

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JIMMIE L. WILSON,

Appellant,

vs.

PROFESSIONAL MAINTENANCE OF
CINCINNATI, INC. et al.

Appellees,

ENTERED
MAY 10 2012

Case No. A1107276

Judge Ruehlman

ENTRY AFFIRMING THE DECISION
OF THE REVIEW COMMISSION

This case is an appeal from the Ohio Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the June 13, 2011 Review Commission hearing officer's Decision finding that Appellant was ineligible for unemployment benefits.

BACKGROUND

The Appellant filed for unemployment benefits. Appellee, Director, Ohio Department of Jobs and Family Services ("ODJFS"), allowed the Appellant benefits. Appellee, Professional Maintenance of Cincinnati, Inc. ("Professional Maintenance") appealed ODJFS' determination. ODJFS affirmed the initial determination granting benefits in a Redetermination. Professional Maintenance timely appealed the Redetermination and jurisdiction was transferred to the Review Commission.

A hearing was held on June 10, 2011. Professional Maintenance appeared but the Appellant did not participate in the hearing. The Appellant had problems with obtaining service from his cell phone in the area where he was located.¹ At the hearing Linda Miller, Territory Supervisor, for Professional Maintenance gave sworn testimony

¹ June 21, 2011 Appeal.



D97574848

that Appellant was a general cleaner. Appellant called Ms. Miller on January 3, 2011, to inform her that he was quitting his employment with Professional Maintenance in two weeks.² Ms. Miller testified that prior to the expiration of the two weeks it had a budget cut in the building where Appellant worked so that she offered the Appellant the opportunity to work in another building until the expiration of Appellant's two weeks.³ Ms. Miller testified that the Appellant responded that he did not want to work out the two weeks, but would "go ahead and quit early and just relax until I have to have all the hard work from my day job."⁴

The Hearing Officer determined that the Appellant quit work without just cause, and ordered repayment of benefits.⁵ The Appellant appealed the hearing officer's decision. The Review Commission Disallowed the Appellant's Request for Review. The Appellant has appealed this decision.

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission is "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.⁶ Otherwise, the court shall affirm the decision.⁷ The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing

² Tr. p. 5.

³ Tr. p. 7.

⁴ *Id.*

⁵ June 13, 2011 Decision.

⁶ R.C. 4141.282(H).

⁷ *Id.*

office) and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.⁸

DISCUSSION

The Ohio Revised Code states:

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[.]⁹

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. The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose is to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonable decent level and is in keeping with the humanitarian and enlightened concepts of this modern day. Likewise, the act was intended 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.¹⁰

An employee quits work without just cause when he or she has an objection to working conditions but does not notify his or her employer or give the employer an opportunity to solve the problem.¹¹ As a general rule, an ordinarily intelligent employee will not quit his or her job due to work conditions unless they have given the employer notice of the problem and an adequate period of time in which to correct it.¹²

⁸ *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E. 2d 1207 (1995). See also *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 161-162, 463 N.E. 2d 1280 (1983), (overruled in *Tzangas* for other reasons).

⁹ R.C. 4141.29(D)(2)(a).

¹⁰ *Irvine v. Unempl. Comp. Bd. Of Review*, 19 Ohio St. 3d 15, 482 N.E.2d 587 (1985) (emphasis in original).

¹¹ *Digiannantoni v. Wedgewater Animal Hosp.*, 109 Ohio App. 3d 300, 307.

¹² *Digiannantoni*, 109 Ohio App. 3d at 308.

Lastly, regarding attempts to supplement the Review Commission record on appeal, R.C. 4141.282(H) expressly prevents supplementing the certified record on appeal, stating, "the court shall hear the appeal on the certified record provided by the commission."¹³ In addition, Ohio case law holds that common pleas courts' review of a Review Commission decision is limited to the certified record provided by the Review Commission and is not a trial *de novo*.¹⁴

ODJFS and Professional Maintenance have filed motions to strike exhibits submitted to the Court by Appellant that are not contained in the Certified Record of the Review Commission. R.C. 4141.282(H) restricts this Court to consider only those documents contained in the record. Accordingly, the Court strikes from the record a letter to Geri Whitehead dated October 18, 2011, a letter to Tony Shelton dated November 18, 2011, the Affidavit of the Appellant dated January 18, 2012, and Appellant's purported affidavit.

Next, upon review of the record by the Review Commission, the Court finds that the hearing officer's decision is supported by the record. The Review Commission issued an Instruction for Telephone Hearing to the Appellant. The instructions advise the parties to use a landline for hearings otherwise use a cell phone, with a fully charged battery and plan to remain in one area for the duration of the hearing.¹⁵ The Appellant did not follow the instructions and is responsible for his failure to participate in the hearing. The hearing officer found that the Appellant quit work without just cause based upon the sworn testimony of Ms. Miller. The Appellant denies that he quit

¹³ R.C. 4141.282(H).

¹⁴ *Gen. Motors Corp. v. Sanders* (June 28, 1985), Butler App. No. CA84-02-022, 1985 Ohio App. LEXIS 8251; *Kilgore v. Board of Rev.*, 2 Ohio App.2d 69, 206 N.E.2d 423 (1965).

¹⁵ Instructions for Telephone Hearing.

employment and states in his brief that he was discharged by Professional Maintenance. Appellant further contends that he was not offered an opportunity to finish his two weeks in another building. There is one notation by ODJFS in the record mentioning the Appellant's contention. The determination of factual questions is primarily a matter for the hearing officer.¹⁶ This Court should defer to the Review Commission on purely factual issues, which concern the weight of conflicting evidence.¹⁷ The Court defers to the factual findings of the Review Commission on this factual issue.

DECISION

The Court hereby STRIKES the exhibits attached to the Appellant's Brief that are not contained in the record and AFFIRMS the Decision of the Review Commission. This is a final appealable order. There is no just cause to delay. Costs to the Appellant.

JUDGE ROBERT RUEHLMAN

¹⁶ *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E. 2d 79 (1947).

¹⁷ *Angelkovski*, 11 Ohio App 3d at 162, 463 N.E. 2d 1280.