

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

FILED

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BARBARA A. WILSON
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

KELLY L. STAHL,
Appellant,

CASE NO. 2011CVF596

v.

DECISION/ENTRY

MIDWEST PRACTICE
SOLUTIONS, LLC, et al.,
Appellees.

Howard D. Cade, III, Attorney for Appellant Kelly L. Stahl, Becker & Cade, 526-A Wards Corner Road, Loveland, Ohio 45140.

Arthur H. Schlemmer, Attorney for Appellee Midwest Practice Solutions, LLC, Barron, Peck, Bennie & Schlemmer, 3074 Madison Road, Cincinnati, Ohio 45209.

Robin A. Jarvis, Attorney for Appellee Ohio Department of Job & Family Services, Assistant Attorney General, 1600 Carew Tower, 441 Vine Street, Cincinnati, Ohio 45202.

This matter came before the court upon Appellant Kelly L. Stahl's appeal, pursuant to Section 4141.282 of the Ohio Revised Code of the State of Ohio Unemployment Compensation Review Commission's ("Commission") denial of unemployment benefits. The Commission filed and served its final determination denying benefits on March 9, 2011. The appellant argues that the Commission's decision to deny unemployment benefits was unlawful, unreasonable and against the manifest weight of the evidence. The appellant requests that this court reverse, vacate, or modify the Commission's decision and award the appellant unemployment benefits.

The appropriate standard of review to be applied by common pleas courts in unemployment compensation appeals is set forth in Section 4141.282(H) of the Ohio Revised Code:

"The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was 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, the court shall affirm the decision of the commission."

A common pleas court must defer to the Commission's findings with respect to purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence.¹ Accordingly, that reasonable minds might reach different conclusions on the basis of the evidence presented does not mean that the Commission's decision necessarily should be reversed pursuant to R.C. 4141.282(H).

The procedural history of this case is as follows. Stahl filed an Application for Determination of Benefit Rights. On April 20, 2010, the Director issued a Redetermination finding that Stahl was separated from Midwest due to a mutual agreement. Stahl's application was allowed with a benefit year beginning February 7, 2010. No disqualification of benefit rights was imposed. On May 11, 2010, Midwest appealed the Redetermination. On May 12, 2010, the Ohio Department of Job and Family Services ("ODJFS") transferred jurisdiction to the Unemployment Compensation Review Commission.

A telephonic hearing was held before Hearing Officer Denis J. Bowshier on October 16, 2010. Stahl was represented by counsel and presented three witnesses at the hearing. Midwest was also represented by counsel and presented three witnesses. Another hearing was held before Hearing Officer Bowshier on December 16, 2010. Stahl was represented by counsel and presented three witnesses and Midwest was represented by counsel and presented one witness at this hearing. Hearing Officer David F. Kubli then wrote a decision upon a review of the complete record. Hearing Officer Kubli wrote the decision because

¹ *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

Hearing Officer Bowshier was unavailable.

In his decision, Hearing Officer Kubli set forth the following findings of fact. Appellant Stahl was employed by Appellee Midwest Practice Solutions LLC ("Midwest") from September 1, 2008 through January 25, 2010 as Director of Operations. Midwest manages physicians' practices, specifically accounts receivable. Several months prior to January 2010, Jeffrey McGrath, President and Owner of Midwest, started discussions with Stahl about how the business could cut salary costs. Midwest was having difficulty keeping up with personnel and overhead costs. McGrath met with Stahl and her husband in late January to inform her that he had decided to cut twenty-five positions. McGrath did not plan to terminate Stahl's employment.

Shortly before January 25, 2010, Stahl decided that she could not continue to work for Midwest with the upcoming changes. She expressed this position to McGrath. Stahl did not raise the issue of hours, raises, or bonuses to which she believed that she was entitled but had not received. McGrath accepted Stahl's position, but offered her the opportunity to stay for sixty days while she sought other employment. Before offering her this arrangement, McGrath learned of several emails sent by Stahl to Midwest's clients informing them that she was starting her own business, Clear Claim MD, which would be doing the same type of work as Midwest. Stahl accepted the sixty day arrangement, but changed her mind when she learned that she would have to sign a non-compete agreement. Stahl then decided to leave her employment on January 25, 2010.

