

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT
2012 JAN 25 PM 4:22

LISA L. KROEGER,

Appellant,

vs.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES, et al.,

Appellees.

) CASE NO.: 10CIV2318

)
)
) JUDGE COLLIER

) JOURNAL ENTRY WITH
) INSTRUCTIONS FOR SERVICE
)

DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

This matter is before the Court on the Appellant Lisa L. Kroeger's appeal of the decision of the Ohio Unemployment Compensation Review Commission (hereinafter, the "UCRC"), wherein the UCRC denied the Appellant's claim for unemployment benefits. On October 14, 2011, the Court issued a Magistrate's Scheduling Order establishing the briefing schedule for this matter. On that same day, the Clerk of Courts mailed a copy of the Order to all parties of record. The matter was scheduled for non-oral decision on January 24, 2012. Prior to that time, the parties were to have the matter fully briefed. To date, there have been no briefs filed in this matter by any of the parties.

The Appellant argues the decision of the UCRC, disallowing the Appellant's claim for unemployment benefits, was unlawful, unreasonable and against the weight of the evidence. The matter before the Court is an administrative appeal pursuant to R.C 4141.282.

In conducting a review of this matter, the Court is limited to a review of the record below to determine whether there exists competent, credible evidence going to all the essential elements of the case to support the UCRC's decision. A reviewing Court is not permitted to substitute its judgment for that of the UCRC. Upon consideration of the pleadings, briefs, and upon careful independent review of the complete record of proceedings provided to the Court in this matter,

the Court finds as follows:

On October 29, 2010, the UCRC issued a Decision making the following findings of fact:

Claimant [Lisa L. Kroeger] was last employed by Distribution Data, Inc. from August 4, 2001, to March 30, 2010, as an Auditor. Distribution Data, Inc. audits bills for their clients. In early 2010, claimant's performance began to deteriorate. A client called Lynn Hartig, Vice President of Operations, and asked why their bills were paid wrong. Ms. Hartig investigated and found that claimant was making a lot of mistakes in her work. These were the same clients that claimant had been working on for years. Ms. Hartig counseled claimant a number of times about her declining performance. Claimant would improve for a short period of time after each counseling.

Claimant appeared to be having personal problems and her coworkers began complaining to Ms. Hartig about having to hear her conversations on the phone. Finally, on March 5, 2010, Ms. Hartig gave claimant a written warning and told her if she didn't improve she would be terminated. Ms. Hartig, who had observed claimant spending an excessive amount of time talking with coworkers and talking and texting on the phone, asked claimant if she thought there was a focus problem, because she was on the phone too much. Claimant agreed there might be. Ms. Hartig instructed claimant to stay off the phone while at work and to restrict her phone usage to breaks and while she was at lunch.

Ms. Hartig continued to find errors in claimant's work. On March 30, 2010, Ms. Hartig walked into the Audit Department three times before lunch and found claimant on the phone all three times. Later that day Ms. Hartig brought claimant in and told her that she had to terminate her employment, that her work had not improved, that there were still too many errors.

The UCRC then found as follows:

Claimant was discharged by Distribution Data, Inc. for continued unsatisfactory work performance after being counseled and warned. Claimant's continued errors establish negligence and provide just cause for discharge. Based upon this finding, claimant received benefits to which she was not entitled [in the amount of \$6,448.00] and she is required to repay those benefits to the Ohio Department of Job and Family Services.

On November 30, 2010, the UCRC Review Commission denied the Appellant's request for review. On December 28, 2010, the Appellant timely appealed the decision of the UCRC to this Court.

Upon consideration of the pleadings, and upon careful independent review of the complete record of proceedings provided to the Court in this matter, the Court finds no error of

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law or fact. The administrative decision, when considered as a whole, is properly based upon consideration of all the evidence and law presented. Furthermore, the Court cannot substitute its judgment for that of the UCRC. The UCRC considered evidence from the Appellant in support of his position and objections from the Appellees in opposition to the Appellant receiving unemployment benefits. The UCRC then weighed the evidence before ultimately coming to the decision to disallow the Appellant's claim for unemployment benefits.

The UCRC was not required under the law to reach a particular decision with regard to this particular application for unemployment benefits. The UCRC was only required to support its decision with competent, credible evidence going to all the essential elements of the case. The record and content of the UCRC Hearing transcript establishes that the UCRC's decision was not unlawful, unreasonable or against the weight of the evidence and there was sufficient evidence to support a finding that the Appellant was discharged from her employment with just cause. The UCRC considered the testimony of the parties and thereafter came to a decision based on all the facts.

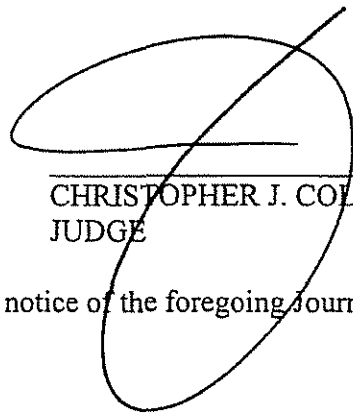
Under R.C. 4141.29(D)(2)(a), an employee may not be eligible for unemployment benefits under certain circumstances, including "if the employee has quit without just cause, or if the employer discharged the employee for just cause in connection with the employee's work." *Lorain Cty. Aud. v. Ohio Unemp. Rev. Comm.*, 113 Ohio St. 3d 124; 2007-Ohio-1247; 863 N.E.2d 133, ¶15. The Ohio Supreme Court defined "just cause" as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). A reviewing Court "must defer to the findings of the UCRC with respect to purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence." *Lafayette Twp. v. Sheppard*,

9th Dist. No. 10CA0124-M, 2011-Ohio-6199, ¶11, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995).

Under the facts of this case, the Court find the decision of the UCRC was supported with competent, credible evidence going to all the essential elements of the case. The Court cannot consider the briefs of the parties because there were no briefs filed. Therefore, this Court is required to affirm the decision in full. Accordingly, the decision of the UCRC to disallow the Appellant's claim for unemployment benefits due to the Appellant's discharge from her employment with just cause is affirmed in full.

Costs are hereby assessed to the Appellant.

IT IS SO ORDERED.


CHRISTOPHER J. COLLIER
JUDGE

The Clerk of Courts is instructed to send notice of the foregoing Journal Entry to the following parties or their counsel of record.

Lisa L. Kroeger
Atty. MacQueeney
Distribution Data, Inc.

Notice of this Entry was mailed by the Clerk of Courts on 01-26-12.


DEPUTY CLERK OF COURT