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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

MONTE R. HEINEMEYER,	*	**Case Number: CV 2010 12 4939**
	*	
Appellant,	*	**Judge Andrew Nastoff**
	*	
vs.	*	**DECISION AND ENTRY**
	*	**REVERSING THE DECISION**
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, et al.,	*	**OF THE REVIEW COMMISSION**
	*	
	*	
Appellees.	*	**FINAL APPEALABLE ORDER**

* *

This matter is before the Court upon the appeal of Monte Heinemeyer ("Heinemeyer") from a decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") disallowing his request to review the denial of his unemployment benefits. For the following reasons the Court reverses the Review Commission's decision.

On December 31, 2009, International Paper Company terminated Heinemeyer for "lack of work." On January 6, 2010, Heinemeyer applied for unemployment compensation benefits with the Ohio Department of Job and Family Services ("ODJFS"). ODJFS allowed Heinemeyer's application on January 27, 2010. On January 12, 2010, Heinemeyer obtained employment with Heidelberg Distributing Company, but quit eighteen days later, claiming the job was too physically demanding. Heinemeyer reapplied for unemployment benefits on February 5, 2010. ODJFS reinstated Heinemeyer's unemployment benefits on March 1, 2010, finding he quit his position with Heidelberg for

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just cause. Heidelberg appealed the determination. In an April 12, 2010 redetermination ODJFS reversed its initial determination and denied Heinemeyer benefits. The redetermination offered little in the way of reasoning, simply stating that Heinemeyer "knew the demands of the job" and "quit without just cause." Heinemeyer was ordered to repay $3,200 in unemployment benefits. Heinemeyer appealed the redetermination, at which point ODJFS transferred jurisdiction to the Review Commission.

Review Commission hearing officer Stephanie Hughes held a telephone hearing on September 8, 2010. Heinemeyer appeared *pro se* and offered testimony. Heidelberg did not appear for the hearing. Heinemeyer testified that he worked for Heidelberg as a Monster energy drink merchandiser, which involved driving to stores to organize and restock Monster product displays. Heinemeyer testified that when he joined Heidelberg, it informed him the position was temporary and would last anywhere from a few weeks to a few months. According to Heinemeyer, he was told that the merchandiser position was the only position available at Heidelberg. Prior to accepting the position, Heinemeyer had concerns with the amount of heavy lifting it required. He informed Heidelberg supervisor Keith Dunham that he had a history of back problems stemming from a herniated disk. The record contains a letter from Alfred Kahn III, M.D. stating that Heinemeyer treated for approximately six months in 2007 for a recurrent herniated disc. Kahn advised Heinemeyer against future "heavy lifting, repetitive bending, twisting, lifting, stooping." According to Heinemeyer, Dunham stated that if he could lift a case of soda, he would have no problem working as a merchandiser.

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Heinemeyer testified that the position proved more burdensome than Dunham represented, requiring him to lift forty to fifty cases of Monster drink daily. Each case weighed approximately fifty pounds. Heinemeyer testified that at the end of his second week at Heidelberg, his back hurt and he believed that he could not withstand the physical demands of the job. Heinemeyer testified that he informed Dunham he could not continue as a merchandiser for fear of re-injuring his back. According to Heinemeyer, Dunham stated "that doesn't sound like it's going to work for either one of us." Heinemeyer agreed to work one more week to allow Dunham to find a replacement.

The hearing officer repeatedly asked Heinemeyer why he did not attempt to explore alternative positions at Heidelberg, and why he did not request that special accommodations be made for his condition. The hearing officer's questions were prompted by a fact finding questionnaire prepared by ODJFS in which Heinemeyer stated that he did not try to resolve his issue with Heidelberg "because there was nothing that could be done to resolve the issue. The job was simply too physically demanding." At the hearing, Heinemeyer admitted that he did not seek another position before quitting because he knew his position was temporary and there were no other positions available when he applied. Heinemeyer also testified that he did not believe Heidelberg could modify the merchandiser position to accommodate his back condition.

On October 8, 2010, the hearing officer mailed her decision affirming the Director's Redetermination, finding that Heinemeyer quit his job at Heidelberg without just cause. What follows is the hearing officer's findings and reasoning, in relevant part:

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> When claimant was hired, the employer informed him that his job duties included lifting boxes that weighed no more than fifty pounds and organizing the product on display shelves. Claimant's job was temporary and would only last several weeks. He had previously injured his back . . . Claimant did not explore alternatives to quitting his employment before he resigned. He did not request that the employer accommodate him by adjusting or eliminating certain job duties. Claimant also did not ask the employer if other jobs were available that were less physically demanding.
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> The evidence presented establishes that claimant quit his employment after working only eighteen days because he believed that the physical demands of his job would cause him to re-injure his back. Claimant's physician did not advise him to quit his job. Before he resigned, claimant did not explore other alternatives to quitting his employment. He also did not ask the employer if other less strenuous jobs were available. Based upon the evidence presented the Hearing Officer finds that claimant quit his job with Heidelberg Distributing Company without just cause.

