

2020 IL App (1st) 191281-U
No. 1-19-1281
Order filed February 18, 2020

Second 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

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|--|---|-----------------------|
| IRENE CAICEDO, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | |
| |) | |
| THE DEPARTMENT OF EMPLOYMENT SECURITY; |) | No. 19 L 50175 |
| THE DIRECTOR OF EMPLOYMENT SECURITY; THE |) | |
| BOARD OF REVIEW; LBP MANUFACTURING, LLC |) | |
| c/o PERSONNEL PLANNERS DAVID PROSNITZ, |) | Honorable |
| |) | Michael Francis Otto, |
| Defendants-Appellees. |) | Judge, presiding. |

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* The Illinois Department of Employment Security Board of Review’s determination that plaintiff was not eligible for unemployment benefits was not clearly erroneous where her employer presented evidence that plaintiff was discharged for misconduct connected with her work.
- ¶ 2 Plaintiff Irene Caicedo appeals *pro se* from the judgment of the circuit court affirming the decision of the Illinois Department of Employment Security Board of Review (“the Board”)

finding her ineligible for unemployment benefits because she was discharged for misconduct under the Unemployment Insurance Act (“Act”). 820 ILCS 405/602(A) (West 2018). For the following reasons, we affirm.

¶ 3 On October 26, 2018, plaintiff was discharged from her job as a machine operator at LBP Manufacturing, LLC (“LBP”) for violating safety guidelines and a drug and alcohol policy. Plaintiff applied for unemployment benefits from the Illinois Department of Employment Security (IDES). LBP, through its third-party administrator, Personal Planners, Inc., “protested” plaintiff’s claim for benefits. The IDES Board of Review (Board) found that plaintiff was ineligible for benefits because she was discharged for misconduct connected with her work, pursuant to section 602(A) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A) (West 2018)). Plaintiff filed a complaint for administrative review in the circuit court. The Board’s final determination was affirmed by the circuit court. Plaintiff appealed that determination.

BACKGROUND

¶ 4 On November 28, 2018, an IDES claims adjudicator determined that plaintiff was not eligible for unemployment benefits because she was discharged for violating a “known and reasonable company rule.” On January 11, 2019, a telephone hearing on plaintiff’s appeal from that determination was conducted by Salvatore J. Labarbera, an administrative law judge (ALJ) with the department, acting as a referee in this case (“referee”).

¶ 5 The evidence introduced at the hearing established that plaintiff was employed as a folder glue operator from December 2, 2013, until October 26, 2018. She was fired for violating LBP’s safety guidelines and drug and alcohol policy, which required an employee to report accidents to a supervisor and complete a drug test upon request.

¶ 6 On October 25, 2018, plaintiff was injured when she “caught her finger in between the belt” on a running machine. Plaintiff admitted that she “was rushing” at the time of the incident and did not turn the machine off before she got hurt. When she told her supervisor about the accident, he applied first aid and told her to “go back to work.” Approximately two hours later, he told her to go to the clinic and take a urine test. Plaintiff provided two samples but they were “not enough.” She knew she could be discharged for leaving the clinic before providing an acceptable sample, but felt she deserved another chance given her years with the company and her lack of any prior “incidents or problems with the job.”

¶ 7 The referee determined that plaintiff was ineligible for unemployment benefits, because she was discharged for misconduct connected with her work.

¶ 8 Plaintiff filed an appeal with the Board. On March 13, 2013, the Board affirmed the decision of the referee as follows:

“Under the general definition of misconduct, an employee’s actions constitute misconduct under the Act only if the evidence in the record satisfies three requirements: (1) a deliberate and willful violation (2) of a reasonable rule or policy of the employer governing the individual’s behavior in the performance of his or her work, that (3) either (a) harmed the employer or a fellow employee or (b) was repeated despite a warning or explicit instruction from the employer. See *Petrovic v. Dep’t of Employment Sec.*, 2016 IL 118562, par. 26, 51 N.E.3d 726, 733.

In this case, the claimant admitted that she knew the employer’s policies; that she was warned that failure to complete the drug and alcohol test would result in termination; and that she left any way. She first stated that she had to pick up her children from the bus and then she stated that she needed to have her finger looked at because it was throbbing. While she provided valid reasons to leave, she willfully and deliberately failed to comply with the employer’s reasonable safety policy. Therefore, the Board finds that the claimant was discharged for misconduct connected with work under the general misconduct definition because she failed to report the accident and failed to complete the drug and alcohol test.

Moreover, a claimant who endangers the safety of himself or co-workers by engaging in grossly negligent conduct is disqualified from receiving benefits. The claimant in this case should have been aware that she could be injured if she did not turn the machine off before

she put her hand in it. Because she was rushing, she did not realize that she had failed to turn it off. Her conduct in this case constituted a substantial deviation from the standard of care a reasonable person would exercise in this situation. Therefore, the claimant's conduct of inserting her hand in the machine before making sure it was off, constituted misconduct as defined under Section 602(A)(8) of the Act.

