

No. 1-24-2295

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

---

|                                     |   |                   |
|-------------------------------------|---|-------------------|
| CLEOTHIS EVANS,                     | ) | Appeal from the   |
|                                     | ) | Circuit Court of  |
| Plaintiff-Appellant,                | ) | Cook County.      |
|                                     | ) |                   |
| v.                                  | ) |                   |
|                                     | ) |                   |
| ILLINOIS DEPARTMENT OF EMPLOYMENT   | ) |                   |
| SECURITY, DIRECTOR OF THE ILLINOIS  | ) | No. 24 L 50522    |
| DEPARTMENT OF EMPLOYMENT SECURITY,  | ) |                   |
| ILLINOIS DEPARTMENT OF EMPLOYMENT   | ) |                   |
| SECURITY BOARD OF REVIEW, and ALPHA | ) |                   |
| BAKING CO.,                         | ) | Honorable         |
|                                     | ) | John A. Simon,    |
| Defendants-Appellees.               | ) | Judge, presiding. |

---

JUSTICE QUISH delivered the judgment of the court.  
Presiding Justice Navarro and Justice Ocasio concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The Illinois Department of Employment Security Board of Review's finding that the claimant refused to follow an order of a supervisor was not against the manifest weight of the evidence and its determination that this behavior constituted misconduct under section 602(A)(5) of the Unemployment Insurance Act, rendering the claimant ineligible for unemployment benefits, was not clearly erroneous.

¶ 2 Plaintiff Cleothis Evans, *pro se*, appeals from the order of the circuit court of Cook County affirming the decision of the Illinois Department of Employment Security (“IDES”) that he was ineligible for unemployment benefits. For the following reasons, we affirm.

¶ 3 Evans was a sanitation worker at Alpha Baking Co. (“Alpha”) from May of 2010 to January 3, 2024. Shortly after his discharge from Alpha, Evans filed a claim for unemployment benefits with IDES. Evans completed a “Misconduct Questionnaire” which asked Evans about the circumstances leading to his discharge. Evans stated that the reason given for his discharge was “insubordination.”

¶ 4 Alpha filed a response, asserting that Evans was fired due to insubordination after an incident on January 3, 2024. Alpha stated that Evans refused to follow an order from a supervisor, Jorge Lamas, to address a fire. Evans used vulgar language towards Lamas and created a hostile work environment. Alpha attached documentation of prior incidents where Evans failed to follow orders or used vulgar language, including an incident which resulted in Evans being demoted and a summary of the January 3, 2024 incident created by Alpha’s Human Resources manager, Vladimir Mota. The summary documented the incident that led to Evans’s discharge, including statements from witnesses supporting Lamas’s account that Evans used vulgar language and acted in a hostile manner.

¶ 5 Alpha also included a document memorializing an interview Mota conducted with Evans wherein Evans stated that Lamas called him to the office and he responded “what is it Lamas, [w]hy you calling me” because other employees could have been called to address the fire. Evans stated that he “walked off [sic] the office and told [Lamas] don’t call me no more” and “I’m on

break don't bother me." Evans admitted his "behavior or voice might have" been elevated, but denied using vulgar language or making threats.

¶ 6 A claims adjudicator interviewed Evans on February 16, 2024. Evans stated that he was on lunch in the locker room of the Alpha warehouse when Lamas called him into the office. Lamas told Evans that there was a fire outside that had been extinguished and Lamas asked Evans to clean up the debris. Evans told Lamas he was on his lunch break and Lamas should call someone else. Evans then left the office, and Lamas followed him back to the locker room and told Evans, "[y]ou think you can do what you want around here." Evans went to the locker room, changed clothes, and left for the day. The next day, Alpha terminated Evans for insubordination.

¶ 7 The claims adjudicator determined that Evans was not eligible for unemployment benefits under section 602(A) of the Unemployment Insurance Act ("Act") (820 ILCS 405/602(A) (West 2024)) because he was discharged from his employment with Alpha due to misconduct that was within his control to avoid. Evans appealed and a telephonic hearing was heard before an IDES referee. Mota and Gary Janke testified on behalf of Alpha and Evans testified on his own behalf.

¶ 8 Mota testified that he was the Human Resources Manager at Alpha and investigated the incident that led to Evans's discharge. Evans was discharged for a series of incidents involving misconduct, using vulgar language, and creating a hostile work environment. Evans had been referred to and completed an Employee Assistance Program, but the most recent incident gave Alpha "no choice" as it was the same behavior of "insubordination, aggressive behavior" and "failure to follow instructions." Evans was given a written warning after an incident on September 29, 2023, which also resulted in Evans being demoted.

