2019 IL App (1st) 181084-U
No. 1-18-1084
Order filed July 9, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WILLOW ELECTRIC SUPPLY CO., INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; DIRECTOR OF ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY; BOARD OF REVIEW; and STARNES K. PASKETT,	)	No. 17 L5 0721
	)	
	)	
	)	Honorable
	)	James M. McGing,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The Board of Review's decision granting claimant unemployment insurance benefits is affirmed where its findings that claimant did not voluntarily resign or commit statutory misconduct were not clearly erroneous.

¶ 2 Plaintiff, Willow Electric Supply Co., Inc., appeals from the circuit court's order affirming the decision of the Illinois Department of Employment Security, its director, and the Department's Board of Review, that the claimant, Starnes Paskett, was eligible for

unemployment insurance benefits under the Illinois Unemployment Insurance Act. The decision found Willow had discharged Paskett and that he did not commit statutory misconduct connected with his work. On appeal, Willow argues that the Board's determination was clearly erroneous and improperly considered whether Paskett committed misconduct.

¶ 3 Applying the clearly erroneous standard of review, we affirm the Board's findings that Paskett did not voluntarily leave employment and did not commit statutory misconduct. Therefore, he was eligible for unemployment benefits under the Act.

¶ 4 Background

¶ 5 On January 8, 2017, Paskett submitted a claim for unemployment benefits because he had been "laid-off (lack of work)" from Willow's employment as of December 2, 2016. On January 20, 2017, Willow filed a protest to Paskett's claim, asserting that Paskett voluntarily resigned from his position. The Department interviewed Paskett and Willow's representative, Bradley Daniel. The Department then determined that Paskett was ineligible for benefits because he left his position voluntarily. On March 2, 2017, Paskett appealed, and on March 20, 2017, an administrative law judge from the Department conducted a telephonic hearing. The relevant evidence follows.

¶ 6 Paskett testified that he began working full-time for Willow in February 9, 2015, as an inside sales representative. On December 2, 2016, Paskett met with Mark Matoga, his manager, for a performance review. The president of Willow, Wieslew Wardala, joined the meeting at some point and Paskett was "let go" from his position due to his low sales performance. Before the meeting, Paskett had not received any warnings about his low sales. On the same day, he signed a resignation letter presented to him by Wardala and Matoga. The letter stated that he

resigned voluntarily and accepted four weeks of severance pay. Paskett explained that he signed the letter because "[i]t was the only way they would give me the severance pay that they listed in the letter of resignation" and he was going to be discharged regardless. Paskett acknowledged that he received compensation through the end of December.

¶ 7 Matoga testified that at the end of the year, between November and December, he reviews all of his employees. At the meeting, Matoga informed Paskett of his low sales numbers. Paskett agreed that he was not performing as well as he should be and that he did not think there was any point for him to continue working after two years of low sales. Matoga testified that he did not have the letter prepared after the meeting and signed at the end of the day. Matoga was under the impression that when Paskett left a mutual agreement existed with Willow and they ended the meeting on "really good terms."

¶ 8 According to Matoga, if Paskett wanted to stay then he would have reviewed his sales performance again in three months to see if it had improved. In the meeting, he told Paskett that he needed to change his work ethic if he wanted to continue his employment. Matoga acknowledged that Paskett did not have any other write-ups or reprimands for his performance, but Matoga had verbally informed Paskett that he needed to increase his sales. Matoga explained that he did not suggest that Paskett leave his employment with Willow and that he does not have the authority to fire an employee. He also explained that Wardala wanted to include the severance pay and that after Paskett left, Willow paid him a Christmas bonus.

¶ 9 Wardala testified that after he joined the meeting and presented the letter, Paskett commented "if I sign this, I will not be able to apply for unemployment benefits" and Wardala responded "most likely yes." He also testified that he offered the severance pay because it was

around Christmas time. When Wardala entered the meeting after having the letter prepared, he was under the impression that Paskett was leaving Willow.

