

1-10-2572

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 JUDICIAL DISTRICT

NANCY I. ARREOLA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	
SECURITY; DIRECTOR OF ILLINOIS)	
DEPARTMENT OF EMPLOYMENT SECURITY;)	No. 10 L 50644
BOARD OF REVIEW,)	
)	
Defendants-Appellants,)	
)	
and)	
)	
PLS CHICAGO PERSONNEL, INC. c/o NSN,)	Honorable
)	James C. Murray,
Defendant.)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

- ¶1 Held: The decision of the Illinois Department of Employment Security Board of Review that the plaintiff was discharged for misconduct connected with work and thus ineligible for unemployment benefits was not against the manifest weight of the evidence or clearly erroneous; the circuit court judgment reversed.
- ¶2 The defendants, the Illinois Department of Employment Security (IDES), the IDES Board

of Review (Board), and the IDES Director,¹ appeal from an order of the circuit court of Cook County reversing the Board's denial of plaintiff Nancy I. Arreola's claim for unemployment benefits. Although the plaintiff has not filed a response brief in this court, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal"). On appeal from the circuit court's reversal, the defendants contend that the Board's finding that the plaintiff was ineligible for benefits because she was discharged for misconduct connected with her work was not against the manifest weight of the evidence or clearly erroneous. For the following reasons, we reverse the judgment of the circuit court of Cook County.

¶3 From November 2008 to September 2009, the plaintiff was employed as a customer service representative by PLS Chicago Personnel, Inc. (PLS), a cash advance service. Following her termination from employment, the plaintiff filed a claim for unemployment benefits. In her application, the plaintiff stated that she was discharged because she conducted a debit transaction for the boyfriend of an acquaintance. The acquaintance had called and informed the plaintiff that she had given her boyfriend her credit card, personal identification number (PIN), and picture identification (ID), and asked that the plaintiff allow the transaction without the acquaintance's presence. An IDES claims adjudicator granted the plaintiff's claim, finding that she was not disqualified under section 602(A) of the Illinois Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2008)), which provides that individuals discharged for misconduct are ineligible to receive unemployment benefits. PLS appealed, and a telephone hearing was held before an IDES referee. Several issues were considered at the hearing, including whether the plaintiff was discharged for misconduct in connection with work.

¹An additional defendant in the proceedings below, PLS Chicago Personnel, Inc., c/o NSN, is not a party to this appeal.

¶4 At the telephone hearing, Maricela Rodriguez (Rodriguez), a PLS District Manager, testified that on September 16, 2009, she discharged the plaintiff because the plaintiff did not follow proper procedures for conducting credit card cash advances. Rodriguez explained that at PLS, a person presenting a credit card for a cash advance must show his or her own picture ID, and the names on the credit card and ID must match. According to Rodriguez, the plaintiff was made aware of the proper procedure during training. In addition, in August 2009, Rodriguez met with the plaintiff and other employees to warn them of a current credit card scam and to review the procedure.

¶5 Rodriguez stated that she became aware of a problem when an audit revealed that identification and other information was missing from the plaintiff's cash advance paperwork. PLS looked into the situation and discovered that the plaintiff had "done this" four or five times before. Rodriguez testified that in one instance, PLS lost \$2,000 due to the lack of information collected by the plaintiff. However, the plaintiff had no previous write-ups or warnings regarding similar conduct. Rodriguez explained that the plaintiff's failure to follow the cash advance procedure was a terminable offense because it had occurred more than once and had caused PLS to incur a loss.

¶6 Rodriguez testified that when she discharged the plaintiff, she explained to her that they had already discussed the credit card procedure. Rodriguez told the plaintiff it was unacceptable to run a credit card for a person who was not the owner of the credit card, and that PLS "had, therefore, to let her go because that was gonna cause a loss on us." The plaintiff told Rodriguez that in one instance, she knew the credit card owner. According to the plaintiff, the credit card owner had called the plaintiff to say that a friend would be bringing in the credit card, and requested that the plaintiff run the transaction. The plaintiff told Rodriguez that she could have the credit card owner come back and sign the paperwork. The plaintiff did not offer Rodriguez an explanation for any of the other instances.

