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IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

Case # 11 CV 701

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
DEC 14 2011  
FILED  
ANTHONY VIVO, CLERK

MARK AUSTALOSH,

Plaintiff

vs.

BOARDMAN STEEL, INC.

Defendants.

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JUDGE JAMES C. EVANS

JUDGMENT ENTRY

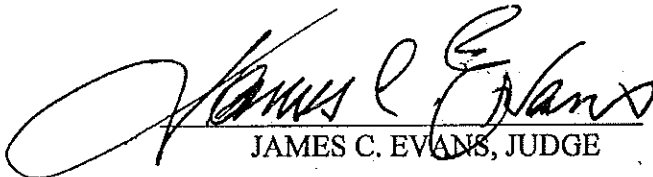
This matter came on to be considered on the Magistrate's Decision filed October 5, 2011.

After review pursuant to Civil Rule 53(E)(4)(a), the Court finds that no written objections have been filed and that no error of law or other defect appears on the face of the Magistrate's Decision.

Therefore, the Magistrate's Decision is hereby adopted and made the action and judgment of this Court as follows: The findings by the Hearing Officer that Mr. Austalosh's behavior was threatening and unacceptable in the workplace was supported by competent, credible evidence. Also, the finding that Mr. Austalosh was terminated for just cause was supported by competent and credible evidence. Therefore, the decision of the Review Commission, 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 and it is **AFFIRMED.**

ALL THIS UNTIL FURTHER ORDER OF THIS COURT.

December 12, 2011

  
JAMES C. EVANS, JUDGE

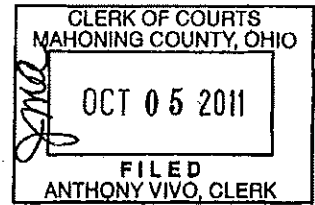
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IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

MARK AUSTALOSH,	)	CASE NO. 11 CV 701
	)	
APPELLANT,	)	JUDGE JAMES C. EVANS
	)	
VS.	)	
	)	
DIRECTOR, OHIO DEPARTMENT	)	MAGISTRATE'S DECISION
OF JOB AND FAMILY SERVICES, <i>et al.</i> ,	)	
	)	
APPELLEES.	)	

Appellant Mark Austalosh had expected to be paid on the afternoon of July 15 2010, when he was advised by Holly Baker, Administrative Assistant for Boardman Steel, Inc., that the payroll checks would not be available until the next morning. Hearing Transcript at 10. Mr. Austalosh reacted to this information with a tirade of swearing and screaming and then he threw a chair across the room into a desk. *Id.* In the presence of at least six other employees, Mr. Austalosh screamed "this company is fucked up"; "I never worked at such a fucked up place"; [I am] never gonna work here again"; and "it's the worst fucking place [I] ever worked." *Id.* at 10, 32. Ms. Baker described Mr. Austalosh punching her desk right in front of her face as "beyond intimidating." *Id.* at 10. Ms. Baker thought Mr. Austalosh quit. *Id.* at 9. Mr. Austalosh "said he would not work here any longer and he walked out." *Id.* The next morning, upon seeing Mr. Austalosh, Ms. Baker recalled "we were all shocked and a little afraid and again he confronted me again right within inches of my face for his check." *Id.* at 11. When David Deibel, the President of the company arrived, Mr. Austalosh followed him into his office. *Id.* at 21. Mr. Deibel described Mr. Austalosh as exhibiting "attitude". *Id.* at 22. Mr. Deibel described Mr. Austalosh as "huffy", "walking on his toes \* \* \* almost ready for a fight", "clenched fist", and "bossy". *Id.*

The Hearing Officer found Mr. Austalosh's reaction to the paycheck delay on July 15 2010 was "unreasonable" and "unacceptable workplace behavior." Decision at p. 4. Most significantly, the Hearing Officer noted—"Not only was he yelling and using profanity, but he slammed his hand on Ms. Baker's desk and threw his desk chair." *Id.* The Hearing Officer characterized Mr. Austalosh's behavior as "threatening." Indeed,

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Mr. Deibel apparently found Mr. Austalosh's behavior as threatening. Mr. Deibel recalled asking someone "to put the cops on speed dial" after he terminated Mr. Austalosh on July 16 2010. Transcript at p. 25.

[\*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."

[\*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* 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 (5<sup>th</sup> Dist. App., Holmes Co. Oct. 29, 2009).

It was Mr. Austalosh's profanity, *along with* hitting Ms. Baker's desk and throwing the chair across a room, which distinguishes this case from terminations based only upon profanity. The findings by the Hearing Officer that Mr. Austalosh's behavior was threatening and unacceptable in the workplace was supported by competent, credible evidence. Also, the finding that Mr. Austalosh was terminated for just cause was supported by competent and credible evidence. Therefore, **the decision of the Review Commission**, 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 and it *is affirmed*.

Dated: October 5<sup>h</sup> 2011



EUGENE J. FEHR, MAGISTRATE

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.

*Done*

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

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