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

Joyce P. Ejhinger,

* Case No. CI 11-4462

Plaintiff/Appellant,

* Honorable Dean Mandros

vs.

* **OPINION AND JUDGMENT ENTRY**

Bieber Corporation, et al.,

*

Defendants/Appellees.

*

Child care worker violated the Ohio Administrative Code, as well as company rules and policies, by failing to ensure that coworkers were aware she was leaving children under her responsibility with the coworkers, leaving a gate between the playground and parking lot open while children were playing on the playground, and leaving children for whom she was responsible unsupervised and out of her line of sight. Such actions demonstrate an unreasonable disregard for her employer's best interests thereby constituting just cause for termination. Therefore, The Unemployment Compensation Review Commission's decision disallowing unemployment compensation benefits is affirmed.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff/Appellant Joyce P. Ejhinger was employed by Defendant/Appellee Bieber

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Corporation as a floater teacher/utility teacher at their Day Care Centers since April 3, 2006. On October 26, 2009, Plaintiff/Appellant was transferred from the Heatherdowns Day Care Center to the Over the Rainbow Day Care Center, Brint Road, Sylvania, Ohio. Her duties were to supervise a class of three- and four-year-old children.

On September 13, 2010, Plaintiff/Appellant was involved in an incident at Over the Rainbow during which a child was left alone in a classroom due to miscommunication among the teachers. Plaintiff/Appellant admitted that during a discussion of the incident with Michelle Bieber, Administrator of Over the Rainbow, Ms. Bieber stressed that in the future, when a second teacher is leaving a child with the first teacher, the second teacher must clearly communicate with the first teacher that she is leaving the child in the care of the first teacher and she must wait for a response from the first teacher acknowledging that the child will now be under the care of the first teacher.

On October 20, 2010, between 3:30 and 4:30 p.m., a second incident occurred at Over the Rainbow involving miscommunication among the teachers, the facts of which are in dispute. According to Ms. Bieber and a co-worker, Patty Osborn, Plaintiff/Appellant had changed a dirty diaper and put it into a garbage bag. When she asked what to do with the bag, Ms. Osborn told her she would take care of it later. Ms. Osborn and another teacher, Melissa Babilini, then took their two groups of children out to the playground. As the children were playing, Ms. Osborn noticed Plaintiff/Appellant's children sitting at the picnic table on the playground but Plaintiff/Appellant was not there. Ms. Osborn then heard the lid to the dumpster closing, saw the gate to the playground was open, and realized that Ms. Ejhinger had taken the garbage bag out to the dumpster, leaving her children unattended. Ms. Osborn and Ms. Babilini stated that there was no conversation with Plaintiff/Appellant regarding combining the groups of children or leaving Plaintiff/Appellant's

children under their care. Ms. Bieber and Ms. Osborn noted that it is over 20 paces from the gate to the dumpster and it would take one or two minutes to dispose of the diaper and return to the playground.

On the other hand, Plaintiff/Appellant claims that her group of children were lined up right behind the other two groups of children in the classroom to go out to the playground. Although she stated that she told Ms. Osborn and Ms. Babilini that they were combining groups and that she was going to put the garbage bag in the dumpster, she admitted that neither communicated back to her that they had heard her. According to Plaintiff/Appellant, her children were sitting at the picnic table and the other children were sitting on benches listening to instructions from Ms. Babilini when she took the garbage bag to the dumpster. Plaintiff/Appellant contends it was only about nine steps to the dumpster and the gate was open less than 20 seconds. Although she claims she could see two or three of her seven children sitting at the table while she was at the dumpster, she admitted that she could not see all of them.

Plaintiff/Appellant was terminated the following day, October 21, 2010, for putting the children as well as Over the Rainbow at risk. Specifically, Plaintiff/Appellant was terminated for not informing any other staff member that she was leaving the area, leaving her group of children out of her vision and out of ratio, and leaving the gate open exposing the children to a parking lot at the most busy pick-up time of the day.

On October 24, 2010, Plaintiff filed an Application for Determination of Benefit Rights for Unemployment Compensation. Plaintiff/Appellant's application was denied throughout the administrative process. Eventually a hearing was held before a Hearing Officer of the Unemployment Compensation Review Commission on March 22, 2011, at which

Plaintiff/Appellant, Ms. Bieber, and Ms. Osborn testified. In the decision mailed March 25, 2011, the Hearing Officer found that Ms. Osborn's testimony was more credible than Plaintiff/Appellant's testimony. The hearing Officer also found that state regulations and company policies require the children to be supervised at all times, the company has a policy that the gate by the dumpster is to remain closed at all times when children are outside, and that Plaintiff/Appellant was aware of these policies; therefore, the Hearing Officer found that Plaintiff/Appellant was discharged for just cause in connection with work.

Plaintiff/Appellant appealed the Hearing Officer's decision to the Review Commission, and on June 22, 2011, her request for review was disallowed. On July 22, 2011, Plaintiff/Appellant filed the instant action appealing the decision of the Review Commission.

This cause is now before the Court upon the briefs of Plaintiff/Appellant and Defendant/Appellees Director of Ohio Department of Job and Family Services and Bieber Corporation.

II. STANDARD OF REVIEW

R.C. 4141.46 mandates that the Unemployment Compensation Act be liberally construed in favor of beneficiaries. *Baker v. Dir. of Ohio Dept. of Job & Family Servs.*, 6th Dist. No. L-06-1198, 2007-Ohio-743. The purpose of the Act is to provide financial assistance to those who find themselves unemployed through no fault of their own. *Id.* A claimant has the burden of proving he or she is entitled to unemployment compensation benefits. *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985).