¶7 The plaintiff testified that the PLS handbook did not include procedures for handling cash advances and that she did not receive any training at work. The only procedure she was made aware

of was that if a customer wanted to make a debit transaction with a PIN, the name on the ID and the credit card were required to match, and the customer was required to sign the receipt. The plaintiff stated that she was not informed that the credit card owner had to be physically present for the transaction. The plaintiff asserted that in every transaction she conducted, she made sure the credit card and picture ID matched.

¶8 The plaintiff then described the last incident that occurred before she was discharged. The credit card owner, whom the plaintiff knew, called the plaintiff from her car. She said that her boyfriend would be coming inside with her credit card and ID. She asked the plaintiff to allow her boyfriend to withdraw some money using her PIN, after which the plaintiff conducted the transaction. The plaintiff explained her thought process as follows:

"I was like well, if he has the ID, and he has the credit card, and it's a PIN transaction, it's not a credit card transaction, it's like nobody could know your PIN except the person that holds the credit card. So she's authorizing me to do it, and there's nothing that says I can't do it unless, because the only thing that I was told was saying that [I was] supposed to match the ID with the credit card, and it was a PIN transaction so I went through ahead and did it."

¶9 Some time later, the plaintiff and her acquaintance went to PLS and spoke with the assistant manager. They explained to him how the plaintiff's acquaintance had authorized the transaction and showed him paperwork from the acquaintance's bank indicating that the bank had paid PLS for the money that was advanced.

¶10 The plaintiff stated that she was never told of a transaction in which PLS lost \$2,000, as a result of paperwork that was not filled out correctly. She further testified that she never received any warnings regarding transactions she had conducted and never received any write-ups.

¶11 Following the telephone hearing, the IDES referee affirmed the claims adjudicator's grant of

the plaintiff's claim for unemployment benefits. The referee found that PLS did not meet its burden of proving by a preponderance of the evidence that the plaintiff was discharged for misconduct. The referee concluded that while it was in PLS's best interest to discharge the plaintiff, the final incident that led to her discharge was not a willful and deliberate disregard of the employer's interest, as she was authorized by the credit card holder to proceed with the transaction.

¶12 PLS appealed to the Board, which reversed the referee's decision. The Board found that PLS had an established company procedure for granting a cash advance from a credit card which required that the personal ID, the credit card, and the person standing before the customer service representative match. Through Rodriguez's testimony that she had trained the plaintiff, PLS had established that the plaintiff knew the proper procedures for completing a cash advance. Therefore, the Board found that the plaintiff had willfully and deliberately violated PLS's cash advance rules when she gave a cash advance to the boyfriend of an acquaintance, in the absence of the acquaintance as the credit card owner.

¶13 Noting that this was about the fourth or fifth time the plaintiff had not followed proper cash handling procedures and that PLS had incurred an approximate \$2,000 loss from one of those transactions, the Board determined that PLS was harmed by the plaintiff's conduct because she exposed PLS to the risk of financial loss. Accordingly, the Board concluded that the plaintiff was discharged for misconduct connected with work and was subject to disqualification for benefits under section 602(A) of the Act. 820 ILCS 405/602(A) (West 2008).

¶14 Thereafter, the plaintiff filed a complaint for administrative review. The circuit court reversed the Board's decision, stating, "[t]he court believes that a mistake has been made in this case."

¶15 On appeal, the defendants contend that the Board's factual findings were not against the manifest weight of the evidence and that the Board's determination that the plaintiff's actions constituted misconduct was not clearly erroneous.

