

IN THE LICKING COUNTY COMMON PLEAS COURT

COMMON PLEAS COURT

Barbara Hoff,

2012 MAR 16 P 2:05

Appellant,

vs.

FILED
GARY B. WALTERS
CLERK

Case No. 11 CV 00707

Correction Reception Center, et al.,

:

Appellees.

:

Judge W. David Branstool

JUDGMENT ENTRY

I. NATURE OF THE PROCEEDINGS

This matter is before the Court on appeal pursuant to R.C. 4141.282 from a decision of the Ohio Unemployment Compensation Review Commission issued April 27, 2011. For the reasons set forth below the decision of the commission is affirmed.

II. STANDARD OF REVIEW

R.C. 4141.282(H) states:

The court 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.

"[W]hile appellate 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. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696 (1995). However, "[t]he board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Id.* at 697. "The fact

that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision." *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

III. CONCLUSIONS OF LAW

Appellant filed an Application for Determination of Benefit Rights and was allowed benefits by the Ohio Department of Job and Family Services (ODJFS). On August 12, 2010, ODJFS issued a Redetermination holding appellant was discharged for just cause and not entitled to benefits. Appellant appealed the Redetermination, and a hearing was held before a Hearing Officer at the Unemployment Compensation Review Commission on January 20, 2011. The Hearing Officer also found that appellant was discharged for just cause in his decision issued January 21, 2011. The Commission denied Appellant's request for review of the Hearing Officer's decision on April 27, 2011.

R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with the individual's work." Unemployment benefits exist to help those who find themselves unemployed through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39 (1980). "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." *Tzangas* at 697-698. "Such fault does not require misconduct; but, nonetheless, fault must be a factor in the justification for discharge."

Sellers v. Board of Review, Ohio Bureau of Employment Services, 1 Ohio App.3d 161, 164 (1981).

The Hearing Officer found that appellant was a probationary employee as defined in OAC Chapter 123 at the time of her discharge from employment with the Correctional Reception Center. Since appellant was a probationary employee, the State was not required to follow a progressive disciplinary policy. There is no evidence in the record to contradict these findings.

Appellant was employed with the Correctional Reception Center from February 16, 2010 to May 20, 2010. The Hearing Officer found that during that time appellant was late for work on thirteen occasions, left work early without authorization on three occasions, and had missed work without authorization on at least two occasions.

Appellant objects that the Hearing Officer disregarded her testimony, refused to allow her to question a subpoenaed witness, and refused to allow her to examine a subpoenaed document. The decision clearly indicates the Hearing Officer weighed appellant's testimony and found the employer to be more credible. The transcript of the hearing does not indicate the Hearing Officer refused to allow the witness, Mr. Eshett who was appellant's supervisor, to testify. Even assuming his testimony was refused, appellant does not demonstrate how the lack of Mr. Eschett's testimony prejudiced her case, nor does she state that Mr. Eschett had any testimony to offer to support her case. Finally, the hearing transcript indicates appellant testified about the document she claims she was not allowed to examine, and the document was entered into the record as one of her exhibits. (Transcript at 10-12; Claimant's Exh. 2).

"Chronic and excessive absenteeism is generally considered to be just cause for discharge unless a bona fide illness excuses the absence." *Case Western Reserve*

University v. Ohio Bureau of Employment Services, 8th Dist. No. 79189, 2002-Ohio-40.

There is sufficient evidence in the record to support the Hearing Officer's findings concerning appellant's tardiness and absenteeism. While appellant attempted to explain and rebut the evidence against her, the Hearing Officer made the determination that the employer was more credible. Reviewing "courts are not permitted to make factual findings or to determine the credibility of witnesses." *Irvine* at 18. "A reviewing court can not usurp the function of the triers of fact by substituting its judgment for theirs." *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982).

Appellant was discharged for just cause due to her tardiness and missed days of work. Accordingly the Court finds there was sufficient evidence in the record to support the decision of the Commission. The decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

IV. CONCLUSION

For the reasons set forth above, the decision of the commission is AFFIRMED.
Costs to appellant.

It is so ORDERED. There is no just cause for delay. This is a final appealable order.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



W. David Branstool, Judge

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DEPARTMENT OF HUMAN RESOURCES