, and an appeal to the Department referee. Plaintiff argued that she did not refuse to obey her employer's orders. She argued that she was performing a procedure, and could not be in two places at one time. Plaintiff asserted that all of the accusations against her were false. She

further claimed that her termination was an act of retaliation by Wainwright because she complained to Robertson and Shameer Shah, director of the respiratory department, notifying them of what was happening in the department. Plaintiff attached to her request a copy of her written rebuttal she had previously submitted to Sinai, and her notice of termination.

¶ 17 After reconsideration, the claims adjudicator again concluded, based on her original factual findings and reasoning, that plaintiff was discharged for misconduct, and therefore, ineligible to receive benefits. Plaintiff's appeal was then filed with the Department referee for a telephone hearing.

¶ 18 Prior to the hearing, plaintiff submitted to the Department another copy of her written rebuttal. She added another statement claiming that the accusations against her were false, and that she did respond to the code yellow. She further stated that after her termination, she learned that another therapist failed to respond to numerous pages, but was not suspended or terminated. Plaintiff asserted that the pagers are very old, unreliable, and always malfunctioning. She did not have a Vocerra that night because there were no batteries available, and she was already carrying two pagers for the emergency room and fifth floor. She again alleged that her termination was an act of retaliation by Wainwright because she complained about the department.

¶ 19 An administrative law judge (ALJ) conducted a telephone hearing to consider plaintiff's appeal. Wainwright testified under oath that plaintiff was discharged because she violated Sinai's policies by refusing patient care and falsifying documentation. On July 29, plaintiff refused requests from a doctor and nurse to suction a ventilator patient in the emergency room who was in poor condition. Plaintiff was assigned to cover the emergency room that night. Plaintiff told the nurse that she was busy doing other work, and that a nurse could suction the patient. Plaintiff

should have known that she had to stop her other work and assist the nurse due to the nature of the call. Wainwright testified “[a] ventilator patient is, by definition, the respiratory therapist’s responsibility.” Wainwright explained that if plaintiff was in the middle of another procedure, she should have communicated that to one of her team members and asked them to assist her.

¶ 20 Wainwright further testified that when he asked plaintiff why she did not assist the patient, plaintiff replied that she had other work to do and was too busy. Wainwright told plaintiff that the patient’s condition was decompensating or “crashing,” and asked if she ever checked on the patient. Plaintiff replied that she did not because she did not know the patient was that sick. Wainwright had never before warned plaintiff about similar conduct because she had never refused patient care. In addition, plaintiff did not attend a code yellow, but in her documentation she charged the patient for her attendance.

¶ 21 McDonald testified that on the night in question, another therapist, Veronica Castillo, told her that a doctor had asked which therapist was covering the emergency room. McDonald went to the emergency room to evaluate and treat the patient. She explained that if she was in the middle of a blood treatment when she received another call, she would ask one of her team members to assist her. Plaintiff never called McDonald for assistance that night.

¶ 22 Castillo testified that she was working in the CCU when a doctor asked her who was covering the emergency room. The doctor said a patient was decompensating and a therapist was needed there immediately. Castillo tried to contact plaintiff, but the communication device said plaintiff was not online. Castillo then contacted McDonald, who was the charge therapist. Plaintiff never contacted Castillo for assistance. Castillo testified that if she was in the middle of a blood procedure when she received another call, Sinai’s procedure is to first call the charge

therapist and notify her that the emergency room has an issue and needs a therapist immediately. The therapists use a device to stay in communication with each other and ask for assistance. Castillo never refused to assist a patient because she was too busy. In those situations, the procedure is to tell the caller that you will find someone to help them.

¶ 23 Plaintiff testified that Wainwright told her that she was being terminated because she refused to treat a patient. Plaintiff was assigned to cover the emergency room. A nurse called plaintiff to suction a patient in the emergency room. Plaintiff replied that she could not treat the patient because she was in the middle of a blood procedure, and suggested that the nurse suction the patient. The nurse then hung up on plaintiff. Plaintiff was not told that the patient was in dire need. Plaintiff did not call a team member for assistance because she did not know that the patient's condition was that poor. After finishing the blood treatment, plaintiff went to the emergency room to check on the patient and found that she was fine.

