IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

JACQUELYN E. FELTON,

Plaintiff/Appellant,

-vs-

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,

Defendants/Appellees.

CASE NO.: 2011 CV 03808

JUDGE TIMOTHY N. O'CONNELL

DECISION AND ENTRY VACATING THE DECISION OF THE REVIEW COMMISSION

Plaintiff/Appellant, Jacquelyn E. Felton, filed a claim for Unemployment Benefits with Appellee, Director, Ohio Department of Job and Family Services ("ODJFS") on August 02, 2010. This action by the Appellant occurred after she had resigned her employment. ODJFS issued a Determination of Unemployment Compensation Benefits ("Determination") that allowed the Appellant's request for Unemployment Compensation Benefits. The Employer appealed the Determination. Subsequently, ODJFS issued a Redetermination that affirmed the allowance of benefits.

The Employer filed a timely Appeal to the Redetermination. ODJFS transferred jurisdiction of the Appeal to the Review Commission pursuant to R.C. 4141.281. On February 08, 2011, an Evidentiary Hearing was held before a duly appointed hearing officer for the Review Commission. On February 28, 2011, a Decision was issued by the hearing officer for the Review Commission that reversed the Redetermination.

On March 18, 2011, the Appellant filed a request for further review of the adverse Decision of the Review Commission. On April 27, 2011, the Review Commission disallowed the Appellant's request for

further review. The Appellant then appealed to this court seeking reversal of her disqualification for Unemployment Compensation Benefits.

On August 24, 2011, Appellant filed her Brief. On October 07, 2011, ODJFS filed its Brief. On October 24, 2011, Appellant filed her Reply Brief. The Court has reviewed the Briefs and the transcript. For the reasons stated herein, the Decision of the Review Commission is VACATED.

FINDINGS OF FACT

Appellant, Jacquelyn E. Felton, worked for the employer, Teradata Operations, Inc., as a Customer Advocate from September 16, 2002 until April, 2010. In April 2010, the Employer made an administrative rearrangement and the Appellant was assigned to work as a Customer Order Specialist. Since there was a transitional period where the employees learned skills, the employees required more time to complete the work. Thus, the employees would work overtime if need be. The Appellant, who was compensated for overtime, complained about the overtime.

The Appellant worked only four to six (4-6) hours of overtime per month in 2009, before her position was changed from Customer Advocate to Customer Order Specialist. In 2009, and apparently in preceding years, there was a custom that the volume of business would increase in the last week of the month necessitating Customer Advocates to work overtime. The Customer Advocates would typically work six to eight (6-8) hours of overtime per month.

The positions of a Customer Advocate and a Customer Order Specialist are not very different from one another. The employer has two (2) different types of orders to process: one is for a solution for hardware and software and one is for maintenance. The Appellant processed the maintenance orders as a Customer Advocate. In April 2010, the employer combined the positions so that all of the employees would know how to process both types of orders. The purpose for the changes was simple: The more people that are trained to know all of the orders, the better it was from the business standpoint. Basically, the employer had two (2) groups of people doing separate orders and they combined that entire operation so that the business had the same number of people processing the same number of orders. Thus, no one really had more work; they just had some different work.

The Appellant had health issues that interfered with her work. However, the employer allowed her to use FMLA to take time off to cover blood drawing appointments. The Appellant was not advised to quit work by a health care professional.

The Appellant did not receive any work related disciplinary actions against her even though her error rate had gone up. Instead, since the employees were learning a new program as Customer Order Specialists, the employer expected the errors to go up and for workers to need a little more time to adjust to the new program.

Overtime was required for the Appellant even before the changes in duties took place. As indicated above, the employer's business is cyclical requiring more work and hours during the end of the month. The employer expected all employees to work overtime during the last week of the month. The Job Description for the Customer Order Specialist states: "All positions require overtime hours at the end of each month and quarter, or as needed. At times, the environment can be stressful as work volumes increase at particular times of the year". The employer made its expectations known that employees would have to work overtime due to the nature of the business. However, the employer did not schedule the overtime hours for employees. Each employee worked the overtime hours needed to get the individual work completed.

After April 2010, the typical Customer Order Specialist, including, apparently, the Appellant, saw an increase in overtime of twenty to thirty (20-30) hours per month. Appellant had grown accustomed to the work hours over the preceding eight (8) years. Based on the work patterns, she had taken on the activity of caring for her elderly mother and caring for a grandchild. When her hours increased in April 2010, Appellant was unable to care for her mother and grandchild to the extent she previously had. The additional hours also aggravated her medical condition.

The Appellant did complain about the additional hours and how it interfered with her health and her care-giving functions. The Appellant did not request additional training. The employer did not offer additional training in response to Appellant's complaint.

The employer did not discipline anyone for making mistakes during the transition period. The Appellant quit on or about May 21, 2010 by giving her two (2) week notice.

