

2019 IL App (1st) 181320-U

No. 1-18-1320

Order filed April 30, 2019

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

ROBERT K. TAYLOR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
ILLINOIS DEPARTMENT OF EMPLOYMENT)	No. 17 L 50588
SECURITY; DIRECTOR, ILLINOIS DEPARTMENT)	
OF EMPLOYMENT SECURITY; and BOARD OF)	
REVIEW; and CONTINENTAL AIR TRANSPORT CO.)	
c/o EQUIFAX (TALX UCM SERVICES),)	Honorable
)	Daniel J. Kubasiak,
Defendants-Appellees.)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Mason and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The Board's decision denying plaintiff unemployment benefits is affirmed where the record supports the finding that plaintiff was terminated due to his misconduct in failing to maintain a valid driver's license as required by the employer.

¶ 2 Plaintiff, Robert Taylor, appeals from the circuit court's order affirming the administrative decision of defendants, the Board of Review (Board) of the Illinois Department of

Employment Security (Department), which determined that he was ineligible to receive unemployment benefits because he had been terminated for misconduct in failing to maintain a valid driver's license. On appeal, plaintiff argues that the Board's determination that he failed to maintain a valid driver's license was against the manifest weight of the evidence. For the reasons set forth below, we affirm.

¶ 3 The evidence in the record shows that plaintiff began working for Continental Air Transport (Employer) in 2006 as a full-time van driver, providing a shuttle service between downtown Chicago and the airports. Upon being hired, Employer gave plaintiff its "Policy and Procedures Notebook" and plaintiff signed a form acknowledging that he had received it. The Notebook contained an "Accident and Driver's License Policy," which specifically stated that "[d]rivers cannot drive without a current driver's license[.]" On January 12, 2017, the Illinois Secretary of State mailed plaintiff a "Notice of Cancellation," which informed plaintiff that his driver's license was cancelled due to a fraudulent act committed in the making of an application in 2000. On January 20, 2017, Employer, through a third party, conducted a check of plaintiff's motor vehicle record and discovered that his driver's license had been cancelled. Plaintiff appealed the cancellation with the Secretary of State and took vacation time to resolve the issues with his driver's license. His last day of work was January 20, 2017.

¶ 4 On February 8, 2017, he informed Employer that he would not be able to return on the scheduled date of February 11, 2017. Employer conducted another motor vehicle record check on February 9, 2017, which again listed plaintiff's license status as cancelled as of January 12, 2017. On February 23, 2017, plaintiff received an "Order of Rescind" from the Secretary of State, which notified plaintiff that the previous order to cancel his driver's license was rescinded

as of that date. Another motor vehicle record check from Employer dated March 16, 2017, listed plaintiff's license status as suspended from April 23, 2017 to April 23, 2018 and cancelled from January 12, 2017 to February 23, 2017. A union hearing regarding the status of plaintiff's driver's license was held on March 22, 2017. On March 31, 2017, plaintiff was terminated for failing to maintain a valid driver's license which was required for his employment. Plaintiff applied for a restricted driving permit, and on April 20, 2017, he received a letter from the Secretary of State stating that he had been approved but could not legally operate a motor vehicle until he had received his restricted driving permit.

¶ 5 Because plaintiff incorrectly believed that his employment was terminated on February 9, 2017, plaintiff applied to the Department for unemployment benefits on March 19, 2017. Employer filed a protest with the Department on March 31, 2017, claiming that plaintiff's termination was due to misconduct. On April 13, 2017, the claims adjudicator issued a determination denying plaintiff's claim for unemployment benefits under section 602(A)(2) of the Unemployment Insurance Act (Act) (820 ILCS 405/602(A)(2) (West 2016)). The determination stated that "[t]he evidence shows that the claimant was discharged *** for failure to maintain a license[,]” “[h]is driver's license had been cancelled due to fraud in the making of his application[,]” and his conduct “constituted misconduct under Section 602A2 of the Illinois Unemployment Insurance Act.”

¶ 6 On April 19, 2017, plaintiff filed an appeal for reconsideration of his claim. A telephone hearing with a referee was scheduled for May 3, 2017. Mike Marison, on behalf of Employer, testified that plaintiff was hired in 2006 as a full-time van driver. He explained that plaintiff was discharged because it was discovered during a routine record check conducted through a third

party that plaintiff's driver's license had been cancelled. Future record checks showed that plaintiff's license was either cancelled or suspended. Plaintiff was not terminated until two months later because plaintiff was allowed to use his vacation time to try to resolve the issue.

