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**IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO**

Mary M. Bodette,

Case No. CI11-2075

Appellant,

Judge James D. Bates

vs.

United Collection Bureau, Inc., et al.,

**OPINION AND JUDGMENT ENTRY**

Appellee.

\* \* \* \* \*

This is an appeal from a decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") which denied appellant, Mary Bodette's request for unemployment benefits. Upon a review of the parties' memoranda, the record of the administrative proceedings, and the applicable law, the Review Commission's decision is affirmed for the reasons that follow.

## I. ASSIGNMENT OF ERROR

"THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION DECISION WAS UNLAWFUL, UNREASONABLE AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN CONFIRMING THAT THE HEARING OFFICER PROPERLY DETERMINED THAT APPELLANT WAS TERMINATED WITH JUST CAUSE."

## II. STATEMENT OF FACTS

Ms. Bodette began her employment with appellee, United Collections Bureau, Inc. ("UCB"), on March 13, 2006. In this employment, Ms. Bodette did clerical work in the billing department.

On November 20, 2008, Ms. Bodette was in a car accident, as a result of which she injured her shoulder and her knee. On June 9, 2009, Ms. Bodette had surgery on her shoulder and was off of work with leave through the Family Medical Leave Act ("FMLA"). According to Ms. Bodette, at no time during this leave period was she required to call in to work to report her absence. Ms. Bodette returned from leave for her shoulder in August 2009. Then, in April 2010, Ms. Bodette had surgery on her knee and was again off on FMLA leave. Initially, pursuant to a doctor's note, Ms. Bodette was on leave from April 13, 2010 through April 23, 2010, and was approved for a "sit down job only from April 24, 2010 through 5/21/2010." On April 23, 2010, Ms. Bodette visited her doctor and received a second note, which read as follows:

**"Patient's work/school restrictions from 4/23/2010 to 5/10/2010:  
sit down job only, must use walker, non weightbearing, no driving  
If no light duty available [sic], patient is to be off work." (Emphasis sic.)**

According to Ms. Bodette's testimony, this note was confusing to her as it was her understanding in talking with her doctor that she was to be off of work until 5/10/2010. She spoke with the physician's assistant, Matt, who had written the note, about her confusion. Ms. Bodette has

testified that, among other things, Matt told her at the time that "if you can't drive, you can't go to work." Ms. Bodette has testified there was no public transportation that she could take to get to work, as she lived in rural Michigan and worked in Toledo, a fact of which her supervisors were aware. She also has stated that she did not have any other ride to work, and therefore, as she could not drive, and had no other way to get to work, Ms. Bodette understood the doctor's note to say that she would be off of work until May 10, 2010.

As Ms. Bodette's job was a desk job, with no requirement that she drive, UCB believed that Ms. Bodette was free to return to work as of April 24, 2010. When Ms. Bodette did not come to work for three days, nor call to say that she would not be in, UCB terminated her employment based upon its three day no call, no show policy, under which an employee who does not report to work, nor call to say that he or she will be absent, is considered to have voluntarily resigned.

When Ms. Bodette was informed of her termination, she called and spoke with Elizabeth Hancock, an employee of UCB, to explain the situation. Ms. Hancock called and spoke with Matt, at the doctor's office, who confirmed to her that Ms. Bodette was able to return to work, as long as the restrictions could be accommodated.

After this, Ms. Bodette went and spoke to her doctor, Dr. Rothhaas, directly and obtained an amended note, dated July 21, 2010, which stated that Ms. Bodette was to be off work from April 13, 2010 (presumably he meant April 23rd) to May 10, 2010.

Ms. Bodette applied for unemployment benefits on May 11, 2010. On May 28, 2010, the Ohio Department of Job and Family Services ("ODJFS") issued a Determination Of Unemployment Compensation Benefits Rights denying Ms. Bodette's claim. This decision was appealed by Ms. Bodette and on July 6, 2010, a Director's Redetermination was issued affirming this prior

determination. Ms. Bodette appealed that decision and the ODJFS transferred jurisdiction to the Review Commission. A hearing was held in front of hearing officer, Shannon O'Brien, on November 19, 2010, at which Ms. Bodette, and Jerry LaCourse, and employee for UCB, testified. In a decision mailed November 24, 2010, Ms. O'Brien affirmed the Director's Redetermination with respect to Ms. Bodette's separation from UCB and found that Ms. Bodette was terminated for just cause. On December 14, 2010, Ms. Bodette requested a review of this decision, which was denied in a decision mailed February 3, 2011. On March 4, 2011, Ms. Bodette appealed this decision to this court, naming as appellees both UCB and ODJFS. The parties have filed their briefs and the appeal is now before the court for determination.<sup>1</sup>

