

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY OHIO

IN THE COURT OF COMMON PLEAS

2012 JAN 13 A 3: 20

TUSCARAWAS COUNTY, OHIO

GENERAL TRIAL DIVISION

WILLIAM E. BONANNO,	:	CASE NO. 2011 AA 09 0991
APPELLANT	:	JUDGE
	:	EDWARD EMMETT O'FARRELL
	:	
	:	<u>JUDGMENT ENTRY-FURTHER</u>
	:	<u>NON-ORAL CONSIDERATION</u>
	:	<u>CONDUCTED ON 1/11/2012 PERTAINING</u>
vs.	:	<u>TO APPEAL OF WILLIAM E. BONANNO</u>
	:	<u>FROM DECISION OF UNEMPLOYMENT</u>
	:	<u>COMPENSATION REVIEW COMMISSION</u>
	:	<u>MAILED 5/6/2011-COURT HAS</u>
	:	<u>CONSIDERED APPELLANT'S BRIEF</u>
	:	<u>FILED 11/30/2011, APPELLEE DIRECTOR,</u>
	:	<u>ODJFS'S BRIEF FILED 12/30/2011, AND</u>
	:	<u>APPELLANT'S REPLY BRIEF FILED</u>
	:	<u>1/9/2012-5/6/2011 DECISION OF</u>
DIRECTOR, OHIO DEPARTMENT OF :	:	<u>UNEMPLOYMENT COMPENSATION</u>
JOB AND FAMILY SERVICES, et al.,	:	<u>REVIEW COMMISSION AFFIRMED-</u>
	:	<u>APPEAL DENIED-ORDER TO CLERK</u>
	:	<u>TO CLOSE CASE FILE AND REMOVE</u>
APPELLEES	:	<u>FROM PENDING CASE DOCKET-</u>
	:	<u>ORDERS ENTERED</u>

This matter was further considered by Edward Emmett O'Farrell, Judge, Court of Common Pleas, Tuscarawas County, Ohio, General Trial Division, on 1/11/2012 on a **Non-Oral** basis relative to the following:

- ◆ 9/22/2011 **Notice of Appeal** filed by William E. Bonanno from the **Decision** of the Unemployment Compensation Review Commission mailed 5/6/2011.

- ◆ 11/30/2011 Brief of Appellant William E. Bonanno.
- ◆ 12/30/2011 Brief of Appellee, Director, ODJFS.
- ◆ 1/9/2012 Reply Brief of Appellant.

The Court

FINDS that the **Standard of Review** when considering Appeals of decisions rendered by the Unemployment Compensation Review Commission is provided in **R.C. 4141.2828** as follows:

If the Court finds that the Decision of the Commission was unlawful, unreasonable, or against the manifest weight of th evidence, it shall reverse, vacate, or remand the matter to the Commission. Otherwise, the Court shall **affirm** the decision of the Commission.

FINDS that this **Standard of Review** was reiterated in *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694.

FINDS the fact that reasonable minds might reach different conclusions is **not** a basis for the reversal of the Review Commission's Decision (See *Roberts v. Haze*, 2003-Ohio-5903 at Paragraph 12).

FINDS the reviewing Court must defer to the Review Commission's determination of purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence. (See *Angelkovski v. Buckeye Potato Chips* [1983], 11 Ohio App. 3d 159, 162).

FINDS that “**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. (See *Irvine v. State of Ohio Unemp. Comp. Bd. of Rev.* [1985], 19 Ohio St. 3d 15, at Page 18).

FINDS that an employee in Ohio is discharged for **Just Cause** when the employee by his/her actions, demonstrated an unreasonable disregard for his employer’s interest. (*Kiikka v. Ohio Bur. of Emp. Services* [1985], 21 Ohio App. 3d 168, 169). Additionally, the “Just Cause” test for discharge in Ohio is whether the discharge was due to the culpability of the employee rather than due to circumstances beyond the employee’s control. (See *Loy v. Unemp. Comp. Bd.*[1986], 30 Ohio App. 3d, 1204, 1206). Lastly, the determination of “Just Cause” is a factual inquiry (See *Reddick v. Sheet Metal Products Co., Inc.*, 2010-Ohio-1160 [Eleventh District] at Paragraph 19, citing *Irvine, supra*).

FINDS that although the undersigned concludes that the decision of the Hearing Officer and subsequent affirmance by the Unemployment Compensation Review Commission that Appellant’s conduct on the date in question prior to his termination was “Just Cause” for that termination is **not** the conclusion the undersigned would reach on these undisputed facts, and that in the opinion of the undersigned, such a result is patently unjust to Mr. Bonanno, such an assessment by the undersigned of the factual predicate for a determination of “Just Cause” or not in the termination of the Appellant cannot, as a matter of law, support a reversal , vacation or remand Order to the Unemployment Compensation Review Commission. Consequently, the undersigned concludes that the Appellant,

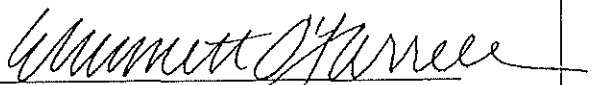
Mr. Bonanno, was discharged with Just Cause in connection with work and that the decision of the Unemployment Compensation Review Commission concluding so was not unlawful, unreasonable, or against the manifest weight of the evidence.

It is therefore

ORDERED that the Appeal of William E. Bonanno filed 9/22/2011 in this case from the Decision of the Unemployment Compensation Review Commission mailed 5/6/2011 is **Denied**. The Decision of the Unemployment Compensation Review Commission mailed 5/6/2011 is **Affirmed** as being lawful, reasonable, and based upon the manifest weight of the evidence.

ORDERED that the Clerk of Courts shall close this case file and remove it from the pending case docket. All costs are assessed against Appellant and payment is **waived**.

ORDERED that there is no just reason for delay under Civ. R. 54 (B)


Edward Emmett O'Farrell, Judge
11/2/2012
Date

Copies to: Court Administrator's Office
Atty. Michael F. Harrington
AAG. Susan M. Sheffield