¶ 7 Moss Mahey, the Vice President of Operations for Employer, testified that he was present during the union hearing on March 22, where plaintiff was given a week to provide Employer with documentation showing that his license was valid and not suspended or cancelled. Plaintiff did not follow through with that request.

¶ 8 Plaintiff testified that his license was suspended on January 18, 2017, due to fraud involving an application in 2000. He informed the Employer of the issue and that he would not be back to work on February 11 as scheduled because he needed to resolve an issue with his license. Plaintiff stated that he "got [his] license back" on February 23. There was then some discussion between the referee and plaintiff as to what the Secretary of State's Order of Rescind meant in terms of the status of plaintiff's driver's license. Plaintiff informed the referee that he had appealed the Notice of Cancellation, which led the Secretary of State to send an Order of Rescind to plaintiff. Plaintiff stated that the Order of Rescind meant his license was valid during his 60-day appeal, but after the 60 days, on April 23, 2017, his license would be suspended. The referee noted that there was no official documentation stating that his license was valid or had been reinstated from February 23 to April 23. Plaintiff then explained that he applied to the Secretary of State for a restricted driving permit which would allow him to legally drive for work while his license was suspended. Plaintiff had documentation showing that his request for a restricted driving permit was approved on April 20.

¶ 9 Plaintiff was then asked specifically about the union hearing on March 22. Plaintiff stated that he was told at the meeting that he needed to prove that he would be permitted to drive the van on a restricted driving permit, and plaintiff disputed that a time period was given to him to provide such proof. He stated that there was no issue at the hearing as to whether he had a valid driver's license on that date, and instead, the concern related to the potential restricted driving permit.

¶ 10 The referee issued a decision on May 4, 2017, finding plaintiff ineligible to receive benefits under section 602(A)(2) of the Act (820 ILCS 405/602(A)(2) (West 2016)). The referee noted that plaintiff was terminated because his driver's license was suspended for an offense that occurred several years prior. The Employer discovered this issue with plaintiff's license through a random check of plaintiff's motor vehicle record. Plaintiff was given time to resolve the issue but never provided proof from the Secretary of State that his license had been reinstated. The referee pointed out that plaintiff did not provide any evidence to support his claim that his license was reinstated at the end of February 2017. The only evidence plaintiff provided was a letter from the Secretary of State approving his request for a restricted driving permit as of April 20, 2017. The referee determined that "[t]he preponderance of the evidence shows that the claimant did not have the needed driver's license to maintain his job[.]" and the referee agreed with the decision of the claims adjudicator.

¶ 11 On May 8, 2017, plaintiff appealed to the Board, which affirmed the referee's decision. The Board rendered its written decision on June 9, 2017, stating that it did not consider plaintiff's additional documentation, *i.e.* the Notice of Cancellation, the Order of Rescind,¹ and a

¹ The Notice of Cancellation and the Order of Rescind had previously been submitted as evidence to the referee. The copies that plaintiff submitted to the Board included handwritten annotations.

page from the Policy and Procedures Notebook, and his attached argument because these materials were not certified as served upon the Employer. After reviewing the record, the Board found that the evidence showed that plaintiff was required to maintain a valid driver's license for his employment, that Employer discovered that plaintiff's license had been suspended on January 20, 2017, and that by March 31, 2017, plaintiff had not resolved the issues with his license. Additionally, the Board stated that the evidence showed that "it was within the claimant's control to maintain his driver's license." After reviewing the pertinent statutes, the Board concluded that the evidence in the record supported a finding of misconduct and that plaintiff was ineligible for benefits under the Act. Thus, the Board affirmed the referee's decision.

¶ 12 On June 21, 2017, plaintiff filed a complaint in the circuit court of Cook County seeking review of the Board's decision. Following briefing and oral argument, the circuit court entered an order on March 21, 2018, affirming the Board's decision. In doing so, the court noted that although there was some evidence that plaintiff's license was valid on March 31, 2017, there was also sufficient evidence to support a finding that he failed to maintain a valid license. Thus, the court concluded that the Board's decision was not clearly erroneous. Plaintiff filed a motion to reconsider, which the court denied.

¶ 13 Plaintiff now appeals the circuit court's order affirming the Board's denial of unemployment benefits.

¶ 14 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 referee. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 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 Security*, 335 Ill. App. 3d 537, 540 (2002). This court will not reweigh the evidence or substitute its judgment for that of the agency. *White v. Department of Employment Security*, 376 Ill. App. 3d 668, 671 (2007); *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998).

¶ 15 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. *AFM 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. However, questions of law are not entitled to the same deference and are reviewed *de novo*. *Sudzus 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. *AFM Messenger Service Inc.*, 198 Ill. 2d at 391.