¶ 24 In closing, plaintiff stated that the blood procedure needed to be done immediately, and therefore, she had to finish that before she could do anything else. Plaintiff stated that she could not do two procedures at one time. Plaintiff never received a follow-up call from the emergency room regarding the ventilator patient.

¶ 25 Sinai's representative, Faye Scales, stated in closing that plaintiff violated Sinai's policy when she failed to treat a patient in the emergency room. Although plaintiff was involved in another procedure, she failed to inform her coworkers that a patient needed help. Plaintiff could have called McDonald or Castillo, but did not. Scales stated that plaintiff's request for unemployment benefits should be denied.

¶ 26 The ALJ issued a written decision affirming the claims adjudicator's determination, and finding plaintiff not eligible for unemployment insurance benefits. The ALJ found that the testimony from Sinai's witnesses was detailed and logical, while plaintiff's testimony was self-serving and not credible. The ALJ found that it was not unreasonable for the nurse to direct plaintiff to assist the patient in the emergency room. Plaintiff refused to do so because she was busy. Plaintiff's refusal was not due to a lack of ability, skills, or training that prevented her from obeying the instruction, nor would the instruction result in an unsafe act. The ALJ concluded that the evidence showed that plaintiff was discharged for misconduct connected with her work as defined by section 602(A)(5) of the Act. Therefore, plaintiff was not eligible for benefits.

¶ 27 Plaintiff appealed the ALJ's decision to the Board. Plaintiff maintained that she did not do anything wrong and performed her work according to the acuteness of the situation. Plaintiff stated that she was told that the ventilated patient in the emergency room needed to be suctioned, not that the patient needed a breathing treatment, or that the patient was in respiratory distress. Had plaintiff been told otherwise, she would have paged McDonald. Plaintiff provided another written statement substantially similar to her previous rebuttal statement. Plaintiff also requested that the Board hold an oral argument.

¶ 28 The Board reviewed the record, including the transcript from the telephone hearing. It found that the record adequately set forth the evidence, and that no further evidentiary proceedings were necessary. The Board stated that it did not consider the additional evidence and arguments submitted by plaintiff because she failed to certify in writing that her request to submit the information was served upon her employer as required by the Department's regulations. See 56 Ill. Adm. Code 2720.315 (2009). Plaintiff also failed to provide an

explanation showing that for reasons outside of her control and not her fault, she was unable to introduce the evidence at the telephone hearing. *Id.* The Board denied plaintiff's request for oral argument because she failed to certify in writing that she served a copy of her request to all other parties (56 Ill. Adm. Code 2720.310 (2009)), and the Board determined that an oral argument was not necessary or appropriate for a full and fair disposition of plaintiff's appeal.

¶ 29 The Board found that plaintiff was discharged for refusing to provide care to a patient. In its factual findings, the Board stated that on July 29, plaintiff was assigned to cover the emergency room, among other areas of the hospital. A nurse directed plaintiff to report to the emergency room to suction a patient who was in distress and whose condition was deteriorating. Plaintiff did not report to the emergency room, and later told her employer that she was busy with other work. Plaintiff did not request assistance from another respiratory therapist so she could go to the emergency room, or send another therapist to the emergency room, in accordance with her employer's policies. The Board found that plaintiff had the ability to follow her employer's instruction, and the record did not show that doing so would have resulted in an unsafe act. It further found that the preponderance of the evidence showed that plaintiff refused to obey the employer's lawful and reasonable instruction, without a compelling reason for doing so. Accordingly, the Board found that, pursuant to section 602(A)(5) of the Act, plaintiff's actions constituted misconduct connected with her work. The Board concluded that plaintiff was not eligible for benefits, and affirmed the ALJ's decision.

¶ 30 Plaintiff appealed the Board's ruling to the circuit court of Cook County. The record shows that plaintiff presented new information to the court that she did not present to the Department. In a continuation order entered February 27, 2018, the circuit court noted that

plaintiff represented that she had settled a claim against Sinai regarding her termination. The court ordered plaintiff to produce a copy of the settlement agreement at the next status hearing. In a continuation order entered March 14, 2018, the court noted that plaintiff was in the process of entering into a settlement agreement with Sinai regarding the receipt of back pay, and that the agreement was not yet finalized, nor did it specify the period of time the back pay would cover. In a continuation order entered April 18, 2018, the court ordered defendants' attorney to provide the court with a letter reconciling the dates of plaintiff's claim for unemployment benefits and the dates covered by her back pay settlement agreement.