On October 25, 2010, Heinemeyer requested a review of the hearing officer's decision, which the Review Commission disallowed. Heinemeyer then appealed to this Court pursuant to R.C. 4141.282. Heinemeyer argues that the hearing officer's "just cause" analysis was unlawful, unreasonable, and against the manifest weight of the evidence.

The Unemployment Compensation Review Commission's determination of whether a claimant quit with just cause is appealable to the court of common pleas: "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

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commission." R.C. 4141.282(H). Thus, this Court may not make factual findings or determine a witness's credibility and must affirm the Review Commission's finding if some competent, credible evidence in the record supports it. *Id.* In other words, this Court may not reverse the Review Commission's decision simply because "reasonable minds might reach different conclusions." *Id* The Court's review is confined to the certified record provided by the commission. *Id.*

The Ohio Unemployment Compensation Act does not protect against voluntary unemployment. R.C. 4141.29(D)(2)(a) provides that no employee may be paid benefits if the administrator finds that the employee quit work without just cause or was discharged for just cause in connection with their work. The burden of proof is on the claimant to show entitlement to benefits by demonstrating just cause for quitting work. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d at 589.

"Just cause" is "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Id.*, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751. The determination of what constitutes quitting with just cause is a question of fact to be determined on a case by case basis and depends on the unique fact pattern of each case. *Id.* at 17. *Irvine* found that the Ohio Unemployment Compensation Act intends to aid individuals who are temporarily unemployed, through no fault or agreement of their own. Id., citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76. Thus, as discussed in *Tzangas,* 73 Ohio St.3d at 695-696, 653 N.E.2d at 1209-1210, a consideration of the employee's fault or responsibility for his own

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predicament must be part of the just cause determination.

Irvine is helpful in navigating the just cause analysis in the context of a claimant who quits employment due to medical issues. In *Irvine*, the claimant, who worked as a nurse for a hospital, was given a five-month medical leave of absence due to health problems arising from coronary artery disease. 19 Ohio St.3d at 15. Claimant returned to work on light duty, but eventually went on another five-month medical leave. *Id.* Claimant was then advised by two physicians that she cease physically demanding employment or employment that causes mental stress. *Id.* The physicians cleared claimant to return to work, so long as it did not involve standing, lifting, or other stressful activity. *Id.* Claimant chose to immediately resign instead. *Id.* Claimant applied for unemployment benefits, but was denied on the ground that her separation from the hospital was without just case. *Id.* The Supreme Court of Ohio agreed, finding that after claimant informed the hospital of her condition, she was required to "to work with [the hospital] to obtain a less demanding position or . . . [give] sufficient timely notice to afford it the opportunity of finding satisfactory alternative employment for her." *Id.* at 18.

The general principal that can be derived from *Irvine* and applied to the case at hand is this: an ordinarily intelligent person with a health problem does not quit their job with just cause without first notifying the employer of the problem to give the employer an opportunity to make suitable arrangements.

Here, the hearing officer found that Heinemeyer quit without just cause because he did not attempt to resolve his medical issue by requesting changes to the position to

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accommodate his back problem or by requesting a new position. *Irvine* is not that rigid. The onus was not on Heinemeyer to exhaust every employment avenue at Heidelberg. *Irvine* simply required Heinemeyer to provide Heidelberg with notice of his condition and an opportunity to accommodate. The evidence shows that Heinemeyer met his obligation under *Irvine* when he informed supervisor Dunham that he would not be able to continue as a merchandiser due to the amount of heavy lifting required. The evidence further shows that after providing notice, Heinemeyer worked another week as a merchandiser. During that time, there is no evidence that Heidelberg attempted to accommodate or make special arrangements for Heinemeyer. Because Heinemeyer established that he had notified Heidelberg of his problem and afforded it an opportunity to make arrangements, the Review Commission's decision was unlawful, unreasonable, and against the manifest weight of the evidence and is **REVERSED**.

SO ORDERED.

This is a final appealable order. There is no just cause for delay. Civ.R. 54(B).

ENTER,

Andrew Nastoff, Judge

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