IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

JOSEPH P. KERNYA	FILED	**CASE NO. 11CV001304**
Plaintiff(s)	2012 FEB 17 AM 11 03	**JUDGE EUGENE A. LUCCI**
vs.	MAUREEN C. KELLY LAKE CO. CLERK OF COURT	**ORDER AFFIRMING DECISION OF UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**
CITY OF EASTLAKE, et al.		
Defendant(s)		

{¶1} The court has considered; (1) the certified transcript of the record of proceedings, filed August 4, 2011; (2) the appellant's brief, filed October 7, 2011; (3) the appellee Director, Ohio Department of Job and Family Services' brief, filed November 18, 2011; and (4) the appellant's reply brief, filed December 27, 2011.

PROCEDURAL HISTORY

{¶2} The appellant was employed from July 16, 2000 through July 13, 2010 as a fireman/paramedic for the city of Eastlake.[1] In 2009, the appellant had an alcohol-related incident and signed a "Last Chance Agreement" with the city.[2] The Agreement apparently forbade the appellant from getting into any trouble in the future, and allowed the city to fire him if he did.[3] On or about July 3, 2010, the appellant was arrested for a suspected O.V.I.[4] Soon thereafter, the fire department launched an internal investigation into the incident.[5] The appellant was sent a certified letter on July 6th, informing him of that fact.[6] After determining that the appellant had indeed been arrested on an O.V.I. charge, he was sent another certified letter on July 9th requesting his presence at an investigatory interview to be held on July 12th.[7] Before that meeting was held, the appellant requested meeting on July 13th instead of July

[1] Certified Record, Transcript of Testimony, Hearing Date March 11, 2011, pp. 7-8, 25. The appellant's testimony was that he was hired in 2001. The fire chief testified he was hired in 2000. For purposes of the court's analysis, this discrepancy is immaterial.
[2] *Id.*, p. 10. The Last Chance Agreement was not entered into evidence, and details of the appellant's problems in 2009 were somewhat contested at the March 11, 2010 hearing. However, testimony as to the existence of the Agreement and the fact that the appellant's 2009 incident was alcohol-related are sprinkled throughout the hearing transcript.
[3] *Id.* pp. 9-10.
[4] *Id.*, p. 9 and p. 25.
[5] *Id.*, p. 25.
[6] *Id.*
[7] *Id.*

12th.[8] When they met, the appellant gave the chief a letter of resignation, stating "[t]his letter is to inform you of my intent to resign from the City of Eastlake effective 07/14/10. I will be resigning for personal and family reasons. I will be seeking employment elsewhere. Thank you very much for my ten years of employment."[9] In a letter of understanding prepared by the city on July 12th, the appellant agreed that he intended to resign his position voluntarily to attend to personal matters, and the city agreed to issue neutral responses regarding his tenure with the city, indicating only the dates of his employment and that his resignation was for personal reasons.[10] The meeting was attended by the appellant, the fire chief, the city's labor attorney, and the union president.[11]

{¶3} On July 14, 2010, the appellant applied for unemployment benefits.[12] For reason of separation, he stated "mutual agreement."[13] On July 15th, he forwarded the Ohio Department of Jobs and Family Services (ODJF) a copy of the letter of understanding.[14] On July 29th, in response to ODJF's request for separation information, the city stated "[c]laimant quit for personal reasons. Claimant indicated he would be working elsewhere."[15] The city also indicated that the appellant left due to personal and family reasons, and included a copy of his letter of resignation in support of that statement.[16] On August 2, 2010, ODJF disallowed the appellant's claim, stating that he resigned his employment for personal reasons he did not wish to disclose, and therefore quit without just cause.[17]

{¶4} The appellant immediately appealed that decision.[18] On August 20, 2010, the ruling was affirmed by director's redetermination.[19]

{¶5} On September 9, 2010, the appellant appealed the director's redetermination.[20] In his appeal, the appellant claimed that he did not voluntarily quit, but instead was forced to

