

Feb 15 - Filed

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CLAUDETTE BLACKMON,)	CASE NO. CV-11-766324
)	
Appellant,)	
)	JUDGE MICHAEL K. ASTRAB
v.)	
)	
DIRECTOR, OHIO DEPT OF JOB &)	
FAMILY SERVICES, et al.)	OPINION AND JUDGMENT
Appellees.)	ENTRY

CASE SUMMARY

Claudette Blackmon (Appellant) worked as a bartender for Appellee Premair of Cleveland from January 14, 2009 through February 28, 2011 at their Great Lakes Brewery location in the Cleveland Hopkins International Airport. The Appellant was terminated from her employment with Appellee Premair on February 28th. Thereafter the Appellant filed an Application for Determination of Benefit Rights with Appellee Ohio Department of Job and Family Services (ODJFS). On or about March 23, 2011, ODJFS issued a determination that the Appellant was not eligible for unemployment compensation, stating that

The claimant (Appellant) was discharged by PREMAIR OF CLEVELAND LLC ON 2/28/2011. The employer discharged the claimant for violating a company rule. Evidence supports that violating the rule did materially and substantially affect the employer's interest. Ohio's legal standard that determines if a discharge is with just cause is whether the claimant's acts, omissions or course of conduct were such that an ordinary person would find the discharge justifiable. After a review of the facts, this agency finds that the claimant was discharged with just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. Therefore, no benefits will be paid until the claimant obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1290 and is otherwise eligible.

The Appellant filed an appeal of the 3/23/11 Determination. A redetermination affirming the original decision was issued by ODJFS on 4/26/11. An appeal of the redetermination was filed by Appellant on or about May 17, 2011. On or about May 18, 2011 ODJFS transferred the appeal to the Unemployment Compensation Review Commission (UCRC)

for purposes of holding a hearing. A hearing was held in the matter on August 4, 2011, with Appellant and Appellee Premair LLC participating via telephone.

On or about August 16, 2011, the UCRC, by and through Hearing Officer Kevin Thornton, issued a Decision finding that the Appellant was discharged with just cause by her employer.

The instant appeal follows from the Decision of the UCRC.

FACTUAL SUMMARY

As this Court is not charged with making factual determinations, *the following factual summary is derived directly from the 8/16/11 Decision of the UCRC:*

Claimant (Appellant) was last employed by Premair of Cleveland LLC from January 14, 2009 to February 28, 2011 as a Bartender at the Great Lakes Brewing Company bar at Cleveland Hopkins Airport.

On February 17, 2011, the Great Lakes Brewing Company unit was scheduled to close at 8:30pm. At 7:55pm a city employee who checks on the units sent an e-mail to Premair of Cleveland LLC, reporting that Appellant had the gates down with patrons inside.

Claimant's supervisor, Casey Reeves, had previously told claimant not to close the gates early. On February 28, 2011, Trish Green, General Manager, terminated Appellant for closing that unit early. Claimant contends that she had been given permission by a manager, Akiza King, to close the unit at 8:00pm.

OPINION OF THE COURT

This Court is bound by the Ohio Revised Code with regard to the standards that it must apply when reviewing a decision of the UCRC. Code Section 4141.282(H) states that

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 the instant matter, the Court is guided by R.C. 4141.29(D)(2)(a), which states that benefits shall not be paid out to an individual who "was discharged for just cause in connection with the individual's work."

The Ohio Supreme Court has defined “just cause” as “that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” **Irvine v. Unemployment Comp. Bd. of Review** (1985), 19 Ohio St.3d 15, 17.

The review that this Court undertakes on unemployment compensation cases is a narrow one. The **Irvine** Court provided further guidance in this area, stating that

The determination of whether just cause exists necessarily depends upon the unique factual considerations of each particular case. Determination of purely factual questions is primarily within the province of the referee and the board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence...like other courts serving in an appellate capacity, we sit on a court with limited power of review. Such courts are not permitted to make factual findings or to determine the credibility of witnesses...The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record...the fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision. (internal citations omitted) 19 Ohio St.3d at 17-18.

