

FILED
COMMON PLEAS COURT
2017 MAR 30 PM 1:53

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

CLERK OF COURTS
GREGORY J BRENTAR

: CASE NO: 11A000990

Plaintiff

:

JUDGE DAVID L. FUHRY

A-18

-vs-

:

DEPARTMENT OF JOB AND FAMILY
SERVICES et al

: **ORDER OF THE COURT**

Defendants

:

This matter comes on for consideration on a Notice of Appeal filed on September 14, 2011 seeking reversal of a decision of the Ohio Unemployment Compensation Review Commission ("Commission" or "Review Commission") decision that denied Appellant's claim for unemployment benefits under R.C. §4141.29(D)(2)(a).

The certified record provided by the Commission has been received as have argument submitted by the parties.

THE COURT FINDS THAT the statutory standard of review to be applied is that set forth in R.C. §4141.282(H). That standard of review requires the Court to hear the appeal upon the certified record. If the Court finds that the decision 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 is to affirm the decision of the Commission.

THE COURT FURTHER FINDS THAT the determination of factual questions and assessment of the credibility of witnesses is the province of the hearing officer and the Review Commission. The parties on appeal are not entitled to a trial *de novo*. As the trier of fact, the Review Commission is vested with the power to review the evidence and to believe or disbelieve the testimony of witnesses. Therefore, the Common Pleas Court in unemployment cases defers to the Review Commission with respect to factual issues that concern the creditability of witnesses and the weight to be accorded to conflicting evidence. *Tzangas, Plakas & Mannos v. OBES* 73 Ohio St. 3d 694, *Reddick v. ODJFS*, 11 Dist. No. 2009 L 092, 2010 Ohio 1160.

In so many words, the fact that reasonable minds might reach different conclusions on the basis of the evidence presented to the Review Commission doesn't mean that the Commission's Decision may be reversed pursuant to R.C. §4141.282(H).

THE COURT FINDS THAT there was evidence upon which the Review Commission justifiably relied in finding that the Appellant quit his job without just cause. Just cause is essentially "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. UNEM. Comp. Bd. of Rev.* (1985), 19 Ohio St. 3d 15, 16-18. There must be a showing of some fault by the employee under the *Tzangas* case.

Upon appeal a court of law may reverse a decision of the Review Commission only if the determination of factual questions are unlawful, unreasonable, or against the manifest weight of the evidence, or if the decision is contrary to law.

THE COURT FURTHER NOTES THAT in Ohio the burden of proof in a statutory unemployment benefits case is on the employee to prove that he or she was discharged by his employer without just cause. Or, that the employee quit for just cause and is entitled to benefits.

Appellant in his brief argues that the Review Commission misevaluated his testimony at the evidentiary hearing held on June 16, 2011. It is clear that the hearing officer of the Review Commission assigned greater weight and credibility to the testimony and evidence of CLE and to disbelieve the testimony of Appellant with respect to the issue of whether Brentar quit his employment at CLE without just cause. As in *Tzangas*, it is appropriate to discharge an employee for unsatisfactory job performance even though the employee did not engage in any disciplinary misconduct. Unsuitability for a position constitutes sufficient fault on the part of an employee to support an employer's discharge of that employee for cause.

In *Tzangas*, the employee was hired to do some style of data input or computer work. She couldn't do the work. She tried to. She wasn't guilty of any other misconduct. However, the fact that she wished to perform better couldn't change the plain fact that she couldn't do the work required of her job. That inability was sufficient fault to justify her termination on the basis of just cause.

In the instant case Appellant voluntarily elected to quit his job despite the evidence that he retained the same salary and benefits at CLE as of January 19, 2011. Brentar was never advised that his employment at CLE was terminated as of January 19, 2011 and he retained the right to remain employed at CLE if he did not resign from his employment at CLE on January 19, 2011. Instead, he elected to quit that

employment and file a claim for unemployment benefits instead of remaining gainfully employed and search for other employment if he was dissatisfied with his job conditions at CLE.

THE COURT FINDS THAT job dissatisfaction on Appellant's part does not provide just cause to quit work.

WHEREFORE, the Appellant's appeal is hereby ORDERED denied. The decision of the unemployment Compensation Review Commission was reasonable and justifiable and the Court is without authority to adopt a different decision.

WHEREFORE, the Appeal is **denied**. Costs to Appellant, Gregory J. Brentar.
IT IS SO ORDERED.



DAVID L. FUHRLY, JUDGE

cc: Gregory Brentar ✓
Patrick MacQueeney, Esq. ✓
L. Stewart Hastings, Esq. ✓

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TO THE CLERK:

Serve upon all parties, not in default for failure to appear (per Civil Rule 5-(3)), notice of this judgment and the date of journalization.