

**IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO**

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TAMI PENTEK
CLERK OF COURTS
COMMON PLEAS COURT
ASHTABULA CO. OH

JUDI L. DOUGHERTY,)	CASE NO. 2012 CV 125
)	
Appellant,)	JUDGE YOST
)	
vs.)	<u>JUDGMENT ENTRY</u>
)	
DIRECTOR, OHIO DEPT. OF JOB)	
& FAMILY SERVICES, ET AL.)	
)	
Appellees.)	

Proceeding: Appeal from the Decision of the Unemployment Compensation Review Commission, mailed January 11, 2012.

The claimant/appellant filed a timely Notice of Appeal, in this Court, from the Decision of the Unemployment Compensation Review Commission, disallowing a request for review of the decision of the Hearing Officer, mailed January 11, 2012. The claimant, Judi L. Dougherty, was employed by the Ashtabula County Joint Vocational School as a computer technology instructor. This position required her to have a two-year Ohio certificate/license for vocational business/computer technology. Initially, upon being hired, she obtained a one-year license. The following year she obtained a two-year provisional license. In order to renew this license she was required to complete six semester hours of college credit. This she failed to do. Consequently, the license was not renewed, with the result that she was discharged from employment by the vocational school. She was notified by a letter dated April 19, 2011, that she would not be re-employed for the next academic year. The appellant's initial application for unemployment benefits was allowed, finding that the employer had failed to establish negligence or willful

disregard of a company rule by the claimant. On the employer's appeal, this finding was affirmed by the director's redetermination. The employer again appealed and the case was transferred to the Unemployment Compensation Review Commission for a full evidentiary hearing. The hearing officer reversed the director's redetermination and ruled that the claimant was discharged for just cause in connection with work. The claimant/appellant requested a review of the hearing officer's decision, which was disallowed.

The appellant acknowledges that she did not satisfy the license requirement necessary for the Ashtabula County Joint Vocational School to continue her employment as a teacher. However, she argues that she should be entitled to receive unemployment compensation benefits because the Ashtabula County Joint Vocational School paid for the training and licensing of other employees and led her to believe that they would help her maintain her license. The appellee, Director of the Ohio Department of Job and Family Services, responds that the argument of the appellant is resolved by *Williams v. Ohio Department of Job and Family Services* (2011), 129 Ohio St. 3d 332. The Court agrees that this case is determinative of two points relevant to the instant matter. First, the initial job posting for the position that the appellant applied and was hired for clearly states that the candidate must possess or be able to possess a Two-Year Ohio Certificate/License for Vocational Business/Computer Technology. The Supreme Court held

"that when employment is expressly conditioned upon obtaining or maintaining a license or certification and an employee agrees to the condition and is afforded a reasonable opportunity to obtain or maintain the license or certification, an employee's failure to comply with that condition is just cause for termination for unemployment compensation purposes." *Williams, supra*, ¶27.

The Court finds that the appellant had a reasonable opportunity to obtain the necessary license. Second, the Supreme Court stated that in unemployment cases the "review of the fairness of a company policy is necessarily limited to a determination of whether the employee received notice of the policy; whether the policy could be understood by the average person; and whether there was a rational basis for the policy." *Williams, supra*, ¶128. The court has never adopted a standard requiring the consideration of whether the policy was fairly applied, that is, whether the policy was applied to some individuals but not others. In the case at bar, it is not clear whether the Ashtabula County Joint Vocational School paid for the course work for other teachers to renew their licenses. The testimony of the appellant on this point is uncorroborated. The testimony of the school representative was that she did not know. However, the Court finds that it makes no difference, that it is a non-issue, because the appellant had notice of the policy, testified that she understood the policy, and the policy requiring her to have a license had a rational basis. Whether the employer may have applied the policy differently to other employees is not relevant to the appellant's claim for unemployment compensation benefits.