The role of the court of common pleas upon appeal from the Unemployment Compensation

Board of Review is set forth as follows in R.C. 4141.282(H):

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

In other words, the Court's role is limited to determining whether the Commission's decision is supported by evidence in the record. "A decision supported by some competent, credible evidence going to all the essential elements of the dispute will not be reversed as being against the manifest weight of the evidence." *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 463 N.E.2d 1280, paragraph two of the syllabus (10th Dist.1983). Determination of purely factual questions is primarily within the province of the Review Commission; therefore, the Court has a limited power of review and is not permitted to make factual findings or to determine the credibility of witnesses. *Irvine* at 17-18. The fact that reasonable minds might reach a different conclusion is not a basis for the reversal of the Commission's decision. *Irvine* at 18.

III. ANALYSIS

Ohio's Unemployment Compensation Act prohibits the payment of benefits if an employee has been discharged for just cause in connection with his or her work. R.C. 4141.29(D)(2)(a). "Just cause" is defined as "conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." (Citation omitted.) *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489 (1991). In determining whether an employee has

been discharged for "just cause" for unemployment compensation purposes, the critical issue is not whether the employee has technically violated some company rule, but whether the employee by his or her actions demonstrated unreasonable disregard for the employer's best interests. *LaChappelle v. Dir., Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 166, 2009-Ohio-3399, ¶¶ 21-22 (6th Dist.), citing *Kikka v. Admr., Ohio Bur. of Emp. Servs.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist. 1985).

The issue before the Court, therefore, is whether Plaintiff/Appellant's actions demonstrated an unreasonable disregard for Bieber Corporation's best interest thereby constituting just cause for termination.

Following the September 10, 2010, incident in which a child was left alone in the classroom, Ms. Bieber discussed with Plaintiff/Appellant the importance of communication among the coworkers. She testified that she told Plaintiff/Appellant "if you are going to make somebody responsible for a child, you have to verbally talk to them, they have to acknowledge your verbal communication, eye contact needs to be made and it's very clear that the child is visibly going to where that teacher is." (Transcript pg.52) Plaintiff/Appellant confirmed this conversation took place. (Transcript pgs. 55-56)

Yet a little over a month later, Plaintiff/Appellant again failed to ensure that her coworkers knew that she was leaving children under their care while she went to dispose of a diaper in the dumpster. Plaintiff/Appellant admitted that neither of the coworkers communicated back to her that they heard her say she was leaving the children she was responsible for in their care. (Transcript pg. 61) Plaintiff/Appellant further admitted that to get to the dumpster, she had to open the gate thereby exposing the children who were on the playground at the time to the parking lot, that the gate was

left open 20 seconds, that she could not see all of the children she was responsible for while she was at the dumpster, and that there is a highly traveled street on the other side of the parking lot. (Transcript pgs. 61-63, 87-88) Ms. Bieber also testified that this occurred between 3:30 and 4:30 p.m., a busy time of day due to parents picking up their children. (Transcript pgs. 9, 21)

Company policy and the Ohio Administrative Code require that all child-care workers keep the children for whom they are responsible in their line of sight. O.A.C. 5101:2-12-20(A) states in pertinent part: "[N]o child shall ever be left alone or unsupervised. Supervised means that children shall be within sight and hearing of child care staff members at all times." The Ohio Department of Job & Family Services Standards, which have been adopted by Bieber Corporation, state on page two in large print: "Children Shall Never Be Left Alone." In addition, it is company policy to leave the gate closed at all times for the safety of the children. Plaintiff/Appellant admitted that she was familiar with these rules and policies. (Transcript pgs. 63-64, 68-70)

An employee's violation of company policy that disregards the employer's best interest constitutes just cause for dismissal. *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061. A single incident of misconduct can create just cause for termination. *Moore v. Comparison Market, Inc.*, 9th Dist. No. 23255, 2006-Ohio-6382, ¶ 25, citing *Gualtieri v. Stouffer Foods Corp.*, 9th Dist. No. 19113, 199 Ohio App. LEXIS 1176, *7 (Mar. 24, 1999). Even if the infraction seems minor and the result harsh, it will constitute just cause for termination where, as here, the employee had been previously admonished. *Croom v. Admr., Ohio Bur. of Emp. Servs.*, 7th Dist. No. 00 C.A. 195, 2001-Ohio-3295.

Although Plaintiff/Appellant argues that the facts surrounding the September and October incidents are in dispute, she has admitted that neither coworker communicated back to her that they

heard her say she was leaving her children under their care on the playground, that she left the gate open while children were on the playground, and that at least some of the children for whom she was responsible were not in her line of sight while she was at the dumpster. Moreover, the Hearing Officer found that Ms. Osborn's testimony was more credible than Plaintiff/Appellant's testimony. This Court must defer to the Review 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. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947).

IV. CONCLUSION

The Court finds that the Review Commission's factual finding that Plaintiff/Appellate violated the Ohio Administrative Code as well as company policies was supported by competent, credible evidence, was not against the manifest weight of the evidence, and was reasonable and in accordance with law. Plaintiff/Appellant's misconduct in leaving children unattended and out of sight and leaving the playground gate to the busy parking lot open was an unreasonable disregard for Bieber Corporation's best interests and thereby constitutes just cause for her termination. Accordingly, Plaintiff/Appellant's appeal is not well-taken.

JUDGMENT ENTRY

It is **ORDERED** that the March 25, 2011, decision of the Unemployment Compensation Review Commission is **AFFIRMED**.

Date: 2-6-12


Dean Mandros, Judge