

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

CAROL A. GIOLITTO,

Appellant,

v.

MONTGOMERY COUNTY AUDITOR, ET  
AL.

Appellees.

:  
: CASE NO. 2011 CV 07188  
:  
: JUDGE MICHAEL L. TUCKER  
:  
:  
: DECISION, ORDER, AND ENTRY  
:  
: REVERSING, IN PART, THE REVIEW  
: COMMISSION'S DECISION AS TO  
: THE FINDING THAT CAROL A.  
: GIOLITTO DID NOT QUIT IN  
: ANTICIPATION OF DISCHARGE  
:  
: AND  
:  
: REMANIDNG THE CASE TO THE  
: REVIEW COMMISSION FOR  
: DETERMINATION OF WHETHER THE  
: EMPLOYER HAD JUST CAUSE FOR  
: TERMINATING CAROL A. GIOLITTO  
:

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On October 6, 2011 Appellant Carol A. Giolitto filed a notice of administrative appeal from the Unemployment Review Commission's (Review Commission) September 7, 2011 decision, which essentially affirmed the Ohio Department of Job and Family Services (ODJFS) Office of Unemployment Compensation's determination that Ms. Giolitto quit work without just cause and

pursuant to R.C. §4141.292(D)(2)(a) was not entitled to unemployment compensation. The appropriate briefs have been filed and the administrative appeal is ready for review.

### **FACTS AND PROCEDURAL HISTORY**

Ms. Giolitto was employed by the Montgomery County Auditor and worked for the Montgomery County Clerk of Courts as a supervisor in the Auto Title Division. Application Summary, Administrative Record (filed November 18, 2011), pg. 5.<sup>1</sup> Transcript of June 28, 2011 Hearing (Hearing Transcript), pg. 10, Administrative Record, pgs. 98-127. The Clerk of Courts scheduled a pre-disciplinary hearing with Ms. Giolitto for January 28, 2011. Hearing Transcript, pg. 15-16, Administrative Record, pg. 112-113. Instead of moving forward with the pre-disciplinary hearing, Ms. Giliotto signed a "Resignation Agreement and Release of Claims" stating that she agreed to submit a resignation letter that day, with March 1, 2011 being the effective date of the resignation. Resignation Agreement and Release of Claims, ¶1, Administrative Record, pg. 12. Hearing Transcript, pg. 16, Administrative Record, pg. 113. Ms. Giolitto did not return to work but was maintained on the payroll through March 1, 2011. The Resignation Agreement was also signed by the Clerk of Court as the employer and stated the following:

**UNEMPLOYMENT INSURANCE** Employer will comply with all requests for information from the state but agrees to not contest the award of any unemployment claim applied for and received by the Employee.

Resignation Agreement, ¶5, Administrative Record, pg. 12.

On February 2, 2011, Ms. Giolitto filed an application for unemployment compensation with the Ohio Department of Job and Family Services (ODJFS). Application Summary, Administrative Record, pg. 4. Initially, on March 8, 2011, ODJFS's Office of Unemployment Compensation issued a Determination Letter allowing the unemployment claim. Determination Letter (March 8,

<sup>1</sup> Citations to the Administrative Record refer to the November 18, 2011 Docket Entry titled "Written Transcript of Proceedings Administrative Record as Submitted by the Review Commission," which includes all the administrative documents and hearing transcripts. The Administrative Record page numbers refers to the electronic page number on which the document appears in the electronic submission.