A remaining issue that is pertinent to the determination of the appellant's claim for unemployment compensation benefits is whether the employer represented to her, at the time she was hired, that it would pay for the additional college courses she would need to obtain the Two-Year Ohio Certificate/License for Vocational Business/Computer Technology. The testimony of the appellant on this point is unclear and also uncorroborated. The employer's representative testified

that the appellant was not told that the school would pay for her to take courses necessary to obtain her license. The appellant's testimony was that when she was hired she was told she needed to obtain a teacher's license and that they would help her to get it. She also testified that she did not know additional college courses would be required until sometime after she was hired, but again that the employer told her they would help her to get them.

The decision of the hearing officer does not make a specific finding on this particular point. The hearing officer finds that the posting for the position indicated the requirement to possess a Two-Year Ohio Certificate/ License for Vocational Business/Computer Technology. He further finds that in June 2009, the appellant had communication with Susan Nell about the cost of taking the necessary courses at The Ohio State University, and that she had several subsequent communications from Christine Ray, reminding her about renewing her teaching certificate/license. In the reasoning portion of the decision, the hearing officer determined that the burden was on the claimant/employee, before accepting the position, to find out what the requirements would be for maintaining a license. Since the Ashtabula County Joint Vocational School could not employ her without a license, her failure to maintain the license was just cause for her discharge. The hearing officer had the opportunity to observe the witnesses and assess credibility. Even if it were within the prerogative of the Court to weigh the evidence, based upon the transcript of the record that has been provided, the Court would conclude that the claimant/appellant has failed to establish, by a preponderance of the evidence, that at the time she was hired, the appellee, Ashtabula County Joint Vocational School, made a

representation to her that it would pay for additional college courses that she would need in order to obtain her Two-Year Ohio Certificate/License for Vocational Business/Computer Technology. In the absence of persuasive evidence that the employer was going to pay for the additional course work, the Court would conclude, just as the hearing officer did, that the claimant/appellant knew the job would require a teaching certificate that she did not have. It was her responsibility to find out what the requirements for the license would be, before accepting the employment.

The law requires that the decision of the Review Commission in this case must be affirmed, unless it was unlawful, unreasonable or against the manifest weight of the evidence. R.C. §4141.282(H). The Court cannot substitute its judgment for a decision that is lawful, reasonable and supported by credible evidence.

The decision of the Hearing Officer indicates that he gave due consideration to the testimony and facts in evidence. In his reasoning process and weighing of the evidence, the Hearing Officer ultimately concluded that the appellant's contention regarding an agreement to pay for the additional courses necessary to maintain her license was unpersuasive, and that the reason for termination given by the employer, was sufficient to establish just cause, and to warrant the discharge of the appellant. The claimant/appellant is urging a different interpretation of the facts and a different opinion as to the conclusions that the Hearing Officer should have drawn from the evidence.

In reviewing the transcript of the proceedings before the Unemployment Compensation Review Commission, the Court finds that there is testimony and evidence to support the findings and conclusions set forth in the Decision of Unemployment Compensation Review Commission, mailed January 11, 2012. It is often arguable that reasonable minds could reach different conclusions on the basis of the evidence presented to the Hearing Officer. However, that is not a basis to reverse, vacate, or modify the decision of the Hearing Officer. In this regard, the Court may not weigh the evidence or substitute its own determination for the factual findings of the Administrative Hearing Officer. In essence, the claimant disagrees with the Hearing Officer's conclusion's drawn from the evidence. The Court holds that the findings of the Hearing Officer are adequately supported by credible evidence. As previously stated, the Court cannot substitute its judgment for a decision that is lawful, reasonable and supported by credible evidence. No error of law has been demonstrated. The Court further finds that the decision of the Hearing Officer is reasonable.

Order: 1. The Decision of the Unemployment Compensation Review Commission, mailed January 11, 2012, disallowing a request for review of the decision of the Hearing Officer, mailed December 16, 2011, is affirmed.

2. Costs are assessed against the claimant/appellant.

THIS IS A FINAL APPEALABLE ORDER. Within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and the date upon every party who is not in default for failure to appear and shall note the service in the appearance docket.

The Clerk is directed to serve notice of this judgment and its date of entry upon the journal upon the following: Richard N. Selby, II, Esq.; Susan M. Sheffield, Esq.; Christopher M. Newcomb, Esq.; and Unemployment Compensation Review Commission.



GARY L. YOST, JUDGE
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GLY/sak