IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

DAWN SIMS	:	Case No. 2010-CV-0896
Appellant	:	Judge Tygh M. Tone
vs.	:	**OPINION AND JUDGMENT ENTRY**
DIRECTOR, ODJFS	:	
Appellee	:	

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This matter is before the Court on Appellant's administrative appeal from the Ohio Unemployment Compensation Review Commission's October 5, 2010, final decision denying unemployment benefits to Appellant. After thorough review of the pleadings this Court **AFFIRMS** the Decision of the Ohio Unemployment Compensation Review Commission.

STATEMENT OF THE CASE

The Appellee, Director of Ohio Department of Job and Family Services initially allowed appellant's unemployment claim. However, on April 6, 2010, Appellee reversed the claim on redetermination, based upon the finding that Appellant had quit employment without just cause. Upon appeal, the Ohio Unemployment compensation Review Commission conducted a hearing on September 1, 2010 in which both Appellant and J.M. Crouvisier, Appellant's supervisor, testified. James Childress, Attorney, represented appellant and Patricia Wesiberg, Attorney, represented Lacoiffe, Inc. The Hearing Officer issued a written decision affirming the Director's redetermination denying benefits. The Hearing Officer determined that Appellant quit without just cause because work was available for Appellant when she quit and it was not the employer's fault she

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quit because Appellant accepted part-time work and pay associated with the part-time work. Appellant then filed a request for administrative review. The full Review Commission denied the request. Appellant filed her R.C. 4141.282 administrative appeal with this court.

STATEMENT OF THE FACTS

Appellant worked for Lacoiffe, Inc., dba Technical Translation Service, "TTS" as a Graphic Artist and Designer from July 7, 2008, to February 12, 2010. Company Owner, J.M. Crouvisier, supervised Appellant. Initially, Appellant was paid $40,000 per year as a full time employee. In April of 2009 Appellant become a part time employee and worked four days a week. In May of 2009 Appellant was reduced to three days a week. In June of 2009, Appellant was reduced to twenty hours a week and was paid approximately $19.00 an hour. Because Appellant moved from her Cleveland apartment to her Sandusky home, she commuted from Sandusky to her employment in Cleveland for the last several months of employment. Appellant quit on February 12, 2010, with a resignation letter that stated because of her reduction in hours, Appellant was suffering from stress, incurring extra costs for gas, and long hours for childcare. Also, Appellant stated that because she was cut from full time to part time she could no longer afford her Cleveland apartment.

The Hearing Officer determined that Appellant quit without just cause. In the Hearing Officer's decision, he noted that Appellant stated that she quit her employment because she was being harassed and mistreated by the supervisor, but failed to note such reason when she first reported to the Ohio Department of Job and Family Services and failed to tell her employer that she was quitting for such reason. Also, the Hearing

Officer stated that the evidence shows that Appellant accepted the part time work and pay because she continued to work for several months after the reduction in hours. Also, Appellant was responsible for the increased commuting expenses when she moved to Sandusky.

STANDARD OF REVIEW

The standard of review for the Common Pleas Court when considering appeals of decisions rendered by the Review Commission is set forth in R.C. 4141.282(H):

> 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.

The determination of just cause is a factual question and thus "is primarily within the province of the referee and board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence." *Irvin v. Unemp. Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). "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." *Williams v. Ohio Department of Job and Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶20. As a court of limited power, this court cannot reverse the Review Commission's decision simply because reasonable minds might reach different conclusions. *Irvin* at 18.

ARGUMENTS

Appellant's Argument:

Appellant argues that she quit her employment at TTS with just cause. According to Appellant she moved to the Cleveland area for a full time job at TTS. However, when her employment at TTS was reduced to part time, she had to return to her Sandusky home. Appellant argues that her substantial reduction in hours, which caused an increase in gas, stress and childcare, gave her just cause to quit in February 2010.

