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IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

WANITA GLENN,

Plaintiff/Appellant

-v-

**CHAMPAIGN RESIDENTIAL,
et al**

Defendant/Appellees

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CASE NO.: **CV2011 0500**

**DECISION & JUDGMENT
ENTRY**

This is an appeal by Wanita Glenn (employee) from a decision of the Unemployment Compensation Review Commission mailed on June 2, 2011 in which the Commission disallowed the employee's request for review of an earlier decision of the Commission, mailed on March 8, 2011 and in which the Commission decided to affirm the earlier administrative determination that appellant Glenn was not entitled to unemployment benefits. In the March 8, 2011 decision, the hearing officer determined that the appellant/employee,

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Glenn, was discharged from her employment with the employer, Champaign Residential Services, Inc. for just cause in connection with work. The hearing officer reasoned that:

"Claimant received several warnings... the employer has shown that claimant continued to violate the employer's policies despite these warnings and that she was discharged for just cause."

The Commission refused to review this decision. The employee, Glenn, contends that the decision of the Commission was unlawful, unreasonable and against the manifest weight of evidence and that she was not afforded a fair hearing.

This matter is governed by R.C. 4141.282(H). That section provides that the court of common pleas shall reverse the commission's decision only if it finds "that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." "[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the [commission's] decision is supported by the evidence in the record." *Tzangas, Plaka & Mannos v. Ohio Bur of Empl. Servs.* (1995), 73 Ohio St. 3d 694, 696. The record of the proceeding below include the transcript of a telephonic evidentiary hearing that took place on May 24, 2011, as well as documents from the claimant's file.

This Court finds the determination that defendant was fired for just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. In *Irvine v. Unemployment Comp. Bd. Of Review* (1985), 19 Ohio St.3d 15, 17, the Supreme Court of Ohio described "just cause" as:

The term "just cause" has not been clearly defined in our case law. We are in agreement with one of our appellate courts that "there is of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12."

It must be mentioned that the claimant has the burden of proving her entitlement to unemployment compensation benefits and to prove that he was discharged by his employer without just cause, or quit work with just cause. R.C. 4141.29(D)(2)(a); *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006 -Ohio- 2313; *Irvine*, supra. Hullinger must be able to demonstrate a showing of entitlement to unemployment compensation by showing that he was free from fault in bringing about his termination. *Case Western Reserve University v. Ohio Bureau of Employment Services*, 8th Dist. App. No. 79189, 2002 -Ohio- 40. On close questions, when the board might reasonably decide either way, this Court has no authority to upset the agency's decision. *Irvine*, supra. The determination of whether just cause exists necessarily depends upon the unique factual consideration of the particular case. Determination of purely factual questions is primarily within the province of the hearing officer and Review Commission. This Court is limited to determining whether some competent, credible evidence contained in the record supports the hearing officer's decision. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 161. This Court "cannot usurp the function of the trier of fact by substituting its judgment for the hearing officer. The decision of purely factual questions is primarily within the province of the referee and the

board of review." See *Clark v. Buckeye Rubber Products, Inc.* (Nov. 14, 1990), Allen App. No. 1-89-76, unreported.

After carefully reviewing the evidence before the hearing officer, the Court finds the hearing officer's determination that Glenn was discharged with just cause is supported by the evidence in the record. There was evidence that Glenn was insubordinate and that she did not comply with company policy. The determination is not unlawful, unreasonable, or against the manifest weight of the evidence. Only a decision that is " 'so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice' " is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. of Emp. Servs.* (Aug. 26, 1988), 6th Dist. No. S-88-8, at *2, quoting 3 Ohio Jurisprudence 2d 817, Appellate Review, Section 819. Therefore, if some competent, credible evidence going to all the essential elements of the case supports the commission's decision, the decision must stand, (*Phillips*, at *1. Accord *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus) and the court cannot reverse it as being against the manifest weight of the evidence. *Angelkovski*, supra; *Shaffer v. Ohio Unemp. Rev. Comm.*, 11th Dist. No. 2003-A-0126, 2004-Ohio-6956, at ¶ 19. Accord *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

Moreover, the record shows that Glenn received a fair hearing. Under R.C. 4141.281(C)(1), the Commission shall provide the parties with an opportunity for a fair hearing. The key factor in deciding whether a hearing satisfies procedural due process is whether the claimant had the opportunity

to present the facts which demonstrate that she was entitled to unemployment benefits. *Atkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-182, 2008-Ohio-4109 at ¶ 17; *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061. This is because “[t]he object of the hearing is to ascertain the facts that may or may not entitle the claimant to unemployment benefits.” *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07 MA 124, 2008-Ohio-1061, ¶ 11; *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 43, 430 N.E.2d 468. “Pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors.” *Meyers v. First Nat'l Bank* (1981), 3 Ohio App.3d 209, 210. Under Ohio case law, even when one or both parties appear pro se, a hearing officer has no duty to present or establish either party's case. See *Fasolo v. Ohio Bur. of Emp. Serv.* (Jan. 21, 1988), Cuyahoga App. No. 52839, unreported. Having chosen to pursue her case without counsel, Glenn should not expect, and the law does not provide, that the hearing officer must act as her advocate. *Id.* Thus, any failure to present properly or to explain the significance of various exhibits must be placed at the feet of Glenn. *Fredon Corp. v. Zelenak* (1997), 124 Ohio App.3d 103, 111. The record does not demonstrate that Glenn was denied due process or that the hearing was unfair.

Therefore, it is ORDERED, ADJUDGED and DECREED that the employee's appeal is not well taken and the decision of the Review

Commission is affirmed. The employee/appellant shall pay the costs.

Judgment for costs.

It is so ORDERED.

January 24, 2012



Jeffrey L. Reed, Judge

The Clerk of this Court shall forward a file stamped copy of this Judgment Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and charged as costs.