

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

RALPH C. RHODE,	□	CASE NUMBER 11CV-11565
	∥	
APPELLANT,	□	JUDGE CAIN
	∥	
vs.	□	MAGISTRATE MCCARTHY
	∥	
OHIO STATE DEPT. OF JOB	□	
AND FAMILY SERVICES, et al.,	∥	
	□	
APPELLEES	∥	

DECISION TO AFFIRM
AND JUDGMENT ENTRY

CAIN, J.

This is an administrative appeal from an adjudication order issued by the Unemployment Compensation Review Commission on August 17, 2011 denying review of its hearing officer's July 19, 2011 decision denying appellant's request for unemployment compensation. The commission's operative decision at the review level found that appellant's employment was terminated for just cause and appellant was thus disqualified from receiving benefits for the entire duration of his unemployment in accordance with R.C. 4141.29(D)(2)(a), which provides:

- (D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:
 - (2) For the duration of the individual's unemployment if the administrator finds that:
 - (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work . . .

A review of the record reveals appellant was employed by Market Ready Real Estate as a comptroller. In that capacity, he had access to and some control over the company's business checking account. In December 2010, it was called to the attention of the management of the company that the account was being overdrawn with the possibility existing that unauthorized activity may have been taking place with the business checking account. Upon investigation, it was determined that appellant had been surreptitiously embezzling funds from his employer. The total was estimated to be in the area of \$2,000.

At the hearing before the hearing officer, appellant admitted issuing the spurious checks, but claimed he was doing so at the direction of this employer. After a review of all of the evidence, the hearing officer found appellant's testimony not worthy of belief. That finding is supported by the evidence.

On appeal, appellant contends that the employer waited a few weeks from the initial contact concerning a shortage of funds until the time appellant was finally fired. He maintains "any discoveries made over five weeks before termination [] aren't relevant because it [sic] wasn't the cause of the termination."

While a lengthy delay may cause concern relating to an actual cause / effect relationship between wrongdoing and termination, here that is not a concern because the length of the delay was not significant and because some of the intervening time was spent conducting an investigation to assure correctness of result. It is found that the length of delay was not unreasonable and is not a determinative factor in this case.

In reviewing a decision of the Unemployment Compensation Review Commission, an appellate court may reverse the Commission's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. § 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694. Reviewing courts should defer to the Commission's findings regarding the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

Although a reviewing court may not make factual findings or determine the credibility of witnesses, it has the duty of determining whether the evidence in the record supports the administrative agency's decision. *Tzangas, supra* at 696. The court may not reverse the decision of the agency, however, simply because it interprets the evidence differently than did the agency. *Angelkovski, supra* at 161. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the agency's decision. *Tzangas, supra*.

In administrative appeals such as the present one, the claimant has the burden of proving his entitlement to unemployment compensation benefits under Ohio Rev. Code Ann. §4141.29(D)(2)(a). Additionally, and as appellant has pointed out, R.C. 4141.46 mandates that the Unemployment Compensation Act be liberally construed. Moreover, it has been judicially recognized the Act is to be liberally construed in favor of the persons benefiting. *Abate v. Wheeling-Pittsburgh Steel Corp.* (1998), 126 Ohio App.3d 742, 748. The purpose of the Act

is to provide financial assistance to those without employment through no fault of their own. *Irvine*, supra.

In the instant action, fault on the part of appellant is easily seen. The finding that appellant was discharged by the employer for just cause because of dishonesty in connection with his work is found to be reasonable, lawful and in accordance with the manifest weight of the evidence and it is therefore affirmed, including the finding that appellant is not entitled to benefits he received in the amount of \$940, and must repay those funds to appellee.

Accordingly, judgment is rendered in favor of appellees. Costs to be paid by appellant. Jurisdiction is reassigned to appellee director.

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Franklin County Court of Common Pleas


Date: 01-27-2012

Case Title: RANDOLPH C RHODE -VS- MARKET READY REAL ESTATE

Case Number: 11CV011565

Type: DECISION

It Is So Ordered.



/s/ Judge David E. Cain