

D96486717

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
HON. CHARLES J. KUBICKI, JR.
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN. 2/14/12

MARK BROXERMAN,

Case No. A1105748

vs.

Charles J. Kubicki

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

ENTRY ADOPTING THE
MAGISTRATE'S DECISION

Appellees.

ENTERED
FEB 14 2012

RENDERED THIS ____ DAY OF FEBRUARY, 2012

Pursuant to Civil Rule 53(E)(4), the Court hereby adopts the Decision of the Magistrate rendered in the above-captioned case. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is a final appealable order. There is no just reason for delay.

JUDGE CHARLES KUBICKI

MAGISTRATE

FEB 13 2012

HAS SEEN

23

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

MARK BROXERMAN,

Appellant,

v.

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

Appellees.

Case No. A1105748

Judge Charles J. Kubicki, Jr.

MAGISTRATE'S DECISION



D96107059

RENDERED THIS 19TH DAY OF JANUARY, 2012

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") June 23, 2011 Decision Disallowing Request for Review of the May 23, 2011 Review Commission hearing officer's Decision finding that Appellant Mark Broxerman ("Appellant") was discharged by the RIW Ornamental Metal, Inc. ("RIW").¹ This appeal, filed pursuant to R.C. 4141.282, was taken under submission upon the conclusion of oral arguments made before the Common Pleas Magistrate on December 19, 2011.

BACKGROUND

The Appellant filed for unemployment compensation benefits. Appellee Director, Ohio Department of Job and Family Services ("Director"), issued an initial determination that allowed benefits. After appeal, the Director issued a Redetermination finding that the Appellant was discharged by RIW for just cause in connection with work. The Appellant filed an appeal from the Redetermination. The Director transferred jurisdiction to the Review Commission.

¹ Decision of the Review Commission mailed May 23, 2011.

An evidentiary hearing was held before a hearing officer for the Review Commission. The hearing officer held that the Appellant was discharged for just cause. The Appellant's request for further review by the Review Commission was disallowed.

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.² Otherwise, the court shall affirm the decision.³ The reviewing court must follow this same standard in assessing just cause determinations.⁴ The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this Court.⁵

DISCUSSION

The Appellant worked for RIW as a welder.⁶ The Appellant obtained the job based upon his representation that he had twenty years of work experience as a welder.⁷ The owner, Ilija Rockvic ("Rocky"), discharged the Appellant after he failed to respond to his communications.⁸ However, the Appellant was rehired at a later date at a reduced wage. During the second employment, Rocky explained to Appellant the

² Ohio Rev. Code § 4141.282(H).

³ *Id.*

⁴ *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17-18, 482 N.E.2d 587 (1985).

⁵ *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694, 697, 653 N.E.2d 1207 (1995). See also *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App. 3d 159, 161-162, 463 N.E.2d 1280 (1983) (overruled in *Tzangas* for other reasons).

⁶ (Tr. p. 6) Unless otherwise noted, references are to specific pages of the transcript of the hearing held on May 18, 2011.

⁷ Tr. p. 7

⁸ *Id.*

manner in which several pieces should be welded together.⁹ Rocky indicated to the Appellant that the parts were marked to indicate how they should be welded together. For example, 29B1 to 29B2 with arrows on top showing which pieces belong together.¹⁰ The Appellant welded the pieces together incorrectly.¹¹ Rocky asked the Appellant to correct his mistake. The Appellant stated I will fix that, no worries.¹² Two days later, the pieces were discovered improperly welded together in another building hidden in the back.¹³

The Appellant contends that he did not hide the pieces but put them aside because he did not have a blueprint to illustrate what he should do with the pieces.¹⁴ The Appellant also denies that he hid parts after they were welded.¹⁵ The Review Commission's hearing officer found that the Appellant did not report mistakes that he made to the Employer.

ODJFS contends that this Court should affirm the decision of the hearing officer since the only issue in the case involves a question of fact that is best left to the hearing officer to decide.¹⁶

An applicant is not entitled to unemployment benefits if he is discharged for just cause. R.C. 4141.29(D)(2)(a). Just cause is defined by the courts as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act."¹⁷ Each case must be considered upon its particular merits.¹⁸

⁹ Tr. p. 8

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Tr. p. 14

¹⁵ *Id.*

¹⁶ Appellee's Br. p. 5

¹⁷ *Irvine v. Unemployment Comp. Bd.*, 19 Ohio St.3d at 15, 482 N.E.2d 587 (1985).

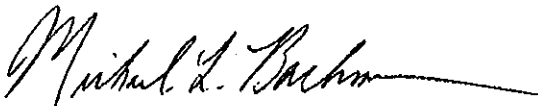
¹⁸ *Irvine*, *supra*.

Ohio case law holds that an employee is considered to have been discharged for just cause when "the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests."¹⁹ The employee's conduct need not rise to the level of misconduct, but there must be a showing of some fault on the employee's part.²⁰

The Court finds that there is some evidence to support the hearing officer's factual determination. The Court is restrained from making its own factual determination in a case if a judgment is supported by some competent credible evidence.²¹ The Decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence.

DECISION

The Decision of the Unemployment Compensation Review Commission is hereby AFFIRMED.



MAGISTRATE

¹⁹ *Kiikka v. Ohio Bur. of Emp. Services*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (1985).

²⁰ *Sellers v. Board. of Rev.*, 1 Ohio App.3d 161, 440 N.E.2d 550 (1981).

²¹ *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 1/20/12

Deputy Clerk: RAT