¶ 9 Mota also testified that on January 3, 2024, there was an incident between Evans and Lamas after Lamas paged Evans to address a fire outside the warehouse. Mota testified that the situation escalated, with Evans using vulgar threats and language at Lamas. Mota obtained statements from witnesses who observed the initial confrontation and supported Lamas's account of the incident. Evans was instructed to go outside and pick up debris or extinguish the fire and Evans said, "I'm on break, go get somebody else."

¶ 10 Mota read Lamas's statement documenting the incident, which stated that after Lamas approached Evans about picking up the debris, Evans stated "why the f\*\*\* you call me," "I don't receive order, only from a group leader," and "you better know who you're dealing with and who you're messing with, you have nothing to deal with me." In his statement, Lamas added that if Evans continued to work at Alpha, he did not want Evans working on his shift because he did not feel safe. Mota stated that Lamas was within his right as a manager to instruct Evans to clean up the debris and it was within Evans's job description to comply with that request.

¶ 11 Mota also testified that he interviewed Evans during his investigation and read Evans's statement into the record. Mota stated that Evans could have returned to his break after addressing Lamas's request. Evans did not have any active leave in place at the time of the incident and did not have any documentation showing that he requested an accommodation. Evans was given an opportunity during his interview to raise any concerns he had about Lamas, but he did not do so.

¶ 12 Janke, Alpha's plant manager, testified that he made the decision to terminate Evans based on Mota's investigation, finding that Evans refused a direct order, used vulgar language in front of several people, caused a hostile work environment, and violated company policy. After Janke's testimony, Alpha admitted several documents into evidence, including Mota's investigation report

and witness statements from the January 3, 2024 incident, as well as documentation of prior incidents involving Evans's misconduct.

¶ 13 Evans testified that, in 2017, his duties were "amended" due to a spine injury that prevented him from pushing or lifting weights above 25 to 50 pounds or climbing to high areas. He gave documentation of these restrictions to a manager and Alpha complied with those restrictions. Evans stated that when Lamas asked him to clear the debris in January 2024, he did not go outside to see if it would be something that he would not be able to handle based on his medical restrictions.

¶ 14 Evans testified that, on the day of the incident, he took his lunch break at around 11:00 p.m. and went to the locker room. Lamas came in for the start of his shift. Evans saw Lamas look at his phone and assumed that Lamas received a text from his son, who also worked at Alpha. Lamas did not say anything to Evans, left to go to the office and then paged Evans from the office. Evans went to the office and asked Lamas what he wanted. Lamas told him there was a fire outside and they needed someone to extinguish it. Evans asked why Lamas did not ask him when they were in the locker room together and why he did not ask someone else as Evans was on his lunch break. Lamas told him that he saw that Evans was not doing anything so he thought he would page Evans. Evans told Lamas that there were "four or five other sanitation workers on the floor" and that Lamas should have paged one of them because he was on his lunch break.

¶ 15 Evans testified that he headed towards the locker room, but Lamas followed him and began harassing him about "sitting down watching the T.V. doing nothing." The other supervisor called Lamas back into the office to tell him that he "can't do that" because Evans said he was on his lunch. Evans went back to the locker room, changed clothes and told the other two supervisors that he was going home and that they "need to do something about this damn guy" because Lamas was

“getting outrageous.” The next day, Mota approached Evans at work with “fabricated stories” about what happened the previous evening.

¶ 16 Evans denied using profanity towards Lamas other than the word “damn.” He agreed that he could have returned to his lunch break after complying with Lamas’s request. He testified that, due to his health conditions, it was not a reasonable request for him to handle the debris, but agreed that he did not tell Lamas about these health conditions when Lamas asked him to handle the debris. Evans stated that he did not follow Lamas’s instructions because he was on his lunch and because of his health restrictions.

¶ 17 Mota testified that Evans did not tell him that he had any health concerns that prevented him from handling the debris. Mota understood that there was “unnecessary tension” between Evans and Lamas, but explained that it was not an unreasonable request for Lamas to ask Evans to handle the debris. Mota denied that any manager at Alpha told Lamas not to give orders to Evans. He testified that Evans could have addressed the debris and then resumed his break and that it was “normal protocol” for an employee to interrupt their break briefly, particularly for a safety incident like a fire, and resume it afterwards. He was not aware Evans had any medical restrictions or limitations at the time of the incident.