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[8] *Id.*, pp. 25-26.
[9] Certified Record, Director's File, Letter of Resignation. As discussed below, the appellant insists that this letter was prepared by the city prior to the July 13th meeting.
[10] *Id.*, Letter of Understanding.
[11] Transcript of Testimony, p. 26. At first, the appellant testified that he had no union representation at the meeting. However, he then stated that he did not remember for sure. See p. 17. On the other hand, the chief testified that the union president was present at the meeting. See p. 26.
[12] Certified Record, Director's File, Application Summary.
[13] *Id.*
[14] *Id.*, Letter of Understanding.
[15] *Id.*, Request to Employer for Separation Information
[16] *Id.*
[17] *Id.*, Determination of Unemployment Compensation Benefits
[18] *Id.*, Director's Redetermination.
[19] *Id.*
[20] *Id.*, Transfer to UC Review Commission.

resign.[21] He also claimed that if he had not resigned, he would have been fired, and therefore he quit with just cause and was entitled to unemployment benefits.[22] He said he knew this would happen because his lieutenant and, possibly, the city attorney and fire chief told him so.[23] He was also told that if the department conducted a formal investigation, a public record would be created that would be available to potential future employers.[24] He understood that could lead to negative job references.[25] He also believed that if he was fired it would be impossible to find work elsewhere as a firefighter.[26] Therefore, he claims he quit under duress, and was thus constructively terminated without just cause.[27]

{¶6} On September 15, 2010, the appellant informed the redetermination unit that he would be represented in his appeal by attorney Robert Leach.[28] On September 29, 2010, the appeal was transferred to the Unemployment Compensation Review Commission (UCRC).[29]

{¶7} After two postponements, the appeal was heard telephonically on March 11, 2011.[30] The appellant, represented by attorney Leach, and Eastlake Fire Chief Ted Whittington, represented by Pam Bertone of CompManagement, Inc., testified before Hearing Officer Valerie A. Roller.[31] On March 25, 2011, the hearing officer issued her decision.

{¶8} She made the following findings of fact. The appellant resigned to avoid a possible discharge for having been arrested a second time for O.V.I.[32] The investigation into his behavior was not complete when he resigned. He elected to quit in hopes of retaining eligibility for employment as a fireman elsewhere, and desired to prevent the creation of public records of an investigation into his actions. He based his actions on his understanding of the consequences he faced under the Last Chance Agreement he had signed the previous year.[33]

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[21] Certified Record, Review Commission File, Letter from Joseph Kernya to Redetermination Unit.
[22] *Id.*
[23] Transcript of Testimony, p. 22.
[24] *Id.*, p. 23.
[25] *Id.*
[26] *Id.*, p. 14
[27] Brief of Appellant Joseph P. Kernya, filed October 7, 2010, pp. 9 – 10.
[28] Certified Record, Review Commission File, Faxed Cover Letter dated September 15, 2010.
[29] *Id.*, Notice That an Appeal Has Been Transferred by the Director to the Review Commission.
[30] *Id.*, Hearing Schedule dated March 3, 2011.
[31] Transcript of Testimony. See also Certified Record, Decision
[32] In his reply brief, the appellant vehemently denies that his problems in 2009 stemmed from an O.V.I. As noted above, the Last Chance Agreement was not made part of the record, so the court does not know what occurred in 2009. But, again, the transcript of the March 11th hearing makes it very clear that what happened involved alcohol use by the appellant.
[33] Certified Record, Decision, p. 3 of 5.

{¶9} In part, Roller based her decision on *Parks v. Health One*[34] where it was held that employees who resign "in anticipation of inevitable discharge ha[ve] just cause to quit ***only if*** the employer did not have just cause to discharge the employee. (Emphasis added). If the employer had just cause to terminate employment, then the claimant quit without just cause. An employee who quits prior to notification that a decision to discharge has been made does not yet face inevitable discharge."[35] The hearing officer went on to say the fact that the fire department had opened an investigation into the appellant's behavior did not necessarily mean that he would be fired. Therefore, the appellant had not quit in anticipation of termination. She noted that no recommendation to terminate him had been forwarded to city officials at the time he resigned, nor had the chief yet decided to make such a recommendation. "Consequently, claimant's election to quit was premature, as he had not yet obtained just cause to do so."[36] On that basis she affirmed the Director's Redetermination, ruling that the appellant voluntarily quit his employment without just cause, and was thus ineligible for unemployment benefits.[37]

{¶10} On April 14, 2011, the appellant filed a request for review of the hearing officer's decision before the UCRC.[38] After reviewing the file, the commission disallowed the request for review.[39] Pursuant to R.C. 4141.282, the appellant then timely filed the instant appeal to this court.

