

DANIEL M. HORRIGAN

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IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY OF SUMMIT

CLERK OF COURTS

INFOCISION MANAGEMENT CORP., )

CASE NO. CV 2011-10-5662

Plaintiff )

JUDGE HUNTER

-vs- )

ORDER

(final and appealable)

DESHALIA PACK, et al., )

Defendant )

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On October 6, 2011, the Plaintiff-Appellant, Infocision Management Corp. filed this administrative appeal from the decision of the Ohio Unemployment Compensation Review Commission pursuant to Ohio Revised Code §4141.282(H).

The transcript of proceedings was filed on November 18, 2011. The briefing schedule pursuant to Ohio Summit County General Division Local Rule 19.03 and this court's order is complete. The issues raised by this administrative appeal are deemed submitted.

The facts of the case are as follows. Appellee Pack was an employee of Appellant until February 8, 2011. On March 1, 2011, the Director of the Ohio Department of Job and Family Services found that Pack had been terminated by her employer without just cause in connection with work and was entitled to unemployment benefits. That decision was affirmed by a Director's Redetermination on April 14, 2011 and again by a Decision from a Hearing Officer on July 11, 2011.

The Hearing Officer's Decision by the Unemployment Compensation Review Commission found as follows.

Claimant worked for the employer from April 17, 2010 through February 8, 2011 as a communicator. Claimant told her co-worker that she was going to be moving to another state and was going to be working for a competitor call center. When management discovered this, Claimant admitted to them that she would be leaving in a few weeks. Claimant was not allowed to give two week notice but was required to submit her resignation that day. Claimant was not paid out for her notice time.

And,

The employer has not established that the discharge was for a reason other than the employee's intention to quit. Claimant did not give a definite date that she would be quitting, the employer went ahead and accepted her resignation immediately and the claimant contends she had not even accepted the other job offer. Case law has determined that if an employee is discharged during a notice of resignation period, and the employer does not pay normal wages to the employee for the balance of that period, then the employer has to establish just cause for the discharge. *Bank One Cleveland v Mason*, 1990 Ohio App. Lexis 190. The employer testified that claimant was not allowed to continue to work because it would be costly to them. This is not just cause for discharge. After a review of the facts, the Hearing Officer finds that the claimant was discharged without just cause in connection with work.

The Review Commission disallowed a request for further review on September 7, 2011. The administrative appeal was timely filed by Infocision in this court on October 6, 2011.

The role of the court of common pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal*

*Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

Upon appeal, a court may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code §4141.282(H); *Tzangas, supra; Irvine, supra*. If the evidence supports the Review Commission's conclusion, a reviewing court may not substitute its own findings of fact. *Durgan v Ohio Bur. Of Emp. Serv.* (1996), 110 Ohio App.3d 545 at 551. Here the former employer, Appellant Infocision, argues that the finding is against the manifest weight of the evidence and it does point to some testimony that supports its position. Under Ohio law, "Where conflicting testimony exists, the Ohio Unemployment Compensation Review Commission, not the court, resolves the conflicts and determines the credibility of the witnesses." *Cottrell v Dir., Ohio Dep't of Job & Family Services*, 2006 Ohio 793. The Hearing Officer made her findings on the conflicting testimony based on the evidence and testimony before her and her finding is supported by the preponderance of the evidence. This court will not substitute its own findings of fact for hers.

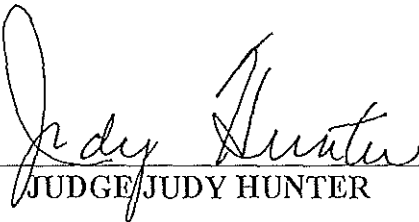
Appellant also argues that the Hearing Officer misstates Ohio law when she cites *Bank One Cleveland v Mason* (1990), 64 Ohio App. 3d 723, and that the present case is distinguishable because the employee in *Mason* was constructively discharged and Pack was in the process of resigning. After reviewing Ohio law and the facts of this case, the Court finds that the Hearing Officer relied on the proper case law in this instance. The Hearing Officer found that, "Claimant admitted to them that she would be leaving in a few weeks. Claimant was not

allowed to give two week notice but was required to submit her resignation that day. Claimant was not paid out for her notice time.” As the court stated in *Bank One Cleveland v Mason*, “resignation is voluntary only as to the date on which the employee intends that the resignation take effect.” The Hearing Officer properly applied the case to the facts as she found them.

After a thorough review of the record, the court finds that there was competent, credible evidence to support the conclusions made below. The court is unable to find that the Review Commission’s decision was unlawful, unreasonable or against the manifest weight of the evidence.

The decision of the Ohio Unemployment Compensation Review Commission is **AFFIRMED**. This administrative appeal is **DISMISSED** with prejudice. This shall serve as a final appealable order. There is no just reason for delay.

**IT IS SO ORDERED.**

  
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JUDGE JUDY HUNTER

cc: Attorney Kathleen Gadd  
Attorney Susan Sheffield  
Deshalia Pack