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



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| Kathleen S. Caughell<br>Plaintiff(s) | : | Case No. 2011-CV-0168 |
| vs | : | Judge Roger E. Binette |
| Center for Cultural Awareness, Inc., et al.<br>Defendant(s) | : | **JUDGMENT ENTRY** |
| | :::: | |

This matter is before this Court on an appeal from a decision of the Ohio Unemployment Review Commission ("Commission") denying Kathleen S. Caughell ("Caughell") 'Unemployment Benefits' after her separation of employment with the Center for Cultural Awareness ("CCA".) This Court has carefully reviewed and considered the briefs of the parties and the record, including the transcript of testimony.

This Court's review of the Commission's decision is limited to determining whether it is "unlawful, unreasonable or against the manifest weight of the evidence." R. C. 4141.282 (H); *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Services* (1995), 73 Ohio St. 3d 694, 696; *Williams v. Ohio Dept. of Job & Family Services* 129 Ohio St. 3d 332, 2011-Ohio-2897, ¶ 20. A reviewing Court cannot usurp the function of the trier of fact by substituting its judgment for the Commission's. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St. 2d 41, 45. The decision of purely factual questions is within the Commission's purview. *Id*; *Brown-Brockmeyer v. Roach* (1947), 148 Ohio St. 511, 518. The role of this Court is limited to determining whether the Commission's decision is supported by evidence in the record. This Court is required to accord deference to the factual and credibility determination of the Commission. *Geretz v. Ohio Dept. of Job & Family Services* 2006-Ohio-321 ¶ 20 and 23, rev'd. on other grounds, 114 Ohio St. 3d 89. "Thus, a reviewing court may not make factual findings or determine a witness's credibility and must affirm the Commission's finding if some competent, credible evidence in the record supports it. In other words, a reviewing Court may not reverse the Commission's decision simply because reasonable minds might reach different conclusions." *Williams*, supra ¶ 20.

Caughell was employed as the Weed and Seed Site Coordinator for CCA from February 4, 2010 through May 28, 2010.[1] Caughell had problems with interpersonal communications and taking instruction from her supervisor, Charlene Adams ("Adams"). A Corrective Action plan was devised. Because sufficient progress had not occurred, Adams met with Caughell on Friday, May 21, 2010.

Adams advised Caughell that she was going to schedule an Employee Assistance Plan ("EAP"), which they had previously discussed, in furtherance of the Corrective Action plan. Caughell advised Adams that she would not attend any scheduled EAP appointment. The testimony diverges as to what happened from that point in their conversation.

Adams testified that there would be consequences of Caughell's refusal, which could result in termination. However, she advised Caughell that she would discuss the situation with Dr. Kirk Halliday ("Dr. Halliday") and Carrie Handy ("Handy"), two members of the Executive Steering Committee of the Weed and Seed Program. Adams testified she directed Caughell to continue working, attend the Kids Fest event on Saturday, and they would talk further on Monday, May 21st.

[1] While Caughell contested these dates and contended the correct date range was February 1, 2010 to May 21, 2010, the Hearing Officer found the hire and termination dates were respectively, February 4, 2010 and May 28, 2010. This factual conclusion is supported by the record. (Tr. 28)

Caughell testified that Adams told her she was fired, that the termination would be effective Monday and that Caughell should finish work that day and work Saturday at the Kids Fest.

Caughell had a problem with the idea of completing work on Friday and appearing as a face of the program at a public event on Saturday, knowing she would be terminated the following Monday. Caughell went to her work area, collected her personal items and left before the end of the workday on Friday. Caughell did not show up at the Kids Fest on Saturday and did not report to work on Monday, May 21 or Tuesday, May 22.

Adams issued a letter of termination discharging Caughell dated May 28, 2010 for Caughell not showing up to work Monday, May 21 and Tuesday, May 22 and for refusing to attend an EAP.

The application for Unemployment Benefits was initially allowed. That determination was appealed. The Director of ODJFS affirmed that decision. CCA appealed the redetermination and jurisdiction was transferred to the Commission. A hearing was conducted November 10, 2010 and sworn testimony was taken from Adams, Handy, Dr. Halliday, Caughell, and Myra Gray.