¶ 18 The referee upheld the denial of unemployment benefits, finding that Evans was instructed to clean up debris from a fire by a supervisor and Evans decided not to complete the task because he was on his lunch break. She further found that Evans used language towards Lamas which made Lamas feel unsafe. The referee concluded, based on a preponderance of the evidence, that Evans was discharged for misconduct connected with his work and therefore, was ineligible for unemployment benefits under section 602(A)(5) of the Act.

¶ 19 Evans appealed to the IDES Board of Review. On August 27, 2024, the Board of Review issued its decision. The Board of Review stated that it reviewed the record of the evidence, including the transcript of the testimony submitted at the telephone hearing, and found the record adequately set forth the evidence so that no further evidentiary proceedings were necessary. The Board of Review affirmed the referee's decision, finding that, on January 3, 2024, Evans was instructed by a supervisor to clean up debris after a fire and he chose not to complete the task because he was on his lunch break. The Board of Review also found that Evans "could have complained to the union had he believed that his being taken out of break was a violation of union rules." The Board of Review concluded that Evans was discharged for misconduct connected with his work under section 602(A)(5) of the Act and was disqualified from receiving unemployment benefits.

¶ 20 Evans filed a complaint for administrative review in the circuit court of Cook County. The circuit court affirmed the Board of Review's decision. This appeal follows.

¶ 21 Evans raises two issues on appeal. First, he argues that his termination was unjustified because he was exercising his right to a scheduled break based on his union contract. Second, he argues that he was terminated due to an unjustified disciplinary action and not misconduct.

¶ 22 IDES initially argues that we should strike Evans's brief and dismiss his appeal due to his failure to comply with multiple aspects of Supreme Court Rule 341(h) (eff. Oct. 1, 2020). Evans's brief does not have a table of contents, an introductory paragraph, a statement of the issues presented or a jurisdictional statement. His statement of facts is not supported by any citations to the record and he fails to cite any legal authority in support of his arguments. See Ill. Sup. Ct. R. 341(h) (eff. Oct. 1, 2020). We are entitled, as a reviewing court, to have the issues on appeal clearly

defined, pertinent authority cited, and a cohesive legal argument presented. *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. When an appellant fails to comply with Rule 341, this court may strike their brief and dismiss the appeal. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. Compliance with Rule 341 is mandatory and the fact that a party appears *pro se* does not relieve that party from complying as nearly as possible with the rules for practice before this court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. While IDES is correct that Evans's brief fails to comply with Rule 341(h), we decline to strike Evans's brief or dismiss his appeal and will consider his arguments to the extent to which they are properly presented.

¶ 23 Evans initially argues that his termination was unjustified because he was exercising his contractual right to a scheduled break. In support of this argument, he attached to his brief a portion of the collective bargaining agreement between Alpha and the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union. However, this document is not in the record and was not presented during the administrative proceedings. “[O]ur review is limited to the record before us; neither the trial court nor this court can consider additional evidence.” *Persaud v. Illinois Department of Employment Security*, 2019 IL App (1st) 180964, ¶ 27. See also *Brandenberry Park Condominium Ass’n v. Abu Taleb*, 2020 IL App (1st) 200442, ¶ 22 (a party cannot supplement the record on appeal by attaching documents to their brief). Thus, we cannot consider it.

¶ 24 Additionally, while Evans referenced that he was entitled to an uninterrupted break in his appeal to the Board of Review, he failed to raise any argument based on the collective bargaining agreement before IDES. Thus, we find this argument is forfeited. See *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill. 2d 200, 212-13 (2008) (arguments not raised in an administrative hearing are procedurally defaulted on review).



¶ 25 Next, we address Evans's argument that his termination was due to an unjustified disciplinary action rather than misconduct. We construe this as an argument that the Board of Review erred in finding that Evans was terminated for misconduct and ineligible for unemployment benefits.

¶ 26 On administrative review of an IDES decision, we review the final decision of the Board of Review, rather than the decision of the circuit court. *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814, 819 (2009). Our standard of review depends on the nature of the question presented. *Id.* The factual findings of the Board of Review are deemed *prima facie* true and correct and will not be reversed unless they are against the manifest weight of the evidence. *Id.* Factual determinations are against the manifest weight of the evidence only "if the opposite conclusion is clearly evident." *Id.* The Board of Review's decision to deny unemployment benefits based on the claimant's discharge for misconduct is a mixed question of law and fact, which requires a court to determine the legal effect of a given set of facts. *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 21. Mixed questions are reviewed under the "clearly erroneous" standard. *Id.* A decision is clearly erroneous if, based on the entire record, the reviewing court is "left with a definite and firm conviction that a mistake has been committed." *Id.* (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392 (2001)).