¶ 10 Regarding Willow's policy on poor sales performance, Wardala explained that they would have warned Paskett in writing following the performance review and there would have been another performance review in three months to see if anything had changed. Willow's policy was to give two written warnings following performance review meetings and if improvement had not been made by the third meeting, the employee would be terminated. A written warning was not presented at the meeting because Paskett wanted to leave his position voluntarily and the agreement letter was prepared instead.

¶ 11 The following day, the ALJ issued its decision, reversing the Department's initial decision and finding Paskett eligible for benefits. The ALJ's decision stated that "[t]he claimant worked to the best of his ability, but was discharged for failing to meet the employer's expectations," and "the claimant was discharged for reasons other than misconduct connected with work and is not subject to any disqualification."

¶ 12 Willow appealed the ALJ's decision to the Board, requesting that the Board reverse the ALJ's decision and find Paskett ineligible for benefits because "[c]laimant was not discharged, nor was he threatened with imminent discharge and "[c]laimant chose to leave his employment with [Willow], rather than trying to improve his sales." The Board modified the ALJ's decision but still determined that Paskett was eligible for benefits. The Board stated that the record adequately set forth the evidence necessary to make a decision. The Board's decision found the following facts:

> "The claimant on December 2, 2016 met with the employer's president and the employer's manager concerning the claimant's poor work performance. The claimant at the meeting was informed that the claimant's sales were not sufficient to justify the claimant's position and salary and that the claimant was being let go by the employer. The employer's manager testified that the claimant's performance was not where it should be and that there was no point to continue after two years of low performance. The claimant during the meeting was given a letter of resignation prepared by the employer's attorney. The claimant signed the letter of resignation in order for the claimant to get the claimant's severance pay. The claimant was working to the best of the claimant's abilities."

¶ 13 The Board also concluded that Paskett credibly testified that he was given no option to remain employed at the meeting and that Paskett's testimony was more credible than that of Willow's witnesses. The Board ultimately held that Paskett "did not have any option to continue working for the employer" and "was discharged by the employer." The Board then addressed the question of whether Paskett was discharged for misconduct connected with his employment pursuant to Section 602(A) of the Act. It found that Paskett was not and concluded that he was eligible for benefits.

¶ 14 Willow filed a complaint in the circuit court for administrative review of the Board's determination. The circuit court affirmed, finding the decision was not clearly erroneous.

¶ 15 Analysis

¶ 16 Standard of Review

¶ 17 In an appeal from an administrative review proceeding, this court reviews the decision of the Board, rather than that of the circuit court or the ALJ. *Petrovic v. Department of Employment Security*, 2016 IL 118561, ¶ 22. As the trier of fact, the Board's factual findings are "*prima facie* true and correct." 735 ILCS 5/3-110 (West 2016); *Horton v. Department of Employment Sec.*, 335 Ill. App. 3d 537, 540 (2002). This court will not reweigh the evidence or substitute its judgment for that of the agency. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). It is the claimant's burden to establish that he satisfies the eligibility requirements for benefits. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007).

¶ 18 The standard of review employed depends on the nature of the issue as a question of fact, a question of law, or a mixed question of both fact and law. *AMF Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). For questions of fact, we will affirm an agency's factual findings unless they are against the manifest weight of the evidence. *Woods v. Department of Employment Security*, 2012 IL App (1st) 101639, ¶ 16. But, questions of law are not entitled to the same deference and are reviewed *de novo*. *Village Discount Outlet v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Finally, if it is a mixed question of law and fact at issue, we must determine whether the Board's decision was clearly erroneous. *AMF Messenger Service*, 198 Ill. 2d at 395. "A mixed question of law and fact is one that involves an examination of the legal effect of a given set of facts." *Manning v. Department of Employment Sec.*, 365 Ill. App. 3d 553, 557 (2006).

¶ 19 The issue of whether Paskett voluntarily resigned or was discharged from employment is a mixed question of fact and law, to which we apply the clearly erroneous standard of review.