LAW

{¶11} The law regarding appeals of unemployment compensation appeals is well-established in Ohio. This court's scope of review is limited both statutorily and by case law.[40] Pursuant to R.C. 4141.282(H), "[t]he court shall hear the appeal upon 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." (Emphasis added). The court must give

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[34] (Aug. 8, 1989), Franklin App. No. 88AP-982, unreported.
[35] Certified Record, Decision, p. 4 of 5.
[36] *Id.*
[37] *Id.*
[38] Certified Record, Fax Transmittal Sheet dated April 14, 2011.
[39] Certified Record, Decision Disallowing Request For Review.
[40] See *Tzangas, Plakas & Mannos v. OBES* (1995), 73 Ohio St.3d 694, 653 N.E.2d 1207.

deference to the UCRC in its role as the finder of fact.[41] It "is not permitted to make factual findings or to determine the credibility of witnesses."[42] Nor can it reverse a decision simply because "reasonable minds might reach different conclusions."[43] In fact, if an issue is close and the UCRC could conceivably decide either way, courts must affirm the commission.[44] Therefore, the court's role is to decide whether the commission's decision is supported by the evidence in the certified record.[45] If it determines that the decision is supported by some competent, credible evidence as to the main elements of the complaint, the court must affirm the board.[46]

{¶12} "Under R.C. 4141.29, a party is entitled to unemployment compensation benefits if he or she quits with just cause or is discharged without just cause."[47] The burden of proving entitlement to unemployment benefits lies with the claimant, "including the existence of just cause for quitting work."[48] Determination of just cause depends upon the facts in each case and also an analysis of the legislative purpose of the Unemployment Compensation Act, R.C. 4141.01 – 4141.47, and 4141.99.[49] "It has long been recognized that the purpose of the Act is 'to provide financial assistance to an individual who has worked, was able and willing to work, but was temporarily without employment through *no fault of his own.*"[50]

{¶13} In the statutory sense, just cause means "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."[51] Just cause for quitting a job "amounts to what 'an ordinarily intelligent person would find to be a justifiable reason for quitting, where that cause is related in a substantial way with a person's ability to perform in his employment."[52]

FINDINGS AND CONCLUSIONS

{¶14} The appellant alleges that the UCRC's decision was unconstitutional, illegal, arbitrary, capricious, unreasonable, and unsupported by the preponderance of substantial,

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[41] *Fisher v. Bill Lake Buick* (Feb. 2, 2006), Cuyahoga App. No. 86338, 2006-Ohio-457 at ¶ 24, citing *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15.
[42] *Irvine* at 18.
[43] *Id.*
[44] *Fisher* at ¶ 24.
[45] *Tzangas* at p. 696.
[46] *Fisher* at ¶ 24, citing *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.
[47] *Upton v. Rapid Mailing Services, Inc.* (Mar. 3, 2004), Summit App. No. 21714, 2004-Ohio-966, at ¶ 13.
[48] *Irvine* at 17, citations omitted.
[49] *Upton* at ¶ 13.
[50] *Id,* quoting *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76.
[51] *Id.* at ¶ 14, citing *Irvine.*
[52] *Id.* citing *Bacula v. Lorantffy Care Ctr.* (Feb. 11, 1998), Summit App. No. 18427, not reported.

reliable, and probative evidence. He claims he quit based on inevitable or constructive discharge, and that he therefore quit with cause and is entitled to unemployment benefits.

{¶15} Based on the above analysis of the law, the court's responsibility is to review the certified record to determine if the UCRC's decision is supported by some reliable and probative evidence. If it is, the court cannot substitute its own opinion for that of the commission, but must, rather, affirm that decision.[53]

{¶16} In his brief and reply brief, the appellant makes four main arguments in support of his contention that he resigned with cause. For ease of analysis, these shall be discussed out of the order presented in the appellant's brief.

Decision Based on Erroneous Facts

{¶17} His first argument is that the UCRC's decision to deny his claim was based on erroneous assumptions regarding the facts of the case. Specifically, he states that: (1) his 2010 O.V.I. arrest was not his second O.V.I. offense; and, (2) that he was not concerned that an internal investigation into his arrest would create a public record which could hinder his chances for future employment as a fire fighter.

