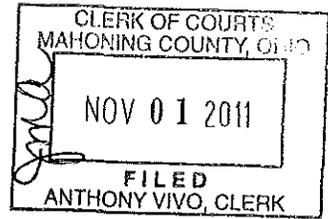


IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO



JOHN P. KADILAK)
)
 APPELLANT,)
)
 vs.)
)
 DIRECTOR, ODJFS, *et al.*,)
)
 APPELLEES.)

CASE NO. 09 CV 4606
JUDGE JAMES C. EVANS
MAGISTRATE'S DECISION

Appellee Claimant John P. Kadilak was terminated by his employer Appellant Youngstown Pipe and Supply LLC [YPS] on June 17 2009 because the Pennsylvania State Police Bureau of Patrol, Commercial Vehicle issued a violation as a result of Mr. Kadilak's failure to possess a valid medical certificate while driving his employer's truck. Driver/Vehicle Examination Report issued 6/17/2009, Director's File; Transcript of 9/29/09 hearing p. 7-8.

On June 5 2009, when Mr. Kadilak was offered a return to work after lay-off, he was advised in writing that another driving violation would result in his termination as a driver. 6/5/09 letter, Director's file; Tr. at p. 7. On that same day, YPS requested of Mr. Kadilak that he provide a valid medical certificate. Tr. 8. As a commercial truck driver, mr. Kadilak was required to carry a valid medical certificate. Tr. 12. On multiple occasions between 6/5/09 and 6/10/09, YPS requested Claimant's medical card. Tr. 8-9. When asked about his medical card, Mr. Kadilk always stated he had forgotten the medical certificate. Tr. 8-9. He never advised his employer that his medical certificate was expired. *Id.* As a result of the 6/17/09 violation as to Mr. Kadilak driving without a medical certificate (and his past driving record), YPS' insurance company refused to insure Mr. Kadilak as a driver any longer. Tr. at p. 8.

[*P57] An appeal of a decision rendered by the Review Commission is governed by R.C. 4141.282(H), which provides, in pertinent part: "* * * If the court finds that the decision is unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, such court shall affirm the decision of the commission."

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[*P58] An appellate court's standard of review in unemployment compensation cases is limited. An appellate court may reverse a board decision only if the decision is unlawful, unreasonable or against the manifest weight of the evidence. See, *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696, 1995 Ohio 206, 653 N.E.2d 1207, citing *Irvine v. Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St.3d 15, 17-18, 19 Ohio B. 12, 482 N.E.2d 587. [**24] An appellate court may not make factual findings or determine the credibility of the witnesses, but rather, is required to make a determination as to whether the board's decision is supported by evidence on the record. *Id.* The hearing officers are in best position to judge the credibility of the witnesses as the fact finder. *Shaffer-Goggin v. Unemployment Compensation Review Commission*, Richland App. No. 03-CA-2, 2003 Ohio 6907, citing, *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St. 2d 11, 233 N.E.2d 582, *Brown-Brockmeyer Co. v. Roach*, (1947), 148 Ohio St. 511, 76 N.E.2d 79.

[*P59] A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the court's have no authority to upset the commission's decision. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 19 Ohio B. 12, 482 N.E.2d 587. "Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission]." *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008 Ohio 301, 891 N.E.2d 348, at P 7, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, 526 N.E.2d 1350. [**25] "[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the trial court's verdict and judgment." *Karches*, 38 Ohio St.3d at 19.

[*P60] We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

[*P61] In order to qualify for unemployment compensation benefits, a claimant must satisfy the criteria set forth in R.C. 4141.29(D)(2)(a). That section provides:"
* * *

[*P62] "(D) * * * [N]o individual may * * * be paid benefits * * *:

[*P63] "(2) For the duration of the individual's unemployment if the director finds that:

[*P64] "(a) The individual quit his work without just cause or has been discharged for just cause in connection with the individual's work, * * *."

[*P65] The Ohio Supreme Court has defined "just cause" as that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Irvine, supra* at 17; *Tzangas, supra* at 697. The determination of whether just cause exists for an employee's dismissal [**26] under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal. *Benton v. Unemployment Compensation Bd. Of Review*, Hardin App. No. 6-2000-13, 2001 Ohio 2201, at 2, citing *Tzangas, supra*, at paragraph two of the syllabus. Furthermore, where an employee demonstrates "unreasonable disregard for [the] employer's best interests," "just cause for the employee's termination is said to exist. *Kiikka v. Ohio Bur. of Emp. Servs.* (1985), 21 Ohio App.3d 168, 169, 21 Ohio B. 178, 486 N.E.2d 1233, quoting *Stephens v. Bd. of Rev.*, Cuyahoga App. No. 41369, 1980 Ohio App. LEXIS 12234, 1980 WL 355009. See, also, *Binger v. Whirlpool Corp.* (1996), 110 Ohio App.3d 583, 590, 674 N.E.2d 1232.

Doering v. Holmes County Dep't of Job & Family Servs., 2009 Ohio 5719 (5th Dist. App., Holmes Co. Oct. 29, 2009).

The Hearing Officer found that Mr. Kadilak was discharged for just cause, because he "rendered himself uninsurable" by failing to carry a valid medical card. Decision, 10/5/2009. The findings by the Hearing Officer were supported by competent, credible evidence.

The decision of Ohio Unemployment Compensation Review Commission, dated November 10 2009, which disallowed further review of the decision of the Hearing Officer that Appellant was terminated for just cause, was not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Review Commission that Appellant Claimant John P. Kadilak was discharged by Appellant Employer Youngstown Pipe and Supply LLC for just cause in connection with work and disallowing his application for unemployment compensation benefits **is affirmed.**

Dated: October 31st 2011


EUGENE J. FEHR, MAGISTRATE

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5.

The parties shall have fourteen (14) days from the filing of this Decision to file written objections with the Clerk of this Court. Any such objections shall be served upon all parties to this action and a copy must be provided to the Court. Except for a claim of plain error, a party shall not assign as error on appeal of the Court's adoption of any finding of fact or conclusion of law, whether

or not specifically designated as a finding of fact or conclusion of law, under Civ. R. 53(D)(3)(a)(ii), unless the party, as required by Civil Rule 53(E)(3)(b), timely and specifically objects to that finding or conclusion and supports any objection to a factual finding with a transcript of all evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. Any party may request the magistrate to provide written findings of fact and conclusions of law. In accordance with Civ. R. 53(D)(3)(a)(ii), this request must be made within seven (7) days from the filing of this Decision.

This is an appealable order and the Clerk of Courts shall serve copies of this Decision upon all counsel and unrepresented parties within three (3) days of the filing hereof.

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