

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

TERRY S HUNT,	:	
	:	
APPELLANT	:	
	:	
-vs-	:	Case No. 11 CV F 07 0788
	:	
UPS GROUND FREIGHT INC,	:	
	:	
APPELLEES, et al.	:	

COMMON PLEAS COURT
 DELAWARE COUNTY, OHIO
 FILED
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 JAN ANTONOPLOS
 CLERK

JUDGMENT ENTRY

This matter came on for consideration of an Appeal disallowing appellant’s claim for unemployment benefits. The Court has reviewed the record of the unemployment proceedings and considered the Brief of Appellee. Appellant did not file a Brief pursuant to the schedule dated October 26, 2011.

On or about September 1, 2010 Appellant Terry S. Hunt (hereinafter “Hunt”) submitted an application for unemployment compensation benefits stating that he had been discharged from employment for a Neglect of Duty Issue, “ to wit: “Drove past 11 hours without a brake (sic)... Because I was in a daycab no sleeper, the (sic) wanted me to get dirty, cheap hotel. I chose to not stay.” See DSN: 007144, Page 8 of 11.

Appellant Hunt was initially allowed unemployment benefits pursuant to a Redetermination issued November 1, 2010 in which the Director found that Hunt was discharged “without just cause.”

Appellee UPS Ground Freight Inc. Company (hereinafter “UPS”) filed an Appeal of the Director’s Redetermination.

TERMINATION CODE 18

A hearing was held on March 9, 2011. Following this hearing, Hearing Officer Lisa M. Slotnik issued a Decision dated March 17, 2011 reversing the Director's Redetermination and finding that the Appellant was discharged from employment "with just cause" in connection with his work.

Appellant requested further review, which was denied. Appellant then filed the instant Appeal.

Appellant Hunt was employed by UPS as an "over-the-road truck driver" from June 23, 2009 through September 1, 2010. He was terminated by his employer for falsifying his driver logs.

During the March 9, 2011 hearing, UPS representative Jeff Kemper testified that Hunt was discharged in August, 2010 after it was discovered that he had falsified his driver logs on four separate occasions, to wit: August 2, 2010, August 9, 2010, August 16, 2010 and August 23, 2010.

According to Kemper, Department of Transportation regulations prohibit a driver from driving more than 11 hours without taking a mandatory 10 hour break. The regulations also require that a day cab driver must go to a designated safe house (i.e. a hotel) for such a break and a driver cannot simply pull over and legally sleep in his truck unless the truck is equipped with a sleeper. In August, 2010 Appellant was driving a day cab truck not equipped with a sleeper.

During the review hearing, Appellant Hunt confirmed that he was aware of these regulations. He further admitted that he violated the regulations by driving more than 11 hours without taking the required break and that he had falsified his logs. He also admitted that when he was first confronted by his UPS supervisor he lied and told his supervisor that he had been taking a break, as required, and paying for a hotel with his

own money. He subsequently (the next day) admitted to his supervisor that he had lied about the hotel room.

UPS representative Kemper testified that the 11 hour driving limitation is not only a Federal DOT regulation, but is also part of the UPS Handbook. He further testified that the consequence for falsification of company documents was “immediate termination”.

Besides testimony, the Hearing Officer was also provided copies of the Appellant’s daily driver logs for August 2, 2010, August 9, 2010, August 16, 2010 and August 23, 2010, and other documentation regarding the time the Appellant was driving on those dates, as well as a copy of the regulations. The regulations state, in relevant part, that a driver cannot drive more than 11 hours without at least 10 consecutive hours off duty.

An individual is not eligible for benefits if the individual was discharged for “just cause” in connection with work. Ohio Revised Code 4141.29(D)(2)(a); *Lorain County Auditor v. Ohio Unemployment Compensation Review Commission*, 113 Ohio St.3d 124, 2007-Ohio-1247.

“Just cause” is “conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee’s discharge”. *Carter v. University of Toledo*, 2008 WL 1837254 (6th Dist.).

An employee’s conduct need not rise to the level of misconduct for there to be just cause, however there must be some fault by the employee, *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio app.3sd 159, 463 N.E.2d 1280.

Pursuant to Ohio Revised Code 4141.282(H), the Court of Common Pleas “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.”

Pursuant to Ohio Revised Code 119.12, a trial court shall affirm an administrative agency’s decision “if it is supported by reliable, probative, and substantial evidence, and is in accordance with the law.” *Pons v. Ohio State Medical Board* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748.

All reasonable presumptions must be made in favor of the Unemployment Compensation Review Commission’s ruling and findings of fact. *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 526 N.E.2d 1350.

The evidence required by Ohio Revised Code 119.12 has been further defined as follows: (1) “reliable” evidence, i.e. evidence that can be confidently trusted. In order to be reliable, there must be a reasonable probability that the fact sought to be proved by evidence is true, (2) “probative” evidence, i.e. evidence that tends to prove the issue in question and that is relevant in determining the issue, and (3) “substantial” evidence, i.e. evidence with some weight, importance, and value. *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St.3d 570, 589 N.E.2d 1303.

The Hearing Officer in this case made the following Findings Of Fact:

Claimant was employed by UPS ground Freight Inc Company from June 23, 2009, until September 1, 2010, as an Over the Road Truck Driver. Claimant falsified his driver logs that he kept during his work in the month of August, 2010. Falsifying the logs is illegal and a violation of Department of Transportation rules and the employer’s policy. Claimant was aware that falsifying his logs was illegal and a violation of Department of Transportation rules and

employer's policy. The employer discovered the falsified logs and terminated the claimant.

These findings of fact were supported by credible and reliable evidence as well as Appellant's own admissions.

Therefore, the decision by the Hearing Officer was supported by reliable, probative and substantial evidence that Appellant, Terry S. Hunt, was discharged "with just cause" from his employment as an over-the-road truck driver with UPS Ground Freight Inc. Company.

The Unemployment Compensation Review Commission decision dated March 17, 2011 is hereby AFFIRMED.

Dated: March 8, 2012.



W. DUNCAN WHITNEY, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by Regular Mail, Mailbox at the Delaware County Courthouse, Facsimile transmission

TERRY S. HUNT, APPELLANT 4323 S. SECTIONLINE ROAD, DELAWARE, OHIO 43015

DAVID E. LEFTON, ATTORNEY FOR APPELLEE, 30 EAST BROAD STREET, 26th FL., COLUMBUS, OHIO 43215