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MAY 7 - 2012

TOLEDO, OHIO

TAMI WILEY, *

Appellant *

Case No. 11 CV 1278

-vs- *

STERLING JEWELERS, INC, et al., *

JUDGMENT ENTRY

Appellee *

* * *

BACKGROUND

Appellant, Tami Wiley, filed a timely appeal from a decision of the Unemployment Compensation Review Board, which denied her appeal of the hearing officer's decision.

In rendering the instant decision, this court has considered the record submitted by the Unemployment Compensation Review Commission (Commission) appellee's brief, and appellant's brief.

FACTS

Tami Wiley was receiving unemployment benefits before starting a part-time job at appellee's store. When she accepted this position, her benefit amount decreased. As a result, she netted less money when she counted commuting and babysitting expenses than she would have had she stayed on unemployment alone. At the time she was hired, she told the manager that she was 100% flexible concerning the hours she would work. Later, she asked to have her schedule changed to work around her ex-husband's schedule to assist with child care expenses. The appellee accommodated her when possible, but it was not always possible due to staffing issues at the store. Shortly after she returned from a vacation, she texted the manager and asked to be taken off the schedule permanently. Appellant quit because she felt she'd net more money on unemployment than by working part-time at appellant's store.

Initially, the Director disallowed her application for benefits. Thereafter, a Redetermination affirmed the initial decision and denied her benefits. This was administratively appealed and after a hearing conducted by a hearing officer for the Commission, the Director's decision was affirmed. As a result of the officer's finding,

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Wiley's claim for unemployment benefits was disallowed. She appealed the officer's decision, and the Commission affirmed the decision without further hearing. Following this decision, Wiley filed a timely appeal in this court.

ISSUE

Whether the decision of the Commission hearing officer which determined that Appellant quit work without just cause is unlawful, unreasonable, or against the manifest weight of the evidence?

LAW

A reviewing court may reverse a decision of the Unemployment Compensation Review Commission if the decision is, "unlawful, unreasonable, or against the manifest weight of the evidence." Courts of appeal are not permitted to determine the credibility of witnesses or make factual findings, but must determine whether the Commission's decision is supported by evidence in the record. *Tzangas, Plakas, & Mannos v. Administr.* (1995), 73 Ohio St.3d 694 (quoting *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15).

In R.C. 4141.29(D)(2)(a), it provides that an individual who quit work without just cause is not eligible to receive unemployment benefits. Just cause has been defined as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act", see *Irvine v. Unemployment Comp. Bd.*, 19 Ohio St. 3d 15 (1985).

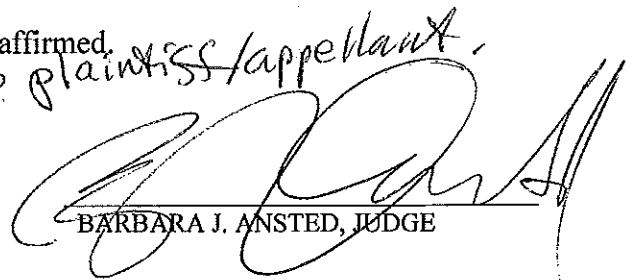
ANALYSIS AND CONCLUSION

The hearing officer's determination that Wiley quit work without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. It is by her own admission that she chose to quit because she was losing money working as opposed to just drawing benefits. The employer was clear when she was hired that due to staffing issues, it is necessary that employees be flexible. In her own words, Wiley said she was 100 % flexible. It is unfortunate that appellant did not take the time to count the cost of gas and babysitters before she agreed to work for the appellee.

Therefore the decision of the hearing officer is affirmed.

Court costs assessed to plaintiff/appellant.

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BARBARA J. ANSTED, JUDGE