2011), pg. 1, Administrative Record, pg. 6. However, on March 10, 2011, ODJFS vacated the initial determination decision and issued a redetermination disallowing benefits. Order Vacating Director's Decision, pg. 1, Administrative Record, pg 9; See also Determination Letter (March 10, 2011), pg. 1, Administrative Record, pg. 10. Ms. Giolitto appealed the March 10, 2011 determination and ODJFS issued a Director's Redetermination Letter affirming the decision to disallow the unemployment claim. Director's Redetermination, pg. 1, Administrative Record, pg. 15. Ms. Giolitto appealed the redetermination and the ODJFS Office of Unemployment Compensation transferred the appeal to the Unemployment Review Commission. Appeal Letter (April 20, 2011), Administrative Record, pg. 24-26. Notice of Appeal Transfer, pg. 1, Administrative Record, pg. 28. A hearing was held on June 28, 2011 before a Review Commission Hearing Officer. Hearing Transcript, pg. 1, Administrative Record, pg. 98. On July 19, 2011, the Hearing Officer filed a decision affirming the Director's redetermination disallowing unemployment benefits. Review Commission Decision (July 19, 2011), Administrative Record, pgs. 128-132.<sup>2</sup> On September 7, 2011, the Review Commission denied Ms. Giolitto's request to reconsider the decision affirming the disallowance of unemployment compensation. Decision Disallowing Request for Review, pg. 3 Administrative Record, pgs. 155-159 at 157. Subsequently, Ms. Giolitto filed the appeal currently pending before this Court.

### **STANDARD OF REVIEW**

A court of common pleas has jurisdiction to hear appeals from the Unemployment Review Commission. R.C. 4141.282(A). In reviewing administrative appeals from the Unemployment Review Commission, the standard of review for the common pleas court is as follows:

If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse,

<sup>2</sup> The July 17, 2011 and the September 7, 2011 Review Commissions decisions contain individual page numbers that contain a mailing page (1 of 5) and a blank page (2 of 5) and the decisions start on page 3 of 5.

vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

R.C. 4141.282(H); See also *Braselton v. Director, ODJFS*, 2nd Dist. No. 21828, 2008-Ohio-751,

¶10. When reviewing administrative decisions, “a court is bound by the nature of the administrative proceedings to presume that the decision of the administrative agency is reasonable and valid.”

R.C. 4141.282(H); See also *Braselton* at ¶10. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision.” *NTA Graphics, Inc. v. Steven J. Lonchyna*, 6th Dist. Case No. L-09-271, 1991 Ohio App. LEXIS 2873, \*7 (June 21, 1991), citing *Craig v. Bureau of Unemployment Compensation*, 83 Ohio App. 247, 260 (1st Dist. 1948). The reviewing court should not substitute its judgment for that of the agency. *Dudukovich v. Lorain Metro. Hous. Auth.*, 58 Ohio St.2d 202, 207 (1979). Pursuant to the standard of review for administrative decisions, “[reviewing] courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board’s decision is supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St. 3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

### LAW AND ANALYSIS

Pursuant to R.C. 4141.29(D)(2)(a), no person shall be paid benefits for unemployment if “the individual quit work without just cause or has been discharged for just cause in connection with the individual’s work...” Ms. Giolitto has the burden of proving entitlement to unemployment compensation, including the existence of just cause to quit work. *Irvine*, 19 Ohio St.3d at 17.

The Ohio Supreme Court, in *Irvine v. Unemployment Comp. Bd. Of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), held that “[t]raditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular

act.” Just cause must be evaluated in light of the purpose of the Unemployment Compensation Act “to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.” *Irvine*, 19 Ohio St.3d at 17. See also *Tzangas*, 73 Ohio St.3d at 697. A determination of whether an employee quit with or without just cause is a factual question primarily within the realm of the administrative board. See *Irvine*, 19 Ohio St.3d 15 at 17. This Court must affirm a just cause determination unless the board’s decision is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). See also *Irvine* at 17.

Essentially, Ms. Giolitto asserts that she resigned in lieu of termination and that her employer agreed not to contest an award of unemployment compensation. However, the determination of whether Ms. Giolitto is entitled to unemployment compensation is not determined by the resignation agreement. See *Youghioghney & Ohio Coal Co. v. Oszust*, 23 Ohio St.3d 39, 41, 491 N.E.2d 298 (1986). Instead, the Review Commission and this court must follow R.C. Chapter 4141, and the applicable case law, in evaluating whether just cause existed.

