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COURT OF COMMON PLEAS  
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MARY L. SWAIN  
CLERK OF COURTS

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

MARIE LOVE,	:	CASE NO. CV2011 07 2361
Appellant	:	JUDGE SPAETH
vs.	:	<b><u>DECISION AND ENTRY</u></b>
STATE OF OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, et al.,	:	
Appellees.	:	

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This matter came before this Court from an appeal as a result of an Ohio Unemployment Compensation Review Commission (hereinafter "Review Commission") decision denying unemployment compensation benefits to Appellant, Marie Love (hereinafter "Love"), a former employee of A Caring Choice, Inc. (hereinafter "Employer"). Love filed her memorandum in favor of her appeal to obtain unemployment benefits on December 15, 2011. Appellee, Director of Ohio Department of Job and Family Services (hereinafter "ODJFS"), filed its brief on January 25, 2012. Love filed her reply brief on February 28, 2012. The parties agreed to submit the issue to this Court on the briefs.

In this case *sub judice*, Love filed an Application for Determination of Benefit Rights and ODJFS issued a Determination of Unemployment Compensation Benefits (hereinafter "Determination") allowing benefits to Love. The Employer filed a timely

Judge Keith M. Spaeth  
Common Pleas Court  
Butler County, Ohio

appeal from the Determination. ODJFS issued a Redetermination which affirmed the initial Determination. The Employer filed an appeal from the Redetermination. ODJFS transferred jurisdiction of the appeal to the Review Commission.

A hearing was conducted on April 4, 2011. The hearing officer held that Love was discharged by the Employer with just cause. See Appellee's Exhibit 1. Love filed a request for further review to the Review Commission. The Review Commission disallowed Love's Request for Review. Love then appealed to this Court, seeking reversal of the decision disallowing unemployment compensation benefits.

Love was employed for a few weeks as a home care aid. Since the Employer runs a Home Health Agency (hereinafter "HHA"), it is required to obtain the fingerprints of potential employees and obtain a report from the Bureau of Criminal Identification and Investigation (hereinafter "BCI") or the Federal Bureau of Investigation (hereinafter "FBI"). On October 28, 2011, the Employer received a report from BCI indicating that Love had no criminal record. The Employer hired Love.

Love then worked for the Employer as a home care aid providing non-medical services to senior citizens in their homes until the Employer received an amended report from BCI on November 9, 2010 indicating that there was a match on Love's fingerprints. Additionally, the Employer was sent a transcript of a sealed record indicating that Love had been convicted of two (2) Misdemeanor-1 Theft charges in 1997. Love admitted to the convictions but indicated that the convictions were expunged. The Employer had a policy whereby it did not hire employees convicted of

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theft because the employees would be going into homes with no one else there. The President of Employer, Jim Kummer (hereinafter "Kummer"), reviewed the Ohio Administrative Code and determined that theft was a disqualifying conviction for HHA. Therefore, the Employer terminated Love's employment.

The Unemployment Compensation Review Commission's determination of whether a claimant was discharged with just cause is appealable to the court of common pleas: "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." R.C. 4141. 282( H). This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15,18, 482 N.E.2d 587. 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. *Id.* In other words, a reviewing court may not reverse the commission's decision simply because "reasonable minds might reach different conclusions." *Id.*

The Employer contends that because Love's employment was conditioned on not having a criminal history for theft offenses, her failure to comply with the company policy was just cause for her termination and thus she was not eligible for unemployment benefits.

Although it is not defined by statute, the Supreme Court of Ohio has stated that “just cause” is “ ‘that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.’ ” *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 335 N.e.2d 751. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings* (1991), 58 Ohio St.3d 206, 207, 569 N.E.2d 489. “[W]hat constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act’s purpose is ‘to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 199 N.E.2d 3.

However, The Ohio Supreme Court has cautioned, “The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697-98, 653 N.E.2d 1207.

Fault on an employee's part is an essential component of a just-cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer's instructions. *Id.* at 698. Unsuitability for a position constitutes fault sufficient to support a just-cause discharge. "An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position." *Id.* at paragraph four of syllabus.

In this case, President Kummer considered the opportunity for the commission of an offense, the liability for damages if a theft occurred, and protection of his elderly clients when declining to keep Love employed. Kummer testified "[i]ts just our policy is (sic) that we don't hire anybody with a theft conviction on the record because the individuals are going into the adult's home. Nobody else is there, I don't want to put our company at risk and more importantly I don't want to put our clients at risk." Transcript pp. 8-9. Kummer considered the statutory factors and concluded that he did not want to keep Love employed under the personal character standards. Having properly considered the statutory exceptions to a disqualifying theft conviction, this Court cannot conclude that the Employer discharged Love without just cause.

Finding that Love's discharge was with just cause is consistent with the purpose of the Unemployment Compensation Act. "The act was intended 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.”

*Salzl v. Gibson Greeting Cards, Inc.*(1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76.

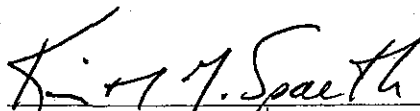
There were no outside economic factors influencing Love’s termination. Employer has a policy to protect its clients from potential harm. Love did not meet the standard.

Failing to meet that requirement was sufficient to establish fault as it was defined in *Tzangas*.

Therefore, this Court finds that the review commission’s decision to deny Love unemployment benefits was not unlawful, unreasonable, or against the manifest weight of the evidence.

**IT IS THEREFORE ORDERED ADJUDGED AND DECREED**, that the decision of the Review Commission was not unreasonable, unlawful or against the manifest weight of the evidence. The decision of the Review Commission is **AFFIRMED. SO ORDERED.**

ENTER,

  
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Keith M. Spaeth, Judge

cc:

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