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Franklin County Court of Common Pleas

Date:	01-03-2012
Case Title:	OHIO ASSOCIATION PUBLIC SCHOOL EMPLOYEES AFS -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICES
Case Number:	11CV008144
Type:	JUDGMENT ENTRY

It Is So Ordered.

/s/ Judge Michael J. Holbrook

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES (OSPSE)/AFSME LOCAL 4, AFL-CIO Appellant, vs. OHIO STATE DEPARTMENT OF JOB AND FAMILY SERVICES, et al., Appellees.	:	CASE NO. 11CVF-07-8144 JUDGE HOLBROOK **JUDGMENT ENTRY**

For the reasons stated in the decision of this Court rendered herein on November 22, 2011, the determination of the Unemployment Compensation Review Commission is AFFIRMED. Costs shall be assessed against Appellant.

IT IS SO ORDERED.

JUDGE MICHAEL J. HOLBROOK

APPROVED:

Written Approval 12/16/2011
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COURT OF COMMON PLEAS, FRANKLIN COUNTY, CIVIL DIVISION

OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES (OAPSE) AFSCME LOCAL 4, AFL-CIO,

CASE NO. 11CVF-8144

APPELLANT,

JUDGE HOLBROOK

VS.

STATE OF OHIO, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, ET AL.

APPELLEES.

DECISION AND JUDGMENT ENTRY ON MERITS OF APPEAL

This action is before the Court on appeal by Appellant OAPSE from a decision of the Ohio Department of Job and Family Services, Unemployment Compensation Review Commission. That decision disallowed review of its Hearing Officer's finding. The hearing officer concluded that Appellee Mary Beth Caldwell, as claimant, was entitled to unemployment compensation. The record has been filed and arguments have been submitted.

STANDARD OF REVIEW

The Court's review in this type of appeal is guided by R.C. 4141.282. "The court shall hear the appeal upon receipt of 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."[1]

1 *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.* (1995), 73 Ohio St. 3d 694, 653 N.E.2d 1207.

The statutory authority for an award of benefits is provided in R.C. 4141.29. "Eligibility and qualification for benefits. Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter." The issue in the instant appeal, as in many, is whether there is fault upon which to justify termination. Factual determinations are the exclusive province of the Board of Review.[2] The common pleas court may not weigh the evidence or substitute its judgment for the administrative hearing officer in factual determinations.[3]

R.C. 4141.29(D)(2)(a) will not allow the payment of unemployment compensation benefits where an employee "has been discharged for just cause in connection with his work." The case decisions have adopted a just cause definition of the following: "Just cause is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.'"[4] Just cause implies some degree of employee fault. Id. at 698. Where an employee becomes involuntarily unemployed by adverse business circumstances through no fault of his or her own, then the act is to apply and benefits are to be awarded. If the employee exhibits" 'unreasonable disregard for [the] employer's best interests,' "it is appropriate to find that there was employee fault, and that the discharge was for just cause." The Court, taking cognizance of the above standard, will address the issues raised in this action.

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2 *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St. 2d 11, 14, 233 N.E.2d 582
3 *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St. 2d 41, 45, 430 N.E.2d 468; *Bulatko v. Dir., Ohio Dep't of Job & Family Servs.*, Mahoning App. No. 07 MA 124 2008-Ohio-1061
4 *Tzangas, Plakas & Mannos, supra,*at 697, quoting *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellant hired claimant in 1996 as an employee. She worked as a Field Representative and was assigned to assist local unions who were members of OAPSE. Claimant was terminated September 24, 2010. Her initial claim for unemployment benefits was denied. Upon appeal to the Commission, a Hearing Officer concluded after a hearing conducted March 23, 2011 and April 8, 2011 that claimant had not been discharged for just cause. The Commission disallowed further review.

ASSIGNED ERRORS

Appellant has offered six reasons which it contends require reversal. Appellant offers that the Commission decision is incorrect and not based upon reliable, probative and substantial evidence and is not in accordance with law. The six reasons are expressed as follows:

1. Ms. Caldwell's termination from employment was based upon just cause. Ms. Caldwell was not well received by the members of the Local Unions she was assigned to work with. Ms. Caldwell had been removed from at least 16 Local Unions before May 28, 2009, because the membership did not want to be represented by her.
2. Ms. Caldwell received progressive discipline and forewarning of the consequences of her continued poor performance. On May 28, 2010, as a result of another Local Union (Mt. Vernon City Schools) requesting a new representative, Ms. Caldwell had a conference with her then immediate supervisor, Harold Palmer, and was presented with a letter explaining that "if we receive any further complaints and/or locals wanting

you removed from their area, we will no longer be able to justify your employment with OAPSE."