¶ 31 Pursuant to the court's order, defendants filed a "Reconciliation of the Dates of Plaintiff's Back Pay Award and Dates of Her Claim for Unemployment Benefits." Therein, defendants stated that some time after her separation from employment, plaintiff filed a charge of unfair labor practice against Sinai. Plaintiff reached a settlement for back pay. Defendants attached a letter from the National Labor Relations Board (NLRB) indicating that plaintiff's back pay award reflected the wages plaintiff would have received had she not been unlawfully discharged, and covered the dates of July 29, 2017, through March 2, 2018. Defendants stated that Sinai reported to the Department that it paid plaintiff the wages for that period. Defendants pointed out that a person is prohibited from receiving both wages and unemployment benefits for the same time period. See 820 ILCS 405/900(D) (West 2016). Defendants asserted that if the court found plaintiff eligible for unemployment benefits, it would need to remand the matter to the Board to determine plaintiff's time period for eligibility in light of the back pay award.

¶ 32 On May 17, 2018, the circuit court entered an order stating that it held a hearing and found that the Board's decision denying plaintiff unemployment benefits was not clearly erroneous. Accordingly, the court affirmed the Board's decision.

¶ 33 On appeal, plaintiff, *pro se*, challenges the denial of benefits by the Board. Plaintiff contends that the circuit court erred in affirming the denial of benefits because the NLRB found Sinai guilty of unlawfully discharging her. Plaintiff also states that one circuit court judge asked her to bring the NLRB settlement agreement to court. However, when she did so, a different judge presided over her hearing, and he refused to look at her settlement.

¶ 34 Defendants respond that the Board's final decision that plaintiff was discharged for misconduct under section 602(A)(5) of the Act was not against the manifest weight of the evidence or clearly erroneous where the evidence showed that plaintiff refused to obey Sinai's reasonable and lawful instruction to assist a patient in the emergency room. Defendants argue that Sinai did not require plaintiff to perform two procedures at once. Instead, Sinai's policy provided that if plaintiff was busy, she was required to seek assistance from another therapist, which she did not do. Defendants point out that plaintiff did not challenge the Board's factual findings or argue that its determination was erroneous, and therefore, any such argument is forfeited. Defendants assert that plaintiff raises wholly irrelevant matters on appeal because the settlement agreement is not relevant to whether the Board's decision was erroneous. Defendants also note that plaintiff is prohibited from presenting new arguments and new evidence on appeal.

¶ 35 In her reply brief, plaintiff raises the same arguments she presented to the Department, specifically, that she could not assist the patient in the emergency room because she was in the middle of a blood procedure, that the accusations against her were false, and that her termination

was an act of retaliation by Wainwright. Plaintiff asserts that she did not notify the Department or Board about the NLRB settlement because she did not know that she was supposed to do so.

¶ 36 It is well established that an issue or argument not presented at an administrative hearing is waived and cannot be raised for the first time before the court. *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97 (2002). Our review is confined to the issues, arguments and evidence that were presented before the Board. *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278-79 (1998).

¶ 37 Here, the record shows that plaintiff never raised any argument or evidence before the Board regarding the NLRB's findings or the settlement agreement. Accordingly, plaintiff waived this argument and we decline to consider it any further. See *Texaco-Cities*, 182 Ill. 2d at 278.

¶ 38 As a threshold matter, we note that plaintiff has failed to cite to any legal authority in her brief in violation of Supreme Court Rule 341(h)(7) (eff. May 25, 2018). Based on plaintiff's noncompliance with this rule, 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 appellees' 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)).

¶ 39 In addition, plaintiff attached to her brief four documents from the NLRB that are not included in the record on appeal. We are precluded from considering the information contained in these documents as they are not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003).

¶ 40 Plaintiff is challenging the denial of unemployment insurance benefits. This court reviews the final decision of the Board rather than that of the circuit court. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 22. 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)). Where the record contains any evidence that supports the Board’s factual findings, they are not against the manifest weight of the evidence and must be sustained. *Woods v. Illinois Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16.