¶ 16 In this court, plaintiff contends that the Board erred in rendering its decision because the Order of Rescind proves that his driving privileges were restored on February 23, 2017. Plaintiff maintains that his driver’s license was valid at the time of his termination, and therefore, the Board’s factual finding on that issue should be reversed. Thus, he urges this court to conclude that he did not engage in misconduct under section 602(A)(2) of the Act.

¶ 17 The Act’s main purpose is to alleviate the economic insecurity and burden caused by an involuntary loss of employment (820 ILCS 405/100 (West 2016)); thus, the Act is “intended to benefit only those persons who become unemployed through no fault of their own” (*Jones v.*

Department of Employment Security, 276 Ill. App. 3d 281, 284 (1995)). However, certain unemployed individuals are disqualified from obtaining benefits, such as those individuals who are discharged for misconduct connected with their work. 820 ILCS 405/602 (West 2016); *Petrovic*, 2016 IL 118562, ¶ 27. In determining whether benefits should be awarded, “the Act must be liberally construed in favor of awarding benefits to unemployed workers” and the employer has the burden of establishing an employee’s disqualification due to misconduct. *Petrovic*, 2016 IL 118562, ¶¶ 23, 28.

¶ 18 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. *Id.* One of those circumstances is “[f]ailure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual.” *Id.* § 602(A)(2).

¶ 19 Here, Employer included in its Policy and Procedures Notebook that all drivers must maintain a valid driver’s license in accordance with state law and as a requirement of their insurance company. Plaintiff signed a form, acknowledging that he had received the Notebook. Plaintiff also stated in an interview with the claims adjudicator that he was aware of this

company policy and that the reason given for his termination was that he had failed to comply with this policy.

¶ 20 If plaintiff did not maintain a valid driver's license, this would constitute misconduct under the Act and plaintiff would not be eligible for unemployment benefits. This is not disputed by the parties. The only dispute here is whether plaintiff did or did not maintain a valid driver's license as required by Employer. Accordingly, this is a question of fact, and we must affirm the Board's decision if there is any evidence in the record to support its finding. See *Woods*, 2012 IL App (1st) 101639, ¶ 16.

¶ 21 After carefully reviewing the record, we find that the Board did not err in concluding that plaintiff did not maintain a valid driver's license where there was evidence presented to support the Board's conclusion. The agency's "factual determinations are contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident." *City of Belvidere*, 181 Ill. 2d at 205. It is the administrative agency's role to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in the testimony. *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). The record here includes conflicting evidence, supporting both Employer and plaintiff's arguments.

¶ 22 Evidence presented in the form of the third-party motor vehicle record checks showed that plaintiff's driver's license was cancelled on January 12, 2017. Subsequent record checks showed that his driver's license was cancelled from January 12, 2017 to February 23, 2017 and was suspended from April 23, 2017 to April 23, 2018. The documents did not indicate plaintiff's license status during the interim period of February 23, 2017 to April 23, 2017. There was also testimony that at the union hearing held on March 22, 2017, Employer requested that plaintiff

contact the Secretary of State and obtain documentation showing that his driver's license was in fact valid, but plaintiff never provided such information to Employer, which resulted in plaintiff's termination. This evidence supports a finding that plaintiff failed to maintain a valid driver's license.

¶ 23 Conversely, there is also evidence that plaintiff did have a valid driver's license on the date of his termination. Plaintiff asserts that it can be reasonably inferred from the record checks mentioned above that plaintiff's driving privileges had been restored during the period of February 23, 2017 to April 23, 2017. Plaintiff also points to the Order of Rescind to support his claim that his driver's license was valid during that time period. He argues that the Secretary of State rescinded the cancellation of his driver's license, which implicitly reinstated his driver's license. Additionally, plaintiff disputes what was discussed at the March 22, 2017 hearing. He claims that there was no issue raised as to the status of his driver's license on that date, but there were concerns as to whether he could drive a van for Employer with a restricted driving permit.

¶ 24 However, “[t]he ‘mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings.’ ” *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006) (quoting *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). Because there is evidence supporting the Board's determination that plaintiff failed to maintain a valid driver's license, we cannot disturb the findings of the Board, as they are not against the manifest weight of the evidence. See *Woods*, 2012 IL App (1st) 101639, ¶ 18 (deferring to the Board's factual finding where there was evidence supporting opposite conclusions). Thus, we

No. 1-18-1320

affirm the Board's factual findings and conclude that plaintiff was terminated for misconduct and was ineligible for unemployment benefits.

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.