

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 0741

HELEN B. EGAN

VERSUS

MARIANNE SULLIVAN, ADMINISTRATOR, OFFICE OF
UNEMPLOYMENT INSURANCE; HOSPITAL SERVICE
DISTRICT NO. 1 OF TANGIPAOHA PARISH, D/B/A
NORTH OAKS MEDICAL CENTER

Judgment Rendered: DEC 21 2012

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On Appeal from the
21st Judicial District Court,
In and for the Parish of Tangipahoa,
State of Louisiana
Trial Court No. 2011-0001960

Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

DME

UBW

TAMH

HIGGINBOTHAM, J.

Plaintiff appeals the district court's judgment affirming the decision of the Board of Review pertaining to the determination that she was not entitled to receive unemployment compensation benefits because her resignation was based on misconduct. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Helen B. Egan, was employed by North Oaks Medical Center (North Oaks) as a medical transcriptionist from May 30, 1989 until September 20, 2010. Egan's employment with North Oaks ended because North Oaks determined that she had violated the Health Insurance Portability Act (HIPPA). Egan was allowed to resign from her employment rather than be discharged. Subsequently, Egan filed a claim for unemployment benefits with the Louisiana Workforce Commission, which determined she was disqualified from receiving benefits because she resigned from employment in lieu of being discharged for misconduct. Egan appealed the finding to the appeals tribunal, and after a telephone hearing on February 17, 2011, the administrative law judge (ALJ) issued her findings of fact and decision affirming the agency's decision. Egan then appealed to the Board of Review, which again affirmed the agency's decision. Egan filed a petition for judicial review in the 21st Judicial District Court, and the district court's judgment affirming the Board's decision is the subject of this appeal. Egan cites as her only assignment of error that there is no evidence of intentional wrongdoing and the decision of the district court is wrong as a matter of law.

DISCUSSION

Louisiana Revised Statutes 23:1601(2) provides that an individual is disqualified for benefits if he is discharged "for misconduct connected with his employment." Further, this provision defines "misconduct" to mean "mismanagement of a position of employment by action or inaction, neglect that

places in jeopardy the lives or property of others, dishonesty, wrongdoing, violation of a law, or violation of a policy or rule adopted to insure orderly work or the safety of others.” When an employer seeks to deny unemployment benefits because of employee misconduct, the burden of proof is on the employer to establish such misconduct. **Fontenet v. Cypress Bayou Casino**, 06-0300 (La. App. 1st Cir. 6/8/07), 964 So.2d 1035, 1037. This court held in **Fontenet**, 964 So.2d at 1038-41, that the amendment of La. R.S. 23:1601(2) in 1990 to include a statutory definition of “misconduct” supplanted the prior jurisprudential standard of “misconduct” that required an intentional breach of the employer’s rules or policies or a wanton disregard of the employer’s interest.

Further, upon appeal of cases arising under the Louisiana Employment Security Law, the scope of appellate review is limited to determining whether the facts are supported by sufficient and competent evidence and, in the absence of fraud, whether the facts, as a matter of law, justify the action taken. La. R.S. 23:1634(B); **Fontenet**, 964 So.2d at 1038. Judicial review of the findings of the Board of Review does not permit the weighing of evidence, drawing of inferences, reevaluation of evidence, or substituting the views of the court for that of the Board of Review as to the correctness of the facts presented. **Gonzales Home Health Care, L.L.C. v. Felder**, 08-0798 (La. App. 1st Cir. 9/26/08), 994 So.2d 687, 690-91, writ not considered, 08-2568 (La. 1/9/09), 998 So.2d 730.

In administrative hearings, the usual rules of evidence do not apply and hearsay may be admissible in accordance with regulations prescribed by the Board. La. R.S. 23:1631; **CEG Welding Supply, Inc. v. Moore**, 31,167 (La. App. 2d Cir. 12/14/98), 723 So.2d 524, 526. Louisiana Revised Statute 23:1631 provides, in part:

The manner in which appealed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the board of review for determining the

rights of the parties, whether or not such regulations conform to the usual rules of evidence and other technical rules of procedure.

Egan's employment with North Oaks ended because she allegedly violated HIPPA. Clancy Edwards, who worked in human resources, stated during the phone hearing that an employee came to her and said that there was some information given to her by Egan that she did not have "a need to know." According to the record, Egan while transcribing, showed an ultra-sound picture of a co-worker to another co-worker revealing that she had a miscarriage. Egan then took the information to the team leader and told her and another person in the room. Egan admitted she took information about the co-worker to the team leader and said "you can do ... whatever you want with this." Edwards stated that Egan told her she knew what she did was wrong, that she had been trained in not doing so and that she was very apologetic for it. Egan stated she "understood" the policy against sharing confidential medical information, but also stated "this is the way we've always conducted it." Egan never offered her reason for sharing the information with her superior.

In concluding that Egan was not entitled to benefits, the ALJ made the following finding:

[Egan] was a medical transcriptionist and the former employer's policy prohibits the medical transcriptionist from disclosing or discussing the content of a patient's medical records. [Egan] was transcribing a co-worker's medical records and shared what she discovered with the acting supervisor and at least one other co-worker from the department.

...

[Egan] admitted to telling her acting supervisor and co-workers about another co-worker's medical information.

In her only assignment of error, Egan contends that the trial court was in error because there was no finding of "intentional wrongdoing." However, because the statutory definition of misconduct no longer contains the requirement of an intentional breach of the employer's rules, the Board did not have to find

Egan's behavior was intentional to be considered misconduct warranting the denial of benefits. See Fontenet, 964 So.2d at 1038-1039.

Egan contends that there was no competent evidence in the record of disqualifying misconduct because the only testimony came from Clancy Edwards, who testified about a "hearsay conversation" with an employee who came forward. Edwards was not present at the time of the incident in question. In support of her position, Egan cites **Jackson v. Louisiana Board of Review**, 41,862 (La. App. 2d Cir. 1/10/07), 948 So.2d 327, 331, which states "hearsay evidence is not competent to overcome an employee's **direct, contradictory** testimony." (Emphasis added). Egan admitted that she brought the information to the acting supervisor, was aware of the policy and had received a prior warning. After review of the record, we find the testimony of Egan was not **contradictory** to Edward's testimony. According to Egan's own testimony, she violated the rules by discussing information that her co-workers did not have the need to know. She never refuted Edward's testimony about her behavior, only that it was not a violation. Therefore, we find no merit to this argument.

CONCLUSION

Accordingly, based on our careful review of the record, we find that the factual findings of the ALJ and the Board of Review are supported by sufficient and competent evidence. Moreover, as a matter of law, those findings justify the Board of Review's decision that Egan was discharged for misconduct within the meaning of La. R.S. 23:1601(2). See La. R.S. 23:1634(B). Therefore, the January 30, 2012 judgment of the district court, affirming the Board of Review's decision is hereby affirmed at appellant's costs.

AFFIRMED.