¶ 27 We first review the Board of Review's factual findings. The Board of Review found that Evans was instructed to clean up debris after a fire, he chose not to complete that task because he was on his lunch break, and this constituted insubordination. In his testimony, Evans acknowledged both that he was instructed by Lamas to clean up debris and that he refused to do

so because he was on his lunch break. Mota testified that Lamas's instruction was reasonable and that cleaning debris was within Evans's job description. Mota also noted that employees would routinely interrupt a break to complete a task and then return to their break. We find that these factual findings are supported by the record and are not against the manifest weight of the evidence.

¶ 28 Next, we find that the Board of Review's conclusion that, under the facts of the case, Evans committed misconduct by refusing to obey a lawful instruction and therefore was ineligible for unemployment benefits was not clearly erroneous. Section 602(A) of the Act provides that an individual is ineligible for unemployment benefits if he is "discharged for misconduct connected with his work." 820 ILCS 405/602(A) (West 2024). The definition of misconduct includes, relevant to this case, the "[r]efusal 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) (West 2024). Conduct that falls under section 602(A)(5) is deemed to be misconduct *per se*, such that the claimant may be denied benefits even if his conduct was not willful or would not fall under the general definition of misconduct. *Persaud*, 2019 IL App (1st) 180964, ¶¶ 21-22.

¶ 29 The evidence before the Board of Review established that Evans refused to follow an instruction by his supervisor, Lamas, to pick up debris. The evidence established that this instruction was reasonable, not unlawful and within Evans's job duties. There is no evidence in the record to suggest that Evans lacked the ability, skill, or training to clean up the debris. Nor is there any evidence that Lamas's request would have resulted in an unsafe act. Evans admitted that he refused to obey Lamas's instruction. Evans agreed that he could have returned to his lunch break after completing the task. We find that the Board of Review's conclusion that Evans was

discharged for misconduct under section 602(A)(5) of the Act by refusing to follow Lamas's instruction was supported by the record and was not clearly erroneous. See *Persaud*, 2019 IL App (1st) 180964, ¶¶ 4, 23 (Board of Review's determination of misconduct under section 602(A)(5) affirmed when employee refused to meet with manager about a performance improvement plan).

¶ 30 Evans argues that Lamas was harassing him and that Lamas has a documented history of harassment complaints. First, he attaches an email listing grievances against Lamas to his appellant's brief, but this document is not in the appellate record and thus, we cannot consider it. *Abu Taleb*, 2020 IL App (1st) 200442, ¶ 22; *Persaud*, 2019 IL App (1st) 180964, ¶ 27. Second, Evans forfeited this argument by not raising it in the administrative proceedings. Evans referred to a conflict between himself and Lamas in both the hearing before the referee and his appeal to the Board of Review, but he did not raise any argument based on a history of harassment complaints against Lamas. Therefore, this argument is forfeited. *Cinkus*, 228 Ill. 2d at 212-13. Lastly, even if this argument was not forfeited, it lacks merit. Evans has not shown how a history of complaints against Lamas is relevant to whether Lamas issued Evans a reasonable and lawful instruction which Evans chose to disobey or how such complaints would render the Board of Review's decision against the manifest weight of the evidence or clearly erroneous. Therefore, we reject Evans's argument.

¶ 31 In his reply, Evans attaches documents to support his assertion that he had a medical restriction. However, these documents are not in the record and thus, we cannot consider them. *Abu Taleb*, 2020 IL App (1st) 200442, ¶ 22; *Persaud*, 2019 IL App (1st) 180964, ¶ 27. Additionally, while Evans testified that he should not have been required to address the debris due to his medical conditions, he admitted that he did not investigate whether his medical conditions

would prevent him from performing that task and that he never told Lamas about this concern or his medical conditions. He also repeatedly stated, both during his interview with Mota and the initial interview with IDES, that he did not address the debris because he was on his lunch break and not because of any medical condition. Accordingly, we reject his argument.

¶ 32 Therefore, the Board of Review's decision is neither against the manifest weight of the evidence nor clearly erroneous. Therefore, we affirm the decision of the Board of Review that Evans is ineligible for unemployment benefits.

¶ 33 Affirmed.