Pursuant to 820 ILCS 405/602A, the claimant is not eligible for benefits from 11/11/2018.”

ANALYSIS

¶ 9 We note that plaintiff's brief does not provide citations to the record or pertinent legal authority in violation of Illinois Supreme Court Rule 341(h) (eff. May 25, 2018). Plaintiff's *pro se* status “does not alleviate [her] duty to comply with our supreme court's rules governing appellate procedure.” *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 7. Based on plaintiff's failure to comply with the requirements of Rule 341, “the court has the inherent authority to dismiss [her] appeal.” *Zale v. Moraine Valley Community College*, 2019 IL App (1st) 190197, ¶ 32. However, since we can ascertain the relevant issues from the record and the appellee's brief, we will reach the merits. See *Stolfo v. KinderCare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 19.

¶ 10 Plaintiff's argument on appeal is that the Board erred in denying her claim for unemployment benefits because she “followed all the rules and regulations” of LBP. Specifically, she argues that she was at the clinic “the whole day” and provided two urine samples, but the clinic “tossed them out.” Plaintiff further asserts that she had to leave the clinic to pick up her children from the bus.

¶ 11 In reviewing a decision by an administrative agency, reviewing courts must review the final decision of that agency. *Pesoli v. Department of Employment Security*, 2012 IL App (1st) 111835, ¶ 20. The applied standard of review depends on whether the question presented is one of

fact or law. *Id.* “In reviewing the Board’s findings of fact, we deem those findings *prima facie* true and correct and will reverse only if they are against the manifest weight of the evidence.” *Id.* When we are dealing with the Board’s findings on a question of law, the review is *de novo*. *Id.* Finally, when the Board’s decision involves a mixed question of law and fact it will be reviewed under the “clearly erroneous” standard. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 21. This standard is used when there are established facts, “ ‘the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard.’ ” *Persaud v. Illinois Department of Employment Security*, 2019 IL App (1st) 180964, ¶ 16 (quoting *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008)). A decision by the Board “is clearly erroneous if, based on the entire record, the reviewing court is ‘left with the definite and firm conviction that a mistake has been committed.’ ” *Petrovic*, 2016 IL 118562, ¶ 21 (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 393 (2001)).

¶ 12 Here, the Board found that plaintiff committed two independent acts of misconduct, each of which made her ineligible for benefits: (1) general misconduct because, despite knowing about LBP manufacturing’s policies, she failed to report the accident and failed to complete the drug and alcohol test; and (2) misconduct under section 602(A)(8) of the Act by engaging in grossly negligent conduct by placing her hand in a machine that was not turned off. 820 ILCS 405/602(A)(8) (West 2018). Because the Board’s decision involves a mixed question of law and fact, we apply the clearly erroneous standard of review. *Petrovic*, 2016 IL 118562, ¶ 21.

¶ 13 In this court, plaintiff only challenges the Board’s determination that she was discharged for general misconduct because she did not comply with LBP’s rules and regulations. However, the Board also found that plaintiff’s gross negligence justified the denial of her claim for

unemployment benefits, a finding she does not contest. Accordingly, she has forfeited any challenge to this ruling. Ill. S. Ct. R. 341(h) (eff. May 25, 2018); *Shakari v. Illinois Department of Financial*, 2018 IL App (1st) 170285, ¶ 34 (“principles of forfeiture apply equally to *pro se* litigants”). Thus, even assuming *arguendo* that plaintiff followed all of the company’s rules and regulations, she is still ineligible for benefits based on the Board’s finding that her conduct was grossly negligent. See *Persaud*, 2019 IL App (1st) 180964, ¶ 21 (There are independent definitions of misconduct which an employee may be discharged for “in spite of” not being discharged under the general definition.).

¶ 14 Nevertheless, we find that the Board’s decision that plaintiff is ineligible for benefits because she was discharged for grossly negligent conduct was not clearly erroneous. Under section 602(A)(8) of the Act:

“conduct is ‘grossly negligent’ when the individual is, or reasonably should be, aware of a substantial risk that the conduct will result in the harm sought to be prevented and the conduct constitutes a substantial deviation from the standard of care a reasonable person would exercise in the situation.” 820 ILCS 405/602(A) (West 2018).

¶ 15 Here, plaintiff admits she “was rushing” at the time of the accident and stuck her hand in a machine that was still on, injuring her finger. A reasonable person would have been aware that such conduct could result in harm. Therefore, her conduct constituted a substantial deviation from the standard of care a reasonable person would exercise in the situation. *Id.* Based on our review of the record, we are not “left with the definite and firm conviction that a mistake has been committed. Given this record, we cannot say that the Board’s decision was clearly erroneous.” *Petrovic*, 2016 IL 118562, ¶ 21.

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¶ 16 Since we conclude that the decision of the Board finding plaintiff ineligible for benefits on grounds that she was grossly negligent is not clearly erroneous, we find it unnecessary to address the Board's other findings. For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.