{¶18} As noted above, the details of his problems in 2009 are not specified in the record. However, the appellant admitted that they involved alcohol and led directly to the Last Chance Agreement.[54] The chief testified at the March 11th hearing that during the course of their investigation they found out "that he had **again** been arrested on the charge of OVI."[55] (Emphasis added). Further, while not specifying what the charge was, the chief testified that the appellant was arrested on August 16, 2009.[56] He confirmed that the 2009 arrest led to the Last Chance Agreement.[57] Therefore, the hearing officer's conclusion that the appellant's arrest in July 2010 was for a second O.V.I. was reasonable and supported by testimony in the record.

{¶19} As to whether the appellant was worried about the creation of a public record hindering his chances of future employment as a firefighter, he testified that "*** I wanted to regain employment as a fireman/paramedic possibly and it was complained (*sic*) to me that if I didn't quit and I was fired, there was going to be an internal investigation and it was going

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[53] *Harrison v. Penn Traffic Co.* (Feb. 17, 2005), Franklin App. No. 04AP-728, 2005-Ohio-638 at ¶¶ 15 & 16.
[54] Transcript of Testimony. p. 10.
[55] *Id.*, p. 25. See also p. 29. "*** Joe was definitely was (*sic*) working under a very stringent last chance agreement because of previous arrests and alcohol use, so then his second arrest with OVI ***."
[56] *Id.*, p. 26.
[57] *Id.*

to be a public record and my chances of reemployment in the field were going to be nearly impossible."[58] Therefore, the appellant's claim that he was not concerned about an investigation is directly refuted by his own testimony in the record, and that testimony supports the UCRC's decision.

Termination Predetermined

{¶20} The appellant's second argument is that the city prepared both the resignation letter and the letter of understanding prior to the July 13th meeting. He states this proves that the city decided to fire him before the meeting. He claims, therefore, that he has just cause for unemployment benefits because, under the circumstances, any reasonably intelligent person would have reached the same conclusion and resigned. Alternatively, he was constructively discharged as of July 13th, because he had no real choice but to sign the letters. This was especially so in light of his understanding that if he was fired he would receive bad references and probably never find work as a firefighter again.

{¶21} The appellant testified that the city prepared both the resignation letter and the letter of understanding prior to the July 13th meeting.[59] Again, he claims that proves the city had decided to fire him in advance of that meeting.[60] But there is contradictory evidence in the record regarding this. The fire chief testified that the appellant prepared the resignation letter himself and resigned of his own free will.[61] The chief also stated that he did not intend to fire the appellant, because he was still investigating the situation.[62] At no time did he tell the appellant he would be fired if he did not resign.[63] Despite what others may have told him, only the mayor had the authority to fire him, and the appellant knew that.[64] The meeting scheduled for July 12th was designed to allow the appellant to explain his side of the story to the City.[65] The date of that meeting was moved to July 13th at the appellant's request after he informed the chief he had decided to resign.[66] The city prepared the letter of understanding on July 12th, but only after being informed of that decision.[67] For all of these reasons, the

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[58] *Id.*, p. 8. See also pp. 13-14.
[59] *Id.*, pp. 12 -13.
[60] *Id.*, p. 12.
[61] *Id.*, p. 30.
[62] *Id.*, p. 29.
[63] *Id.*
[64] *Id.*, p. 22.
[65] *Id.*, pp. 25-27.
[66] *Id.*, pp. 25-26, p. 28.
[67] *Id.*, p. 28.

UCRC's finding that the city had not decided to terminate the appellate before he tendered his resignation on July 13th is supported by clear and probative evidence in the record.

{¶22} As to constructive discharge, the appellant states in his brief that this occurs when an employer forces an employee to resign involuntarily. Citing case law, he says that if a reasonable person believes that termination is inevitable due to the cumulative effect of an employer's actions, Ohio law does not compel an employee to "struggle with the inevitable simply to attain the 'discharge' label."[68]

{¶23} Although the appellant's conclusion is accurate, the court does not agree with his definition of the law. Constructive discharge occurs when an employer makes working conditions so intolerable that a reasonable person would feel compelled to resign under the circumstances.[69] There is no testimony in the record that the city made working conditions intolerable. To the contrary, the appellant testified that he wanted to keep his job.[70] Therefore, it is reasonable that the UCRC concluded that the appellant was not constructively discharged.