CONCLUSIONS OF LAW

The standard of review when considering appeals of decisions rendered by the Review Commission is set forth in R.C. 4141.282 (H). That section states:

> "If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification; otherwise such court shall affirm such decision."

This standard of review is reiterated in the leading case on Ohio unemployment compensation, *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694 (1995). In *Tzangas*, the Ohio Supreme Court specified, "[t]he board's role as factfinder is intake; 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. Although the Commission's decision should not be "rubber-stamped," a reviewing court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Rev.*, 2 Ohio App.2d 69 (1965). The parties are not entitled to a trial de novo. *Id*

The determination of factual questions is primarily a matter for the hearing officer and the Commission. *Brown-Brockmeyer Co. v. Roach,* 148 Ohio St. 511 (1947). As the trier of fact, the Commission and its hearing officer are vested with the power to assess the evidence and believe or disbelieve the testimony of the witnesses. Accordingly, the trial court in this Administrative Appeal should defer to the Commission's determination of purely factual issues which concern the credibility of witnesses and the weight of conflicting evidence. *Angelkovski v. Buckeye Potato Chips,* 11 Ohio App.3d 159, 162 (1983).

The Appellant argues that she quit with just cause. The hearing officer at the initial Review Commission level made findings of fact and also indicated her reasoning. The findings of fact are supported by the evidence and are generally not contested. The findings of fact do indicate that the Appellant was required to learn a completely new computer system and document/invoice process. Further, the facts indicated that Appellant had difficulty with the increased demands placed upon her.

In her reasoning, the hearing officer concluded that the Appellant failed to allow sufficient time for the learning curve of the new task to be completed. The hearing officer went on to find that the Claimant quit her job without just cause.

There was no evidence to indicate what would be a sufficient time for the learning curve of the new tasks to be completed. The Appellant did wait approximately seven (7) weeks before giving her two (2) week notice. It is true that this would probably have only involved two (2) of the peak business times.

The employer's Vice President of Business Operations testified that six (6) or nine (9) months out the employees would have learned the job and had been back in the position they were before the change. (Tr. p. 38) Six (6) to nine (9) months out is a significant passage of time. Given the need for relatively quick action with respect to the family care and health issues, it is not reasonable to expect that Appellant had to wait six (6) or nine (9) months. The Vice President of Business Operations testified that Appellant was on the learning curve like everyone else and things were getting better; but he did not testify when that learning curve would flatten and everything would be back to normal.

There was no testimony about the amount of time it would take for the learning curve. There is no evidence on the amount of sufficient time for the learning curve. The Vice President of Business Operations did not say the learning should have been completed within three (3) months. He did not say two (2) months. He eventually made an estimate of six (6) to nine (9) months that things would be back as they had been before. If one doesn't have evidence of what was sufficient time for the learning curve of new tasks to be completed, one cannot find that Appellant failed to allow sufficient time for the learning curve of the new tasks to be completed. The hearing officer's finding is not supported by the evidence.

The Director, Appellee, takes a different approach. Appellee does not argue that the Appellant quit without just cause because she did not allow the passage of sufficient time for the learning curve of the new tasks to be completed. Rather the Appellee argues that Appellant quit without just cause because she did not notify her employer of her objection and, or give the employer an opportunity to solve the problem. The Appellee argues that an ordinary intelligent person would not quit over an objection to working conditions without bringing the objection to the attention of the employer, asking for a solution, and giving the employer a chance to implement a solution. Appellee claims Appellant quit without just cause because she had objections to working as a Customer Order Specialist and did not notify the employer that she wanted additional training for the position.

The argument of the Appellee that Appellant cannot utilize medical issues as a real concern for quitting her job is supported by the record and is reasonable. There is no evidence that a doctor or other

medical professional recommended that she terminate because of health reasons. The Appellant's medical concerns were adequately addressed by the employer.

The dispute over hours impacting family commitments has greater force. Appellant was required to perform more overtime at her new position.

Based on the case law, two (2) issues must be examined. First, did the Appellant notify her employer over objections to working conditions? Second, did the Appellant give the employer an opportunity to solve the problem?

With respect to the first issue, the record contains arguably conflicting evidence. The Appellant says she did complain about her hours, the fact that she had to work more overtime. The Appellant claims to have complained to her team leader and to the V.P. of Business Operations. Confronted with that factual issue, the Vice President of Business Operations testified that he did not recall the conversation, at least on a one-on-one basis. Based on this testimony, the conclusion that Appellant did not notify her employer of her objections to working conditions is not supported by the evidence.

The Vice President of Business Operations was asked if the Appellant came to him and asked if he could help her keep her job, he responded that he did not think that happened. The Vice President qualified his answer a bit by asserting an apparent difference between one-on-one conversations and questions or statements in a group setting.