The Review Commission essentially made two findings of fact: (1) Ms. Giolitto resigned prematurely, and (2) the employer, despite being confident of the grounds for discharging Ms. Giolitto, did not formally decide to terminate her employment. Review Commission Decision (July 19, 2011), pg. 3, Administrative Record, pg. 130. This court finds, upon review of the Administrative Record, that the Review Commission’s factual findings are unreasonable and against the manifest weight of the evidence. Ms. Giolitto testified at the June hearing that her supervisor Gregory Brush, who is the elected Montgomery County Clerk of Courts, attended the meeting that led to her resignation. Hearing Transcript, pg. 11, Administrative Record, pg. 108. Ms. Giolitto further testified, and the employer did not refute this testimony, that Mr. Brush told her he would fire her if she did not quit. Hearing Transcript, pg. 12, Administrative Record, pg. 109.

The Review Commission reasoned that Ms. Giolitto's receipt of a letter initiating the pre-disciplinary process was not a formal determination of her discharge, and, as such, Ms. Giolitto resigned prematurely. Review Commission Decision (July 19, 2011), pg. 4, Administrative Record, pg. 131. This determination lead the Review Commission to hold that Ms. Giolitto's "election to quit her job rather than risk public disclosure that could possibly hinder future employment opportunities, was not a quit in anticipation of discharge." Id. Review Commission Decision (July 19, 2011), pg. 4, Administrative Record, pg. 131. The determination that Ms. Giolitto did not quit in anticipation of discharge is at odds with Ms. Giolitto's uncontradicted testimony at the June hearing that she was told by Gregory Brush that she would be discharged if she did not quit. Given this evidence in the Administrative Record, the Review Commission's determination that Ms. Giolitto did not quit in anticipation of termination is unreasonable and against the manifest weight of the evidence. Since Ms. Giolitto quit in anticipation of termination, the appropriate determination is whether the Montgomery County Clerk of Courts had just cause to terminate Ms. Giolitto if she had not opted to quit in the face of imminent termination.

The Franklin County Court of Appeals in *Watters v. City of Upper Arlington*, 10th App. Dist. No. 81AP-778, 1982 Ohio App. LEXIS 12580 (March 16, 1982), has best, in this court's mind, outlined the standard for determining whether a resignation in lieu of termination constitutes an employee quitting work with or without just cause. The *Watters'* Court stated as follows:

Clearly, quitting work to avoid being discharged for just cause constitutes quitting work without just cause since an employee cannot avoid the inevitable consequences of his own wrongdoing by resigning.

and

Conversely, however, an employee quits his work with just cause if he quits at the urging of his employer who suggests that otherwise the employee will be **unjustifiably** discharged.

*Watters* at \*6-\*7 (emphasis added). When evaluating a resignation in lieu of termination, for the purposes of unemployment compensation, the underlying issue is whether or not the employer had just cause for terminating the employee. *Watters* at \*6-\*7. See also *Robb v. ODJFS*, 11th App. Dist. No. 2002-L-060, 2003-Ohio-6972; *Wintucky v. North Coast Cable Ltd.*, 8th App. Dist. No. 66643, 1994 Ohio App. LEXIS 5368 (December 1, 1994); *Parks v. Health One*, 10th Dist. App. No. 88AP-982, 1989 Ohio App. LEXIS 3118 (August 8, 1989). The Review Commission did not make a determination concerning whether Montgomery County Clerk of Courts, as employer, had just cause for terminating Ms. Giolitto. Typically, given the Review Commission's fact finding role, a remand by the common pleas court to the Review Commission is warranted when the Review Commission has failed to make a determination in a resignation in lieu of termination case as to whether an employer had just cause for terminating the employee.

### **CONCLUSION**

The Court hereby **reverses** the finding of the Review Commission that Ms. Gilitto did not quit in anticipation of discharge and **remands** the decision of the Review Commission for the determination of whether the employer had just cause, pursuant to R.C. 4141.29(D)(2)(a) to terminate Ms. Gilitto's employment.

**SO ORDERED**

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s/MICHAEL L. TUCKER, JUDGE

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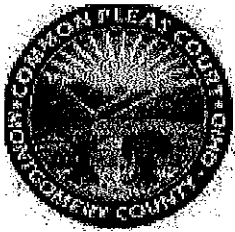
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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Title:** CAROL A GIOLITTO vs MONTGOMERY COUNTY  
AUDITOR  
**Case Number:** 2011 CV 07188  
**Type:** Decision

So Ordered

A handwritten signature in black ink that reads "Michael L. Tucker".

Michael L. Tucker