Childress v. Department of Employment Sec., 405 Ill. App. 3d 939, 942. We will only find the agency's decision to be clearly erroneous where a review of the record leaves this court with the definite and firm conviction that a mistake has been made. *Id.*

¶ 20 Issue of Resignation

¶ 21 Willow first argues that Paskett voluntarily resigned, making him ineligible for benefits under Section 601(A). That section denies unemployment insurance benefits to someone who leaves his or her job voluntarily and without good cause attributable to the employer. 820 ILCS 405/601(A) (West 2016). "Good cause results from circumstances that produce pressure to terminate employment that is both real and substantial and that would compel a reasonable person under the circumstances to act [in] the same manner." *Childress*, 405 Ill. App. 3d at 943. To determine whether an employee left for good cause attributable to the employer, the focus falls on the actions and conduct of the employer. *Walls v. Department of Sec., Bd. of Review*, 2013 IL App (5th) 130069, ¶ 15.

¶ 22 The Board, as trier of fact, found that Paskett was given no genuine option to remain employed. The Board specifically found that Paskett to be more credible than the representatives of Willow. Additionally, the Board found that Paskett only signed the resignation letter prepared by Willow so he could receive severance pay. Competent evidence supports the Board's findings; Paskett testified that he was "let go" and then presented with a resignation letter at the meeting.

¶ 23 The Board ultimately concluded that Section 601(A) did not apply because Paskett did not voluntarily resign without good cause attributable to Willow. Based on the Board's factual findings, Paskett did not, in fact, voluntarily resign, despite the signed resignation letter.

Focusing on Willow's actions, the record shows that Paskett was told he was being discharged due to his low sales, that he had no option to stay employed by Willow, and that he had to sign the resignation letter to receive his severance pay.

¶ 24 Under these circumstances, Paskett's met his burden of establishing his eligibility for benefits under the Act; his resignation was not voluntary without good cause attributable to Willow. See *Lojek v. Department of Employment Sec.*, 2013 IL App (1st) 120679, ¶ 34. We cannot say with a definite and firm conviction that a mistake has been made, and, thus, the Board's conclusions that Paskett was discharged by Willow and that Section 601(A) was inapplicable are not clearly erroneous.

¶ 25 Statutory Misconduct Issue

¶ 26 Willow also argues that the Board improperly considered whether Paskett had committed statutory misconduct connected with under Section 602(A). Willow asserts that misconduct was not raised by either of the parties and Willow did not have the opportunity to present evidence on that issue. For this reason, Willow requests that we remand this issue.

¶ 27 But, the record shows that in its notice the Board included its consideration of the issues of whether Paskett left voluntarily or was discharged and whether Paskett was discharged for statutory misconduct. Moreover, the Board stated in its decision that the evidence in the record sufficed to determine all the issues to be addressed. Thus, Willow's argument is without merit. See *Arroyo v. Doherty*, 296 Ill. App. 3d 839, 845-46 (1998) (finding that claimant's argument that the Board of Review should not have considered misconduct under the Act where it was not raised by either party failed where the Board's notice mentioned Section 601 and 602).

¶ 28 Under the Act, an employee cannot claim unemployment benefits where the discharge turned on misconduct connected to his or her work. 820 ILCS 405/602 (West 2016); *Petrovic*, 2016 IL 118562, ¶¶ 24-25. Previously, "misconduct" was solely defined as:

> "[T]he 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).

The statute was amended in 2016 to include a list of eight specific work-related circumstances that would qualify as misconduct under the Act. 820 ILCS 405/602(A) (West 2016). For this determination, the employer has the burden of establishing an employee's disqualification due to misconduct. *Petrovic*, 2016 IL 118562, ¶¶ 23, 28. Whether Paskett committed statutory misconduct presents a mixed question of fact and law and is subject to the same "clearly erroneous" standard of review already discussed. *Id.* ¶ 21.

¶ 29 The Board found that Paskett had been discharged for failing to meet Willow's expectations, which does not constitute misconduct under Section 602(A). The Board also stated that none of the subsections of Section 602(A) applied to this case. This is not disputed by the parties. We agree with the Board's conclusion. No evidence in the record shows any misconduct committed by Paskett. Thus, the Board's determination that Paskett did not commit statutory misconduct connected with work under Section 602(A) was not clearly erroneous.

¶ 30 Affirmed.