The second component of the legal standard is difficult to resolve. That provision of the standard requires someone situated like the Appellant to give the employer an opportunity to solve the problem. The Appellee argues that then raises the issue of training. On this matter, it seems that neither party took the initiative. The Appellant did not specifically ask for more training. The employer did not offer more training.

Given this second component of the rule, a natural question is: Who must act affirmatively? Must the employee go beyond merely raising the objection and ask specifically for training or propose some type of resolution, or must the employer affirmatively offer training. The employer here had provided some training and it felt that Appellant simply had to apply that training for a given period time and the problem would be solved. The Appellant was either unsure the training would be successful or felt she did not have sufficient time to allow it to become effective given her circumstances. The Appellee has not established all

the elements of its theory for determining Appellant quit without just cause. The evidence does not support a finding that Appellant did not notify the employer of her objections to working conditions. The evidence does not support a conclusion that the employer provided a resolution of additional training, presuming the employer had the affirmative duty to do that upon notification by the Appellant.

R.C. 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 defined by the courts as, "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd.*, 19 Ohio St.3d at 15 (1985), quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d. 10, 12 (1975). Each case must be considered upon its particular merits. *Irvine*, supra.

In *Tzangas* the Ohio Supreme Court examined the issue of fault and stated as follows:

> The [Unemployment Compensation] 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 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.

Id. At 697-698

The Appellant argues that because of the additional hours, she was not able to provide the necessary family care she previously provided. She asserts that an ordinary intelligent person would find this a justifiable reason for terminating employment. For eight (8) years she was accustomed to certain hours. Essentially, she had grown accustomed to having to work overtime but that overtime was limited to six (6) or eight (8) hours a month. With the change in April 2010, the Appellant's apparent overtime increased to ten (10) to twenty (20) hours per month. The Appellant is arguing that if she was working fifteen (15) or twenty (20) hours a month extra, she could not perform necessary family care.

Appellee argues that these increased hours would not go on forever. After some reasonable period of time, the Appellant would be back to six (6) to eight (8) hours a month in overtime and things would be as

they were before. She simply had to wait to allow the learning curve to be completed. So the time for completion of the learning curve is critical here. The record does not supply the amount of time for the learning curve to be completed. If there were evidence that the learning curve would only be two (2) or three (3) months, then perhaps the employer's position is reasonable and an ordinary intelligent person would not find a disruption for that period of time to be sufficient to quit and give up a valuable asset, one's job. On the other hand, if the learning curve was seven (7) to eight (8) months, and one is dealing with essential services, such as daily care for the young or the old, then there is a justifiable reason to take the rather significant step of quitting one's job.

This matter should be remanded for consideration of what is the quantity of time that the training would become effective or, how long would it take upon reasonable application of the training for the COS employees to be back to the amount of overtime previously experienced. Depending on the determination of that amount, one could assess whether Appellant quit with just cause.

This Court is concerned with the actual impact on Appellant. It appears she did not actually work these additional overtime hours. She testified in somewhat strange terms that her co-workers were experiencing these additional levels of twelve (12), fifteen (15) or twenty (20) hours of overtime per month under the new requirements. The Appellant did not testify she actually incurred that additional time. Her hours, as testified to, did not indicate she was working additional overtime after April 01, 2010, but the time measured was from January through May, 2010. So it is not clear when the twenty-four point five (24.5) hours of overtime was incurred.

R.C. 4141.282 (F) indicates that if the court finds the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse and vacate such decision or modify the decision or remand the matter to the Commission. Because the record does not contain evidence of the amount of time it would take for the "learning curve" to be completed, the Commission's decision is against the manifest weight of the evidence. In addition, the evidence does not support the argument that Appellant did not notify the employer of her objections to working conditions. The evidence does not support the two (2) possible grounds for finding Appellant quit without just cause and is thus ineligible for unemployment compensation benefits.

Therefore, the Decision of the Review Commission is VACATED and this matter is REMANDED to the Commission for a determination of the amount of time sufficient to effectuate the training provided and, with that determination taken into consideration, whether the Appellant quit without just cause.

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

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ROBIN A. JARVIS
(513) 852-3497
Attorney for Defendants/Appellees,
Ohio Department of Job and Family Services
and Unemployment Compensation Review Commission of Ohio

Copies of this document were sent to all parties listed below by ordinary mail:

JACQUELYN E. FELTON
431 SHOOP AVENUE
DAYTON, OH 45417
Plaintiff/Appellant, Pro Se.

TERADATA OPERATIONS, INC.
1000 INNOVATION WAY
DAYTON, OH 45342
Defendant/Appellee

SHERRI PETERSON, Bailiff (937) 225-4416

General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Title: JACQUELYN E FELTON vs OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Case Number: 2011 CV 03808

Type: Decision

So Ordered

Timothy N. O'Connell

Timothy N. O'Connell