Due Process Violations

{¶24} The appellant's third argument is that he was denied due process rights to be heard or represented in the days leading up to his separation from the fire department. Specifically, he claims: (1) the entire process was rushed, partly in order to prevent him from attaining longevity benefits, and partly, apparently, to prevent him from contacting his attorney; (2) he was not told he had a right to an attorney or other representation at the July 13th hearing; and, (3) the city failed to follow separation procedures established for civil service employees under R.C. 124, *et seq.*

{¶25} In his brief, the appellant claims he had only one day notice of the July 13th meeting. This is supported by the appellant's testimony.[71] The appellant also testified that he would reach a longevity benefit on July 16th, which, he claimed he was told, the city attorney did not want to pay.[72] Whether the city rushed the process to prevent the appellant from collecting such a benefit, however, is mere speculation and unsupported by anything in the record other than the appellant's own testimony. As such, its probative value is minimal.

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[68] Brief of Appellant Joseph P. Kernya, filed October 7, 2011, p. 10, citing *Mauzy v. Kelly Services, Inc.* (1996), 75 Ohio St.3d 578, 588 – 589.
[69] *Mauzy,* 588 – 589.
[70] Transcript of Testimony, p. 10.
[71] *Id.,* pp. 20–21.
[72] *Id.,* p. 20.

{¶26} Further, there is other evidence in the record that a total of 10 days passed between the appellant's arrest for an alleged O.V.I. violation, and his resignation on July 13th. As noted above, the appellant was put on notice via certified mail on July 6th that the department was conducting an internal investigation.[73] On July 9th, the chief sent a second certified letter stating that the department was conducting a formal investigation into the matter, and requesting the appellant's presence for an investigatory interview on July 12th.[74] The fire chief testified that the appellant received that letter on July 10th.[75] Before that meeting occurred, however, the appellant requested that it be held on July 13th, and that he intended to resign.[76] Thus, there is evidence that the appellant had over a week to seek representation if he wanted it, and at least 2-3 days notice of the July 12th/July 13th meeting.

{¶27} As to representation, the appellant testified that neither his attorney nor his union representative were present, thus denying him his due process right to be heard at the July 13th meeting.[77] However, the appellant also testified that he could not remember whether his union representative was present at the meeting or not.[78] And the chief testified that the union was present and even had input regarding the letter of understanding.[79] As for his attorney being present, the chief stated that the appellant never requested delaying the meeting to contact counsel.[80] He also denied telling the appellant that he could not have legal representation at the meeting.[81] In fact, the appellant himself testified that the city did not tell him he could not have an attorney present.[82] He just decided it was not necessary, even though Mr. Leach was his attorney at the time and, according to the appellant, would have attended if asked.[83] In part, his decision was based on his belief that he was going to be fired.[84] It was also, however, based on his assumption that he would be eligible for benefits.[85] In fact, he testified that if he had known he would not be eligible, he would have

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[73] *Id.*, p. 25.
[74] *Id.*
[75] *Id.*, p. 35.
[76] *Id.*, pp. 25-26, p. 28.
[77] *Id.*, pp. 12, 14, 16.
[78] *Id.*, p. 17.
[79] *Id.*, pp. 26, 28.
[80] *Id.*, p. 31.
[81] *Id.*, pp. 30 – 31.
[82] *Id.*, p. 19.
[83] *Id.*, pp. 19-20. See also pp. 15 - 16.
[84] *Id.*, p. 19.
[85] *Id.*, p. 11.

asked his attorney to attend the meeting and had him negotiate benefits.[86] For these reasons, there is significant evidence in the record that the appellant's due process rights were not violated.

{¶28} Finally, the appellant's contention that his civil service rights were breached was not discussed in the record. As noted above, pursuant to R.C. 4141.282(H), the court's role is to determine whether the UCRC's decision is supported by the evidence in the certified record. Because this claim is not in the record, the court cannot consider it.