¶ 41 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). Reviewing courts are precluded from reweighing the evidence, resolving conflicts in the testimony, or evaluating the credibility of the witnesses. *Woods*, 2012 IL App (1st) 101639, ¶ 16. Nor may a reviewing court substitute its judgment for that of the Board. *520 South Michigan Avenue*, 404 Ill. App. 3d at 317. If the issue on review merely involves conflicting testimony and witness credibility, the Board’s determination should be sustained. *Id.* at 318.

¶ 42 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. *Petrovic*, 2016 IL 118562, ¶ 21. The Board's decision is clearly erroneous where the court reviews the record and definitively concludes that a mistake has been made. *Id.*

¶ 43 Under section 602(A) of the Act, a person who is discharged by her employer for misconduct connected with her work is not eligible to receive unemployment insurance benefits. *Id.* ¶ 25. The Act defines “misconduct” as:

“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 2016); *Petrovic*, 2016 IL 118562, ¶ 25.

¶ 44 In 2016, the legislature amended section 602(A) by adding an enumerated list of eight work-related circumstances under which an employee is disqualified from receiving benefits. *Petrovic*, 2016 IL 118562, ¶ 37, n.3 (citing Pub. Act 99-488 (eff. Jan. 3, 2016)). In addition to the above definition, the statute now further provides:

“The previous definition notwithstanding, ‘misconduct’ shall include any of the following work-related circumstances:

* * *

5. Refusal to obey an employer’s reasonable and lawful instruction, unless the refusal is due to the lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act.” 820 ILCS 405/602(A)(5).

¶ 45 Here, we find that the Board’s determination that plaintiff refused to obey a reasonable and lawful instruction from her employer was not against the manifest weight of the evidence.

Documents in the record and testimony from multiple witnesses at the telephone hearing show that on the night of July 29, plaintiff was the respiratory therapist assigned to cover the emergency room, in addition to the fifth and sixth floors. About 1 a.m., a doctor and nurse both paged plaintiff multiple times to inform her that a ventilator patient in the emergency room was in respiratory distress and needed therapist intervention. Plaintiff herself testified that she told the nurse that she could not treat the patient because she was in the middle of a blood procedure, and suggested that the nurse suction the patient. Wainwright testified, however, that “[a] ventilator patient is, by definition, the respiratory therapist’s responsibility.”

¶ 46 Moreover, Wainwright, McDonald and Castillo all testified that if a therapist is in the middle of a procedure when she receives a call to assist another patient, Sinai’s procedure provides that the therapist tell the caller that she will find someone to assist the patient, and then contact another therapist for assistance. The Board found that the evidence showed that plaintiff did not follow her employer’s policy. She did not tell the nurse that she would find someone to assist the patient, but instead, told the nurse to suction the patient. Plaintiff testified that she did not contact another therapist for assistance because she did not know that the patient’s condition was so poor. The record shows that plaintiff merely refused to attend to the patient, claiming she was busy, which caused the doctor to leave the emergency room to find another therapist himself. In addition, the evidence showed that plaintiff failed to respond to a code yellow, but in her documentation she charged the patient for her attendance.

¶ 47 Plaintiff claims that all of the accusations against her were false. The ALJ expressly found that the testimony from Sinai’s witnesses was detailed and logical, and that plaintiff’s testimony was self-serving and not credible. Based on its ruling, the Board also found plaintiff’s

testimony not credible. It was the Board's responsibility to determine the credibility of the testimony from all of the witnesses, and this court will not disturb that determination. *Woods*, 2012 IL App (1st) 101639, ¶ 16; *520 South Michigan Avenue*, 404 Ill. App. 3d at 318.

¶ 48 The Board found that plaintiff had the ability to follow her employer's instruction, and there was no indication in the record that doing so would have resulted in an unsafe act. It further found that the preponderance of the evidence showed that plaintiff refused to obey her employer's lawful and reasonable instruction without a compelling reason for doing so. Accordingly, the Board concluded that plaintiff's actions constituted misconduct as defined by section 602(A)(5) of the Act.

¶ 49 Our review of the record reveals that an opposite conclusion is not clearly evident, and therefore, we will not disturb the Board's findings. *520 South Michigan Avenue*, 404 Ill. App. 3d at 313. Accordingly, the Board's determination that plaintiff was discharged for misconduct and not eligible for unemployment insurance benefits was not clearly erroneous. *Petrovic*, 2016 IL 118562, ¶ 21.

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

¶ 51 Affirmed.