IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

NEWBURY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION	:	CASE NO: 11A000651
Plaintiff	:	JUDGE DAVID L. FUHRY
-vs-	:	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES et al	:	**ORDER OF THE COURT**
Defendants	:	A-L

This matter came on for consideration on Plaintiff/Appellants Appeal of the Decision of the Ohio Unemployment Compensation Review Commission. That Commission decided to award unemployment benefits to claimant, Katherine L. Harrington ("the Claimant"). Plaintiff/Appellant claims that the Commission's decision must be reversed because it is unlawful, unreasonable, or against the manifest weight of the evidence.

The Court is duty bound to affirm the award of the Review Commission if it is supported by reliable, probative, and substantial evidence and is in accordance with law.

Applying this standard the Court finds that the decision of the Review Commission is in fact supported by reliable, probative, and substantial evidence.

In its challenge to the Review Commission's determination the Plaintiff/Appellant relies primarily on two cases. The first is the case of *Dean v. Schill Architecture*, 2005 WL 616097 (Ohio App 8 Dist.). It also relies on *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694, 653 N.E. 2d 1207 (1995).

In the *Dean* case the employee was discharged for just cause because she failed to report her condition to the employer, was not able to give her employer a specific date when she intended to return to work, was absent from work for over a month, and the employer was a small 2 person firm. The claimant's absence from work caused serious productivity problems to the employer.

The *Dean* court makes reference to *Tzangas*. It recites to the *Tzangas* montra that a just cause determination requires fault on the part of the discharged employee.

Fault contemplates culpable actions within the employee's ability to control: "when an employee, by his actions, demonstrates an unreasonable disregard for his employer's best interests, Ohio law considers the discharge to have been with just cause."

The Plaintiff /Appellant cites to three other cases: *Peterson V. Director*, 2004 W.L. 869373 (4th District COA); *Simpson v. Invacare Corp.*, 1983 (9th District COA) W.L. 3927; and, *Vest. Adm'r, Ohio Dept. of Job & Family Serv.*, 2005 W.L. 3549191 (4th District COA). The claim is that these cases support the proposition that Ohio courts have consistently held that an employer has just cause to terminate an employee who fails to provide timely notification that he or she will be absent from or late to work, even if the employee's absence or tardiness was the result of a bona fide medical condition.

In *Peterson* the issue was whether the employer followed its progressive disciplinary procedure before discharging him and whether Peterson's failure to have called in his absences due to his illness amounted to fault. The Court of Appeals found that the employer's disciplinary policy was rendered moot by Peterson's repeated absenteeism without notice and that failing to have a phone was a form of fault. The Court further noted: " while we do not dispute that Peterson was ill or injured on the date he missed work , an employee must be able to properly schedule and manage its employees. Peterson knew that he was frequently ill and should have made accommodation to his employer when necessary".

In *Simpson* the employee did not maintain that he did not have the ability to call in due to illness or lack of a phone. The Court finds this case does not apply to the issue in the instant case.

In *Vest* the employee left work without permission and the Court of Appeals upheld the Commissioner's ruling that that equated with fault. The Court finds this case does not apply to the issue in the instant case.

In *Dean* the claimant's actions justified her termination. She never reported upon her medical condition. There was no finding in that case that the cause of her failure to report her medical condition *was* a medical condition. The Court found that the hearing officer apparently concluded that the claimant's actions demonstrated "unreasonable disregard" – in other words, fault, which justified termination.

In the instant case the claimant was not found to have demonstrated an unreasonable disregard for the employer. The claimant was not found to have been at fault because, as stated in the decision, the cause of the failure to notify the employer was the medical condition. The transcript contains evidence that the condition was

chronic and would flare up suddenly and without warning, and there is even evidence that the school was on notice of the condition. There is further evidence in the record that there was no one else at the claimant's household who could have made a call to the school at the sudden onset of the medical condition.

This Court believes that the *Tzangas* court would not find that a medical condition of the sort involved in this case and that is one that prevents the claimant from contacting the employer is a just cause for terminating the employee. While it may be that this type of claim - where it is argued that the medical condition which prevents the contact - - can be easily feigned that does not change the law. Nor does it change the decision of the Review Commission in this case. Nor does the *Peterson* case seem applicable because there the illness was not a sudden onset.

WHEREFORE, the appeal of Plaintiffs/Appellants is hereby ordered **denied.** Costs to Appellant

IT IS SO ORDERED.

DAVID L. FUHRY, JUDGE

cc: Thomas C. Holmes, Esq.
Laurel Blum Mazorow, Esq.
Katherine L. Harrington

sb

TO THE CLERK:
Serve upon all parties, not in default for failure to appear (per Civil Rule 5-(B), notice of this Judgment and its date of journalization.