Case Law Misinterpreted

{¶29} Finally, the appellant contends that the hearing officer's reliance on *Parks* is misplaced. In that case, the appellant was employed for three years as a physical therapist. She was then placed on a 30-day probationary period due to job performance issues. During her probation, her employer's acting executive director told her attorney that she would be terminated when the 30 days were up. Instead of waiting for her probation to expire, she resigned her position. She was denied unemployment compensation because the Ohio Board of Employment Services (OBES) found that she "quit her job in anticipation of being discharged and that the issue of whether a possible discharge would have been for 'just cause' *** was not applicable to the issues in this case."[87] Upon review, the appellate court found that "[t]he facts before this court are incontroverted that the only reason Parks quit her job was in anticipation of being discharged. *** [S]he quit her job **only** after her employer told her attorney that [her company] intended to terminate her employment irrespective of her job performance throughout the remainder of her probationary period."[88] The court went on to state that it was unaware "of any requirement that an employee remain on the job, in a highly stressful situation, when a discharge from the employment is inevitable."[89] The court then remanded the case back to OBES to determine whether good cause existed to terminate Parks.

{¶30} In the case at bar, the appellant states that the hearing officer's sole finding justifying her decision to deny benefits was that the appellant resigned before the city reached a decision to terminate him.[90] He claims, however, that his termination was inevitable. Therefore, he believes he resigned with cause, as, he infers, did Parks.

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[86] *Id.*, p. 15.
[87] *Parks*, p. 2.
[88] *Id.*
[89] *Id.*
[90] Review Commission File, Decision, p. 3 of 5. See also Appellant's Brief, filed October 7, 2011, p. 8.

{¶31} However, his case is distinguishable. In *Parks,* a decision to discharge the employee - regardless of her performance - had definitely been reached prior to her resignation. That was relayed to her attorney by a person with the authority to implement the decision. Here, the appellant claims he was told by several people that he was going to be fired. However, there is no evidence in the record that anyone with direct authority to terminate him ever told him that. To the contrary, there is evidence that as of July 13th the city had not decided whether to terminate the appellant or not. This supports the UCRC's finding that the appellant's decision to quit was premature and without just cause.

{¶32} Further, the court in *Parks* went on to say that "[f]or unemployment compensation purposes, an employee who resigns in anticipation of being discharged must be judged by the same criteria as if the discharge had actually taken place."[91] As noted above, a determination of just cause depends in part on the facts of the case, and in part on the legislative purpose of the Unemployment Compensation Act. Again, the purpose of the act is to provide assistance to those who find themselves temporarily unemployed through no fault of their own.[92] The burden to prove entitlement to unemployment benefits lies with the claimant, and that burden includes showing the existence of just cause for quitting work.[93]

{¶33} The facts of this case plainly show that the appellant had an alcohol-related incident in 2009. As a result, he signed a Last Chance Agreement with the city. The terms of that agreement prohibited him from getting into trouble again, and allowed the city to fire him if he did. In 2010, the appellant was arrested for an alleged O.V.I. The appellant quit his job approximately 10 days after that arrest, even though his court case had not been adjudicated and evidence shows that the city had not made a decision to terminate him from his job with the fire department. To prove eligibility for unemployment benefits, the burden was on the appellant to show that if the city had fired him, it would have been through no fault of his own. He made no such showing. Therefore, the UCRC's reliance on *Parks* is not improper or misplaced.

{¶34} Wherefore, the court finds that the UCRC's decision was lawful, reasonable, and not against the manifest weight of the evidence. It is, in fact, supported by competent and credible evidence. Therefore, the UCRC's decision that Appellant Joseph P. Kernya resigned

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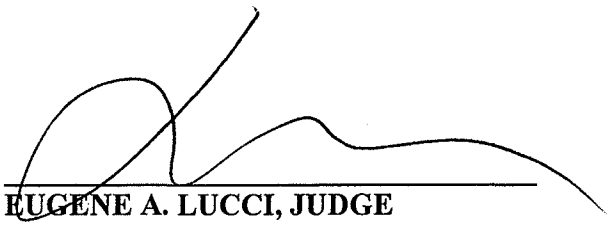
[91] *Parks,* p. 3.
[92] *Upton, supra.,* at ¶ 13.
[93] *Id.*

his position without just cause and is ineligible for unemployment compensation benefits, is hereby affirmed.

{¶35} IT IS SO ORDERED.



EUGENE A. LUCCI, JUDGE

c: Robert S. Leach, Esq., Attorney for Plaintiff
Joseph R. Klammer, Esq., Attorney for Defendant City of Eastlake
Vincent P. Macqueeney, Esq., Attorney for Defendant Director, Ohio Department of Job and Family Services

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R. 58 (B)