In his decision issued on February 7, 2011, Hearing Officer Kubli determined that Stahl quit her job at Midwest. Officer Kubli based this determination on his finding that Stahl stated that she could not continue to work for the company when the upcoming personnel changes were made. Officer Kubli then determined that, if discharged, Stahl was

discharged for just cause because she violated the fiduciary relationship one owes a present employer when she emailed Midwest's clients stating that she would be starting her own business. Based upon these findings, Officer Kubli determined that Stahl received benefits to which she was not entitled and ordered her to repay those benefits to ODJFS. Additionally, Officer Kubli reversed the Director's Redetermination issued April 20, 2010 with respect to Stahl's separation from Midwest.

On February 25, 2011, Stahl filed a request for review under R.C. 4141.281(A)(3). Stahl's request was disallowed on March 9, 2011. Stahl filed the instant appeal on April 8, 2011. Whether Stahl is entitled to a reversal or modification of the decision depends upon whether Hearing Officer Kubli's decision was unlawful, unreasonable or against the manifest weight of the evidence.²

Stahl first claims that The Commission erred as a matter of law in finding that, even if Midwest initiated the separation, Stahl quit before any termination date, making her ineligible to receive unemployment benefits. Specifically, Stahl notes that R.C. 4141.29(D)(2)(a)(iv) states as follows:

"When an individual has been issued a definite layoff date by the individual's employer and before the layoff date, the individual quits to accept other employment, the provisions of division (D)(2)(a)(iii) of this section apply and no disqualification shall be imposed under division (D) of this section."

Stahl asserts that the Commission specifically found that Midwest told Stahl it was terminating her employment in sixty days because of the disagreements over the direction in which Midwest was headed. Stahl argues that the sixty day mark was a layoff date.

Section 4141.29 provides that "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in

² *Tzangas, Plakas & Mannos, Attorneys v. Administrator, Ohio Bureau of Employment Services* (1995), 73 Ohio St. 3d 694.

the amounts and subject to the conditions stipulated in this chapter.” Based upon this section, it is clear that, to be entitled to benefits, an individual’s unemployment must be involuntary. However, on page three of the Decision under the heading “FINDINGS OF FACT,” Hearing Officer Kubli found that “Mr. McGrath had no plans to terminate claimant” and that “[s]hortly prior to January 25, 2010, claimant decided that she could not work under the upcoming changes and expressed her position to Mr. McGrath by stating that [she] felt it would be necessary to quit.” Additionally, “Mr. McGrath accepted claimant’s position and offered her the opportunity to stay for sixty days, while seeking another position.” Based upon these findings of fact, it is clear that Stahl quit her job at Midwest because she did not want to continue to work for the company after it terminated other employees. Her decision to quit was her choice; thus, her unemployment was not involuntary.

Additionally, under the terms of the statute, “an individual may not be paid during the individual’s unemployment if the director finds that: (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual’s work . . .”³ “Just cause” has been defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.”⁴ There are no findings of fact to support the position that Stahl had just cause, within the meaning of the statute, to quit her employment. Furthermore, there is no factual finding to support Stahl’s position that the sixty day employment period was a layoff date set by Midwest. Accordingly, the Court finds that the Commission did not err as a matter of law in finding that Stahl was ineligible to receive unemployment benefits because she quit before any termination date.

³ R.C. 4141.29(D)(2)(a).

⁴ *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696.

Second, Stahl alleges that the Commission erred as a matter of law by ruling that the Revised Code did not provide for a separation by mutual agreement and that a separation had to be "either a quit or a discharge." The Court affirms the Commission's finding. The statute does not contemplate a "mutual agreement" to terminate employment. Instead, the statute awards benefits where an individual's unemployment is involuntary because the individual was either terminated without cause or quit for just cause. Accordingly, the Court finds that the Commission did not err as a matter of law in finding that Stahl was ineligible to receive unemployment benefits because she quit before any termination date.