On January 5, 2011, the Hearing Officer on behalf of the Commission issued a Decision reversing the Director's redetermination, finding that Caughell was not entitled to Unemployment Benefits. The Hearing Officer determined that Caughell voluntarily quit her employment with CCA without just cause.

The Review Commission denied a request from Caughell for final administrative review. Caughell filed this Administrative Appeal.

This Court finds and holds, as it must given the standard of review, that there is competent, credible evidence to support the Commission's conclusion.

"Just Cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St. 3d 17, 19. It is well settled that "fault" is essential to the unique chemistry of a just cause termination. *Tzangas*, supra at 698.

Irrespective of whether one were to conclude that Caughell quit on May 21 or she was terminated May 28, the conclusion would be the same. Caughell did not have just cause to quit and CCA had "just cause" to terminate. There is ample evidence to support the Commission's conclusion. Adams testified that she did not tell Caughell she was terminated on Friday, May 21. Adams' position is that she was doing what she could to retain Caughell. Adams' testimony is that she wanted to review Caughell's defiant refusal to attend an EAP with Dr. Halliday and Handy, and told Caughell that Adams and Caughell would have a follow up discussion on Monday, May 21. Adams further testified that she believed Caughell would change her mind and agree to attend an EAP when they reconvened on Monday. Caughell once before flatly rejected the EAP, but relented and told Adams to schedule the appointment. Adams only terminated Caughell when she failed to report to work the following Monday and Tuesday (and, for failing to attend an EAP.) Adams' testimony is substantiated by Handy.

Thus, there is competent, credible evidence to support the finding of the Commission. Thus, that determination cannot be reversed by this Court.

There is evidence to support the conclusion Caughell quit Friday, May 21. She walked off the job before the day ended without reporting to Adams. Caughell admitted that she should have interrupted Adams and reported this but didn't. (Tr. 47.) Caughell was precipitous in doing so. She was not told she was fired; but that it would be further discussed on Monday. Caughell did not do as instructed and finish her job duties on Friday and attend Kids Fest on

Saturday. Moreover, she didn't report for work on the following Monday or Tuesday. Caughell either quit without just cause or was subsequently terminated for just cause.

Caughell's argument that legally she didn't have to attend and EAP is both a belated argument and wholly without merit. First, Caughell admitted during her testimony she understood the employer could include the EAP as part of her corrective action plan and that her failure to do so could result in her termination (Tr. 54). At no time did she make any argument or reject the EAP on some farfetched notion that she had a constitutional right to reject such. This is an after the fact creation of counsel, it has no legal foundation. Certainly, an employer can require a corrective action plan, which could include an EAP for an employee who exhibits a defiant attitude toward his/her supervisor. The employer would have the right to simply terminate such an employee. Certainly the employer can take a lesser step of offering an EAP. Here the evidence was that other corrective action, like the lunch meetings with Dr. Halliday were insufficient.[2]

This Court concludes that the Commission's decision is also not unlawful or unreasonable.

After a thorough and complete review of the record, this Court is compelled to conclude that the Commission's decision is not unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, that decision must be affirmed.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that, based on the foregoing, the decision of the Commission is **AFFIRMED**.

**IT IS SO ORDERED.**

2/29/12

**JUDGE**

"The Erie County Clerk Of Courts is ORDERED to enter this Judgment Entry on its journals, and shall serve upon all parties not in default for failure to appear Notice of this Judgment Entry and its date of entry upon the journal. Within 3 days of journalizing this Judgment Entry, the Clerk shall serve the parties. Civ. R. 58(B) & 5(B)"

Katina Retzloff Werner
Eric Baum
Gaye Harris Miles

[2] Indeed, even at the Hearing months later, Caughell continued to display a lack of respect and defiance toward Adams by ignoring Dr. Halliday's testimony that what he'd tried was not sufficient and rejecting an EAP, as Adams simply being a "bully."