Also, Appellant argues that the Hearing Officer failed to ascertain all of the relevant facts and fully develop the record as required under R.C. 4141.282(C)(2). Appellant argues that the Hearing Officer failed to review her resignation letter that stated that she quit because of cut in hours, extremely long commute, extra gas, child care expenses and stress and health issues. Also, Appellant claims she had an employment agreement with her employer in which she would move to Cleveland for a full time $40,000 job at TTS. Also, Appellant claims in her reply brief that the Hearing Officer failed to determine who was the employer: TTS or Lacoiff. Also, the Hearing Officer failed to make a finding of fact as to whether the mistreatment by Mr. Crouvisier occurred.

Appellee's Argument:

Appellee argues that Appellant quit her job without just cause. According to Appellee, for just cause due to reduction in hours the Hearing Officer must determine if the reduction in work was so drastic that it was reasonably necessary for the employee to quit. The factors that should be considered are the amount of hours or wages that are reduced, if the employee accepts the reduction, and if the reduction in hours is temporary.

Here, Appellant worked for several months after she was reduced from full time to twenty hours. Also, Appellee claims that Appellant quit at a time when she was offered to work additional hours. To support his argument, Appellee states that another employee was hired after Appellant quit and the employee was indeed elevated to full time.

Also, according to Appellee Appellant did not have an employment agreement with Lacoiff. Also, Mr. Crouvisier denied punishing Appellant for filing an earlier unemployment claim due to a holiday season layoff. Also, Appellee argues that the retaliation claim is not valid on its face because Appellant is alleging that the retaliation occurred before the holiday season layoff.

Also, Appellee argues that Appellant received a fair administrative hearing. The Hearing Officer complies with the fairness standard if he questions each witness, permits the parties to pose follow-up questions, and allows the parties to make closing arguments. Here, Appellant was represented by counsel and had every opportunity to represent her case. Also, in regard to the Hearing Officer not questioning anyone concerning Appellant's resignation letter, Appellee states that the resignation letter is in the administrative record and Appellee testified about her hardships. Thus, testimony about the resignation letter would be cumulative. Therefore, appellant has failed to establish any prejudice necessary to demonstrate that she was deprived of a fair hearing.

ANALYSIS

Did Appellant Quit Her Job for Just Cause?

4141.29 (D)(2)(a) provides in pertinent part:

> (D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions: * * *

(2) For the duration of the individual's unemployment if the director finds that:
(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work * * *

"Just Cause" is determined on a case by case basis. The Ohio Supreme Court has stated that "essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvin*, 19 Ohio St.3d at 15, 482 N.E.2d 587 quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975). Also, the legislative purpose underlying the Unemployment Compensation Act must be considered when determing just cause. The Act's purpose is "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." *Irvine* at 17, quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980).

A claimant has the burden to prove she is entitled to unemployment compensation as well as the grounds for just cause to quit. *Irvine* at 17. A certain amount of reduction in hours does not create as a matter of law just cause. *Stapleton v. Ohio Dept. of Job & Family Servs.*, 163 Ohio App.3d 14, 2005-Ohio-4473, 836 N.E.2d 10, ¶29 (7th Dist.). Instead, a reduction in work hours is only one factor considered in an unemployment compensation case. *Id.* at ¶31. In *Sutfin*, the employee's hours were reduced from forty hours a week to twenty-right hours a week and then later to eight hours a week. *Sutfin v. Carlsbed Marketing & Communications, Inc.*, 2nd Dist. No. 24555, 2011-Ohio-5988 at ¶3. When the employee applied for unemployment benefits the employee stated that her reasons for quitting were the daily personal attacks and reduction in hours. *Id.* at ¶4. The

trial court, in affirming the Review Commission's ruling that employee had quit her job without just cause, stated that the employee should have talked to the owner about the personal attacks. *Id.* at ¶5. Also, the trial court stated that the issue of whether the reduction in hours was sufficiently substantial was a factual question to be determined by the hearing officer. *Id.* Also, the trial court noted that even though the employee's hours had been substantially reduced the employee could have contintued to work the reduced hours and apply for partial unemployment compensation. *Id.* Furthermore, the employee should have discussed the reduction of hours with the owner prior to quitting. *Id.* Upon review, the Second District Court of Appeals agreed with the trial court that the alleged personal attacks did not constitute just cause to quit. *Id.* at ¶9. The adminstrative Hearing Officer had found that the employee's reason for quitting was due to the reduction in hours. *Id.* Also, "regardless of whether Sutfin [employee] sufficiently complained to Doran [owner], or even needed to do so, the Hearing Officer notably found that she quit because her hours had been reduced and that she could have continued working eight hours a week." *Id.* at ¶16. The Court reasoned:

> Allowing Sutfin to quit her job and receive total unemployment compensation would undermine the statutory scheme providing for a person in her situation to continue working and receive partial benefits. Most of the cases holding that a reduction in hours constitutes just cause for an employee to quit her job overlook this fact. *Id.* at ¶18.

In the case at bar, the Hearing Officer heard testimony both by Appellant and Mr. Crouvisier. Appellant testified concerning her reduction in hours to only two and a half days a week, 92 mile commute, two car accidents, and relocation to Sandusky. Also, Mr. Crouvisier testifed that although he had offered additional work to Appellant three times during January, Appellant declined the additional hours. This court, sitting as a

reviewing court, may not make factual findings or determine a witness's credibility. The determination of just cause is a factual question for the Hearing Officer. Competent, credible evidence in the record supports the reasoning by the Hearing Officer that "the evidence before the Hearing Officer fails to establish that the reason for claimant's separation can be attributed to the employer as claimant had accepted the part-time work and the pay associated with the part-time work" and was responsible for the long commute from Sandusky to Cleveland. Thus, this court cannot reverse the commission's decision.

Also, Appellant and Mr. Crouvisier's testimony is in conflict regarding the alleged mistreatment of Appellant by Mr. Crouvisier. While Appellant claims mistreatement, Mr. Crouvisier denies mistreating Appellant and that Appellant did not notify Mr. Crouvisier of any mistreatment. As stated, this court, sitting as a reviewing court, may not make factual findings or determine a witness's credibility. Thus, because competent credible evidence exists to support the Hearing Officer's finding of fact that Appellant did not report the mistreatment as reason to quit to the Ohio Department of Job and family Services and did not indicate to her employer that she was quitting for this reason. Thus, the Hearing Officer's decision that the alleged mistreatment was not sufficient for Appellant to have just cause to quit her employment was not unlawful, unreasonable, or against the manifest weight of the evidence.

Did the Hearing Officer FullFill His Duty Under R.C. 4141.281(C)(2)?

R.C. 4141.281(C)(2) provides in pertinent part:

> In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. Hearing officers have an affirmative duty to question

parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record.

If a Hearing Officer questions each witness, permits the parties to pose follw up questions, and make closing arguments then the hearing comports with the requirement of fairness as required by R.C. 4141.281(C)(2). *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061 at ¶28-29. In the present case, the Hearing Officer questioned both the Appellant and Mr. Crouvisier. Both Appellant's attorney and Lacoiff's attorney's were present and conducted direct and cross examination of their respective witnesses. Also, each side provided a summary argument at the closing of the hearing.

Furthermore, the resignation letter was properly admitted into the record as stated by the Hearing Officer. Appellant testified about the reasons stated in the resignation letter, such as the reduction in hours, long commute, increased stress and child care expenses. Thus, under R.C. 4141.281(C)(2) the Hearing Officer was not required to pose questions stemming from the resignation letter as this evidence would have been cumulative. Therefore, the Hearing Officer conducted the hearing with the required fairness.

CONCLUSION

The decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The Hearing Officer's determination that Appellant did not quit with just cause is based upon competent, credible evidence. Also, the Hearing Officer fully and fairly developed the record and conducted the hearing as required by R.C. 4141.281(C)(2).

JUDGMENT ENTRY

IT IS ORDERED that Dawn Sims, Appellant, is not entitled to and is not eligible to receive unemployment compensation benefits.

IT IS ORDERED that the decision of the Unemployment Compensation Review Commission is affirmed.

It is further ORDERED that there is no just reason for delay pursuant to Civil Rule 54(B).

4/3/12
Date

Judge Tygh M. Tone