### **III. LAW AND APPLICABLE DISCUSSION**

A party may appeal a decision of the Unemployment Compensation Board of Review to the appropriate court of common pleas. R.C. 4141.282(A). The board's decision can be reversed only if it was "unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282(H). *Also, see, Lombardo v. Ohio Bureau of Employment Services*, 119 Ohio App.3d 217, 220, (6th Dist.1997). "In reviewing the commission's decision, an appellate court has the duty to determine whether the decision is supported by the evidence in the record; however, it is not permitted to make factual findings or determine the credibility of witnesses. \*\*\* A reviewing court, whether it be the common pleas court or the Ohio Supreme Court, may only overturn the commission's decision if it was 'unlawful, unreasonable, or against the manifest weight of the evidence.'" *Stoll v. Owens Brockway Glass Container, Inc.*, 6th Dist. No. L-02-1049, 2002-Ohio-

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<sup>1</sup> UCB determined that, based on the ODJFS brief, it was unnecessary for it to file its own brief.

3822 (citations omitted).

A person is not entitled to unemployment benefits in Ohio if it is found that “[h]e quit his work without just cause or has been discharged for just cause in connection with his work.” R.C. 4141.29(D)(2)(a). “‘Just cause’ is ‘conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee’s discharge.’ An employee’s conduct need not rise to the level of misconduct for there to be just cause, but there must be some fault by the employee.” *McCarthy v. Connectronics Corp.*, 183 Ohio App.3d 248, 2009-Ohio-3392 (6th Dist.) (citations omitted). The Sixth District Court of Appeals has stated that “[i]n just cause determinations, what matters is not whether the employee technically violated some company rule, but whether the employee, by her actions, demonstrated an unreasonable disregard for her employer’s best interest.” *McCarthy*, at ¶18.

Ms. Bodette argues that she is entitled to benefits, and thus, the Review Commission’s decision should be reversed, as it was reasonable for her to assume that her leave was extended through May 10, 2010, based upon the fact that she could not drive to work, her conversation with Matt, and the after-the-fact notes from Dr. Rothhaas.

The ODJFS counters that Ms. Bodette was terminated for just cause as she violated the company rule by not calling to report her absence for three days. ODJFS also argues that not being able to drive is not an excuse for missing work and that the burden was on Ms. Bodette to properly clarify with the employer that she was excused from work due to a medical condition.

"Ohio courts have found that multiple no call/no show absences are a just cause for termination." *Hartless v. Director, Ohio Dept. of Job and Family Services*, 4th Dist. No. 10CA27, 2011-Ohio-1374, at ¶ 21. *See also Warner v. Keystone Auto. Indus., Inc.*, 6th Dist. No. L-08-1392,

2009-Ohio-3396, at ¶ 19. After a review of the record and the evidence in this case, this court cannot find that the Review Commission's decision affirming the finding that Ms. Bodette's termination was for just cause was unlawful, unreasonable, or against the manifest weight of the evidence. Although Ms. Bodette claims that she was not required to call or to be at work during the applicable days as she was ill and had a doctor's excuse for her absence, it is clear that, based upon Ms. Bodette's own testimony, the doctor's excuse given to UCB at the time was, at best, confusing.<sup>2</sup> If, as Ms. Bodette alleges, the note excused her from work during the applicable period if she was unable to get a ride to work, the court finds it reasonable, in light of the fact that Ms. Bodette considered the letter to be confusing, and as Ms. Bodette was aware that UCB was not privy to her conversations with her doctor and Matt, which were needed to clarify the matter in her mind, that Ms. Bodette call UCB and inform someone that she would not be at work during the applicable period as she did not have any transportation to work. Additionally, this court does not find that UCB waived enforcement of the no call, no show policy, as alleged by Ms. Bodette. Although Ms. Bodette's July 26, 2010 letter claims that the no call, no show policy had not been enforced previously, it also states that her supervisor advised her that she needed to call in periodically because of the no call, no show rule. Further, although Ms. Bodette testified that, after her shoulder surgery in 2009, she was not required to call in, that incident was distinguishable as she testified that she "had not been released by the doctor." Here, based upon the evidence before UCB, it was reasonable for UCB to conclude that Ms. Bodette had been released by her doctor to return to work. Accordingly this court affirms the decision of the Review Commission.

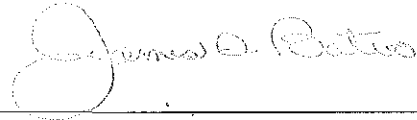
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<sup>2</sup> Although the later doctor's note was clear and excused Ms. Bodette from work during the applicable period, this court finds that that note was not timely. *See, e.g., Warner.*

**JUDGMENT ENTRY**

It is **ORDERED, ADJUDGED, AND DECREED** that the decision of the Ohio Unemployment Compensation Review Commission denying unemployment compensation benefits to appellant, Mary M. Bodette is hereby **AFFIRMED**.

January \_\_, 2012



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James D. Bates, Judge

cc: Brian J. Hoch, Esq.  
Eric A. Baum, Esq.  
Adam J. Rocco, Esq.