Third, Stahl argues that the Commission erred as a matter of law by adopting a decision from a hearing officer who was not the hearing officer who heard the evidence. However, Stahl has not pointed to any law stating that a decision must be issued by the hearing officer who heard the evidence. Additionally, Hearing Officer Kubli stated that he based his decision on the entire record. Furthermore, there is no evidence that Hearing Officer Kubli's decision was unlawful, unreasonable, or unsupported by the evidence merely because he was not the officer who conducted the hearings. Accordingly, the Court finds that the Commission did not err as a matter of law by adopting a decision written by a hearing officer other than the one who heard the evidence.

Fourth, Stahl asserts that the Commission's decision that Stahl left her employment without just cause was unlawful, unreasonable, and against the manifest weight of the evidence. Under the terms of the statute, "an individual may not be paid during the individual's unemployment if the director finds that: (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work . .

..”⁵ “Just cause” has been defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.”⁶

In the present case, Hearing Officer Kubli found that “Mr. McGrath had no plans to terminate claimant” and that “[s]hortly prior to January 25, 2010, claimant decided that she could not work under the upcoming changes and expressed her position to Mr. McGrath by stating that [she] felt it would be necessary to quit.” Additionally, “Mr. McGrath accepted claimant’s position and offered her the opportunity to stay for sixty days, while seeking another position.” Instead of continuing her employment during that period of time or until she found other employment, Stahl quit her job because she did not want to sign a non-compete agreement. Stahl’s original decision to quit her job and her later decision to not accept Midwest’s offer to stay an additional sixty days were voluntary. There are no findings of fact to support the position that Stahl had just cause, within the meaning of the statute, to quit her employment. Accordingly, the Commission’s decision that Stahl left her employment without just cause was lawful, reasonable, and was not against the manifest weight of the evidence.

Finally, Stahl contends that the Commission’s decision that Stahl was terminated for just cause was unlawful, unreasonable and against the manifest weight of the evidence. In so finding, Hearing Officer Kubli stated that Stahl was in “violation of the fiduciary relationship one should owe to their present employer.” Hearing Officer Kubli based this determination primarily on the finding that, while employed by Midwest, Stahl had sent emails stating that she was starting her own business.

⁵ R.C. 4141.29(D)(2)(a).

⁶ *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696.

As note above, "just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."⁷ An issue to consider is whether or not the employee's actions demonstrated an unreasonable disregard for her employer's best interests.⁸ In determining whether an employee was discharged for "just cause," there also must be a showing of some fault by the employee.⁹ To find fault, it must only be shown that the employee intentionally or unintentionally committed an act that contravenes the employer's best interest.¹⁰

In his decision, Hearing Officer Kubli found that while Stahl was still employed by Midwest, McGrath learned of several emails sent by Stahl to Midwest's clients informing them that she was starting her own business, Clear Claim MD, which would be doing the same type of work as Midwest. Any attempt by Stahl to compete for Midwest's business while she was still employed by Midwest shows an unreasonable disregard for Midwest's best interests. Accordingly, the Commission's decision that Stahl was terminated for just cause was not unlawful, unreasonable or against the manifest weight of the evidence.

Based upon the foregoing, the court finds that the Commission's decision was lawful, reasonable, and was not against the manifest weight of the evidence. Accordingly, the court affirms Hearing Officer Kubli's decision in all respects.

IT IS SO ORDERED.



JUDGE THOMAS R. HERMAN

⁷ *Id.*

⁸ *Kikka v. OBES* (1985), 21 Ohio App. 3d 168, 169.

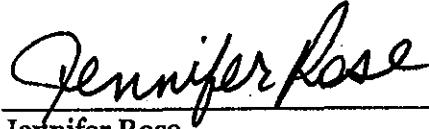
⁹ *Tzangas, Plakas & Mannos v. OBES* (1995), 73 Ohio St. 3d 694.

¹⁰ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision was served upon the following by regular U.S. Mail or Electronic Mail on this 15th day of November, 2011.

Howard D. Cade III
Arthur H. Schlemmer
Robin A. Jarvis



Jennifer Rose
Administrative Assistant