3. After May 28, 2009, Ms. Caldwell's work performance did not improve. Four additional Local Unions requested that Ms. Caldwell be removed as their Field Representative, and the Local Union at Walnut Township Schools filed a petition to decertify OAPSE as their Union. The Local Union President at Walnut Township informed Ms. Caldwell's supervisor that the reason for the decertification petition was that Ms. Caldwell failed to attend Local Union meetings and was not accessible to represent the members.
4. Ms. Caldwell turned in falsified reporting forms about her attendance at Local Union meetings, phone contacts with Local Union officials, and visits made to meet with Local Union officials.
5. The September 24, 2010, termination hearing was waived by Ms. Caldwell through her conduct of bringing an unauthorized person to the hearing, condoning that person's disruptive and disrespectful conduct, and by her Union representative's affirmative waiver of the hearing.
6. The Hearing Officer's Decision acknowledges that there were "complaints from the locals" but concluded that the complaints did not warrant Ms. Caldwell's termination from employment. The Hearing Officer's Decision is inconsistent to the extent that he finds just cause in the form of the "complaints from the locals" but does not find just cause for termination.

DISCUSSION

Appellant has set forth the argument that the decision to allow benefits is not supported by the evidence and is contrary to the law applicable to this action. The decision of the Hearing Officer determined that claimant was subject to a collective bargaining agreement which provided that the "principles of progressive corrective action shall be followed." The Hearing Officer also notes that the only form of discipline claimant received was a letter, dated May 28, 2009, that stated if there were further complaints, OAPSE would no longer be able to justify her employment. Also noted was that claimant was given no opportunity to sign the letter or respond with comments. Because of the phrasing of the letter, she was not able to pursue a grievance under the collective bargaining agreement.

The Hearing Officer concluded that claimant was not discharged for just cause because she did not receive progressive discipline in accordance with the agreement. He also concluded that the evidence did not establish that the complaints of the locals were the result of gross neglect of duty or misconduct on the part of the claimant to warrant the termination of her employment, considering her fourteen years of employment.

Appellee has cited the case of *Pickett v. Unemployment Compensation Bd. of Review* (1989), 55 Ohio App.3d 68; 562 N.E.2d 521 for the holding that a failure to follow a mandatory progressive discipline procedure results in a discharge without just cause. (Relying upon *Interstate Brands Corp.* v. *Cogar* (June 13, 1985), Cuyahoga App. No. 48704.)

The record reflects that Gary Martin, the Associate Director for Appellant, testified, as did claimant. Martin testified as to the complaints of the locals and the written warning given to claimant in 2009. He acknowledged on cross-examination that the disciplinary policy contained in the collective bargaining agreement mandated signature of the employee and the filing of matters of a negative nature as respects the employee. (Transcript of Hearing March 23, 2011, page 22.) At the hearing on April 8, 2011, claimant testified that she was unaware of any of the complaints. (Page 8)

The Court is not in a position to judge credibility. Further, the standard of review requires the Court to affirm the Commission unless its determination is against the manifest weight of the evidence. There is no evidence that the claimant was ever offered corrective instruction nor was there any documented evidence of the complaints by the various locals or evidence other than Martin's opinion evidence as to the basis of the complaints. Neither of claimant's immediate supervisors offered testimony. The discharge of claimant was predicated upon her inability to service any other locals based upon the number that had rejected her as their representative. The Hearing Officer was entitled to reject this statement as unsupported by the evidence. While the Hearing Officer acknowledged that there were complaints, he did not make a concomitant finding that those complaints warranted discharge. Claimant testified that it was common to move field representatives among the locals and she stated that she was unaware of specific complaints.

There is no dispute that the actions taken by Appellant could be claimed to be progressive discipline, as only one noted disciplinary warning was evidenced in her years of employment until her termination was decided. As to the events that took place

at her disciplinary hearing, the circumstances are in dispute. The Court is not in a better position to judge what occurred and whether there was a waiver of her rights.

The issue of falsified records was in dispute and the evidence by way of testimony was in conflict. The resolution on that issue rests with the trier of fact.

While the Court might have determined that Appellant had just cause to terminate claimant, this is not a matter for the Court to substitute its judgment for that of the Hearing Officer and the Commission. If there is evidence to support the award and there is, the Court must affirm the Commission. The Court finds that the decision of the Commission is supported by the evidence and is in accordance with law. The Court **AFFIRMS** the decision of the Commission. Counsel for the Commission shall prepare and circulate a Judgment Entry pursuant to Local Rule 25.01.

Appearances:

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Franklin County Court of Common Pleas

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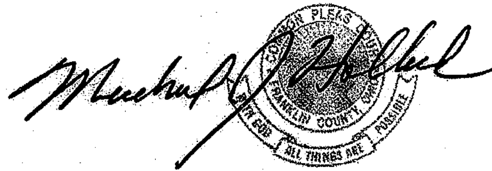
Case Number:	11CV008144
Type:	DECISION

It Is So Ordered.



/s/ Judge Michael J. Holbrook