This Court has reviewed the certified record of this matter, including the transcript of the hearing held with the UCRC, as well as the briefs submitted by the Appellant and Appellee ODJFS. Appellee Premair did not file a brief in this matter. Appellant did not file a Reply Brief in the time allotted by this Court in its briefing schedule.

At the onset the Court notes that the Appellant has chosen to proceed in a Pro Se fashion in this matter. It is the position and policy of this Court, in accordance with established law, that pro se litigants are bound by the same rules and procedures as those litigants who retain counsel and are not to be accorded greater rights and are responsible for accepting the results of their own mistakes and errors. *See, Meyers v. First Nat’l Bank of Cincinnati* (1981), 3 Ohio App.3d 209; *Tisdale v. Javitch, Block & Rathbone*, 2003 WL 22971032 (Ohio App.8th Dist.). It is with this understanding that the Court finds well-taken the arguments of Appellant ODJFS that the Court exclude from consideration any materials outside the certified record. *See, Anderson v. Board of Review, OBES*, 1989 Ohio App. LEXIS 5014 (Ohio App.8th Dist.). As such, the Court cannot and will not consider Exhibits (labeled by Appellant as “articles”) 4, 7 and 8

attached to Appellant's Brief in this matter as being "new" evidence not present in the certified record.

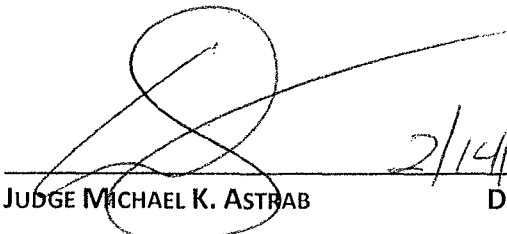
Based upon the review of the evidence presented at the hearing and contained in the record, the Court finds that credible evidence exists to support the termination of the Appellant from her employment. The employer, through its representative, presented testimony that the restaurant was closed at 7:55pm, that the actual closing time was 8:30pm and that the Appellant had been warned on prior occasions by her supervisor not to close early. The Court further finds that evidence was presented to show that the actions of the Appellant created a health and safety hazard and potentially caused the employer to lose revenue on that evening, both of which are actions demonstrating an unreasonable disregard for the employer's best interest and actions that an ordinary person would view as a justifiable reason for discharging an employee, as found by the UCRC.

The Appellant sets forth several arguments in support of her claim. Unfortunately, she presented nothing at the hearing to support those arguments. The UCRC, in its notice, clearly states that witnesses may be subpoenaed for the hearing, and for reasons known only to the Appellant, she chose not to utilize the subpoena power of the Commission.

This Court finds that, based on the record, the UCRC's finding that the Appellant was terminated from her employment with just cause was supported by the evidence and was not unlawful, unreasonable, or against the manifest weight of that evidence. As such, the decision of the UCRC is **AFFIRMED**.

IT IS SO ORDERED. FINAL.

Costs taxed to Appellant Blackmon.



JUDGE MICHAEL K. ASTRAB 2/14/12
DATE

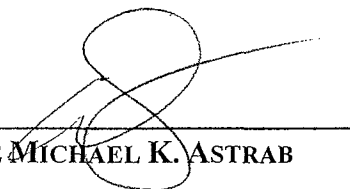
CERTIFICATE OF SERVICE

The Clerk of Courts is directed to send a copy of this Opinion to counsel of record for the parties:

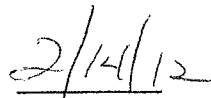
Claudette Blackmon
24655 Berrimore Lane
Warrensville Heights, Ohio 44128
Appellant, Pro Se

Laurel Blum Mazorow, Esq.
615 West Superior Avenue
11th Floor
Cleveland, Ohio 44113
Attorney for Appellee ODJFS

Premair of Cleveland LLC
5300 Riverside Drive
Cleveland, Ohio 44135
Appellee/Employer



JUDGE MICHAEL K. ASTRAB



DATE