¶16 In an appeal involving a claim for unemployment benefits, we defer to the Board's factual findings unless they are against the manifest weight of the evidence. *Manning v. Department of Employment Security*, 365 Ill. App. 3d 553, 556 (2006). An administrative agency's findings of fact are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). In our role as a reviewing court, we may not judge the credibility of the witnesses, resolve conflicts in testimony, or reweigh the evidence. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007).

¶17 In this case, the Board made the following factual findings: that PLS had in place an established procedure for granting a cash advance from a credit card which required that the personal ID, the credit card, and the person standing before the customer service representative all match; that the plaintiff knew of the proper procedure for cash advances; that the plaintiff nevertheless conducted a cash advance for the boyfriend of the owner of the credit card presented; that this was the fourth or fifth time that the plaintiff had not followed proper procedures; and that PLS had incurred a loss of about \$2,000 due to one of the prior occurrences.

¶18 Although the plaintiff testified that she was never made aware of PLS's policy that the person presenting the credit or debit card must be the same individual whose name was on the card and picture ID, we defer to the Board's factual finding to the contrary. Rodriguez testified that such a policy existed, that the plaintiff was trained as to the proper procedure, and that the plaintiff and other employees were reminded of that procedure at a meeting about a month before the plaintiff conducted the transaction in question. In addition, while the plaintiff testified she had no knowledge of prior transactions where her paperwork was incomplete, Rodriguez related that an audit revealed that this was the fourth or fifth time that the plaintiff had failed to follow procedure, and that one of those occurrences led to a \$2,000 loss. The Board chose to believe Rodriguez over the plaintiff. On review, we may not judge the credibility of the witnesses or reweigh the evidence. *White*, 376 Ill.

App. 3d at 671. We find that the Board's factual findings are not against the manifest weight of the evidence.

¶19 The defendants next contend that the Board's determination that the plaintiff's conduct constituted misconduct so as to disqualify her for unemployment benefits pursuant to section 602(A) of the Act was not clearly erroneous.

¶20 To establish misconduct under the Act, it must be proven that: (1) there was a deliberate and willful violation of a rule or policy of the employing unit; (2) the rule or policy was reasonable; and (3) the violation either harmed the employer or was repeated by the employee despite a previous warning or other explicit instruction from the employing unit. 820 ILCS 405/602(A) (West 2008); *Manning*, 365 Ill. App. 3d at 557. Whether an individual was properly terminated for misconduct in connection with his work is a question that involves a mixed question of law and fact, to which we apply the clearly erroneous standard of review. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 327 (2009). An agency's decision is considered to be clearly erroneous where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶21 In this case, PLS presented evidence of the existence of a reasonable policy regarding the procedure to be used when conducting cash advances. PLS also presented evidence that the plaintiff was made aware of the policy, but nevertheless performed a debit transaction where the person standing before her was not the person whose name was on the credit card and picture ID. As to the third element of misconduct, we note that harm to the employer is not limited to actual harm, but can be established by potential harm. *Hurst*, 393 Ill. App. 3d at 329; *Manning*, 365 Ill. App. 3d at 557. Here, the plaintiff's conduct harmed PLS because it exposed the company to the risk of financial loss. Rodriguez testified that PLS had lost \$2,000 on a prior occasion when the plaintiff did not follow proper procedure. While the plaintiff testified that in this instance, her acquaintance's bank paid PLS

for the money that was advanced, we agree with the defendants that such might not always be the case. Moreover, the failure to follow cash advance procedures potentially exposes PLS to liability if a customer presents a PLS employee with a stolen or invalid credit card.

¶22 After reviewing the entire record, we cannot say, definitively and firmly, that the Board made a mistake. The Board's determination that the plaintiff was discharged for misconduct connected with work was not clearly erroneous.

¶23 For the reasons explained above, we reverse the judgment of the circuit court of Cook County and uphold the Board's decision finding the plaintiff ineligible to receive unemployment benefits.

¶24 Reversed.