

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

DS EXPRESS CARRIERS, INC.	:	Case No. 2011-CV-0790
Appellant	:	Judge Tygh M. Tone
vs.	:	OPINION AND JUDGMENT ENTRY
CHESTER L. DIXIE, et al.	:	
Appellee	:	

FILED
COMMON PLEAS COURT
ERIE COUNTY, OHIO
2012 MAY 23 PM 4:03
LUNADA S. WILSON
CLERK OF COURTS

 This matter is before the Court on Appellant’s administrative appeal from the Ohio Unemployment Compensation Review Commission’s final decision granting unemployment benefits to Appellee. After thorough review of the pleadings this Court **AFFIRMS** the Decision of the Ohio Unemployment Compensation Review Commission.

STATEMENT OF THE CASE

On February 8, 2011, Appellee Ohio Department of Job and Family Services allowed Mr. Dixie’s application for benefits based upon the initial determination that DS Express Inc., hereinafter DS, fired Mr. Dixie without just cause. On March 9, 2011, the determination was affirmed. A hearing was held on June 2, 2011 and July 5, 2011, by telephone before Hearing Officer Donald L. McElwee. Mr. Dixie and DS was represented by Attorney Mark Shearer and company president Daniela Stankic were present. On July 8, 2011, the hearing officer affirmed the decision. On October 20, 2011, the Review Commission denied a final administrative review. Appellant DS Express Inc. filed this administrative appeal seeking reversal of the Review Commission’s final decision.

FACTS

Mr. Dixie worked for DS as an over the road truck driver from September 30, 2010 to December 28, 2010. Shortly after Mr. Dixie began working he took his truck home overnight. After Mr. Dixie received a warning for taking his truck home, he did not take his truck home. On December 10, 2010, Mr. Dixie received a warning for failing to obtain a signed bill of lading from a delivery. During the hearing Mr. Dixie admitted to this error. Mr. Dixie was also late for a delivery in Easton, Pennsylvania on December 15, 2010. Also, Mr. Dixie was late for a delivery to West Chester, Ohio on December 27, 2010. Mr. Dixie also did not take a load as requested to Florida or Maryland on December 27, 2010. Mr. Dixie was discharged on December 28, 2010.

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

According to Appellant DS, Mr. Dixie was terminated due to multiple late deliveries, inappropriate time off, and improper truck parking. Mr. Dixie delivered a load to Atlanta three hours late. According to Appellant, DS disciplined Mr. Dixie by providing him with an administrative write up first occurrence. Also, on December 10, 2010, DS disciplined Mr. Dixie with a verbal warning for failing to provide a signed bills of lading. DS disciplined Mr. Dixie with a second administrative write up on December 15, 2010, for making a late delivery to Easton, Pennsylvania on December 13, 2010. On December 27, 2010, DS disciplined Mr. Dixie with a third administrative write up for a later delivery to West Chester, Ohio. On December 28, 2010, DS disciplined Mr. Dixie for refusal to report to work for a delivery to Florida. Also, Mr. Dixie refused to take a load to Maryland because he was drunk. Also, on December 28, 2010, DS disciplined Mr. Dixie for taking a company truck home on December 26, 2010, without company approval.

According to Appellant DS, employee Mr. Dixie has not met his burden to prove that his termination was without just cause. DS provided sufficient evidence of proper progressive discipline. Mr. Dixie showed unreasonable disregard for his employer's best interest. Although Mr. Dixie provided excuses for his late deliveries, these excuses were insufficient. Mr. Dixie alleged that his late delivery to Easton, Pennsylvania was due to

bad directions. However, Appellant argues that Mr. Dixie's excuse was without merit because of the use of GPS and modern software technology. Also, while Mr. Dixie alleges that he was late to West Chester Ohio due to weather, Mr. Dixie should have prepared for the weather, Mr. Dixie has not provided evidence of such bad weather, and a "weather underground" website states there was no meaningful precipitation in the areas Mr. Dixie traveled. Also, Mr. Dixie did not request off December 28, 2010 and thus should have been sober in order to drive to Maryland.

Appellee's Argument

Appellee Direct, Ohio Department of Job and Family Services, hereinafter ODJFS, argues that the Review Commission's decision is supported by some competent, credible evidence and therefore should be affirmed. Appellee ODJFS argues that although the administrative write ups had a space provided for Appellee Mr. Dixie to sign, his signature does not appear on any of the forms. Mr. Dixie claims that only one write up had merit: his failure to obtain a bill of lading. His delivery to Atlanta was late due to problems with his truck. His delivery to Easton, Pennsylvania was late due to weather and improper directs as he arrived closer to his designation. His delivery to West Chester, Ohio was late due to a freeway shut down. Mr. Dixie denied at the hearing that he took his truck home for personal use in December. Also, in regards to the delivery to Florida, Mr. Dixie argued that he could not leave that night because his truck needed to be repaired. He decided to drink a couple of beers that evening since he did not anticipate delivering a load that evening and therefore could not deliver a load to Maryland until the next day.

Appellee ODJFS argues that the determination of factual questions is primarily for the hearing officer and review commission. Determining Mr. Dixie's credibility regarding his reasons for late delivery and refusal to deliver to Florida and/or Maryland is primarily within the discretion of the hearing officer. The hearing officer's decision is supported by some competent, credible evidence. It does not matter that a different fact finder could have reached a different result.

ANALYSIS

A claimant has the burden to prove she is entitled to unemployment compensation. *Irvin v. Unemployment comp. Bd. Of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). 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* at 15 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 determining 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).

Appellant DS claims it had just cause to terminate employee Mr. Dixie. "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination." *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 698, 653 N.E.2d 1207 (1995). In the present case, the hearing officer determined Mr. Dixie's excuses to be credible. Although Appellant DS claims that Mr. Dixie's excuses are meritless, this Court cannot make factual findings or determine a witness's credibility. Mr. Dixie's testimony does provide some competent, credible evidence to support the factual finding by the hearing officer that the evidence fails to establish sufficient fault or misconduct to warrant disqualification from unemployment benefits.


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 DS Express Carriers, Inc. fired Appellee Chester L. Dixie without just cause is based upon competent, credible evidence.

JUDGMENT ENTRY

IT IS ORDERED that Chester L. Dixie, Appellee, is entitled to and 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).

5/23/12
Date



Judge Tygh M. Tone