

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

JOEY L. CLARK,

CASE NO. 2011 CV 07231

Appellant,

JUDGE STEVEN K. DANKOF

-vs-

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES, et al,

**FINAL AND APPEALABLE, DECISION,
ENTRY AND ORDER AFFIRMING IN
ALL RESPECTS THE
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION'S
DETERMINATION THAT APPELLANT
WAS FIRED FOR JUST CAUSE**

Appellees.

This matter is before the Court on Appellant Joey Clark's ("Appellant-Clark") October 7, 2011 administrative appeal from a decision of the State of Ohio Unemployment Compensation Review Commission ("Review Commission"). On November 17, 2011, a written transcript of the administrative proceedings was filed. Appellant-Clark's December 30, 2011 Brief was filed pursuant to the Court's November 29, 2011 Briefing Schedule. On January 12, 2012, the Brief of Appellee Director, Ohio Department of Job and Family Services ("Appellee-ODJFS") was filed.¹ This matter is now properly before the Court pursuant to R.C. 4141.282.

I. STATEMENT OF THE CASE AND FACTS

On February 3, 2011, Appellant-Clark made a claim to Appellee-ODJFS for unemployment compensation. On February 24, 2011, Appellee-ODJFS allowed Clark's application for unemployment compensation benefits, and issued a decision accordingly.² On March 16, 2011, Appellee-Hospital appealed

¹ The Court notes Appellee-Good Samaritan Hospital and Health Center ("Appellee-Hospital") was served on October 12, 2011, neither a notice of appearance or brief has been filed.

² February 24, 2011 Determination of Unemployment Compensation Benefits.

the decision, seeking a redetermination, but on April 4, 2011, the decision was affirmed.³ On April 12, 2011, Appellee-Hospital then appealed, and the case was transferred to the Review Commission for determination.⁴

On June 9, 2011, a Notice of Telephonic Hearing set for June 22, 2011 at 8:15 a.m. was sent by the Review Commission.⁵ Appellee-Clark called in for her hearing, conducted by Hearing Officer Leanne Colton (“Hearing Officer Colton”).⁶ Appellee-Hospital was represented by Attorney Deb Ansel and Ms. Denise Langston, Diagnostics Manager, (“Langston”) testified as a witness for Appellee-Hospital.⁷ On June 27, 2011, Hearing Officer Colton issued a decision *reversing* the Director’s Redetermination and finding that Appellant-Clark was discharged for just cause from her employment with Appellee-Hospital.⁸ Hearing Officer Colton also ordered that Appellee-Clark immediately repay any benefits she previously received.⁹

On July 7, 2011, Appellant-Clark requested review of the Review Commission’s decision, which was denied in a September 7, 2011 decision.¹⁰ On October 7, 2011, Appellant-Clark initiated her instant administrative appeal.¹¹

Appellant-Clark worked for Appellee-Hospital from August 15, 1988 through February 3, 2011.¹² Immediately before her termination, Appellant-Clark’s last position title was “patient access associate”.¹³

Regarding employee discipline, Appellee-Hospital utilized a five step corrective action plan: 1) informal counseling, 2) verbal consultation, 3) written warning, 4) final warning, and 5) discharge.¹⁴

In June, 2010, Appellant-Clark received Step 1 discipline: Informal Counseling after failing to: attend a meeting, clock-in on several occasions, notify Appellee-Hospital in advance of a June 11, 2010

³ Director’s April 4, 2011 Redetermination.

⁴ April 18, 2011 Notice from Unemployment Compensation Review Commission

⁵ From the transcript provided to the Court, there were four levels of the administrative review process in this case. First, the claimant-employee applies to the Director of the Ohio Department of Job and Family Services for unemployment compensation. Second, an appeal is made to the same Director for a redetermination. Third, an appeal may be made to the Unemployment Compensation Review Commission, where a hearing officer holds an on the record hearing, and issues a decision. (This level of the administrative process will be referred to as the “hearing officer level”). Fourth, an appeal can be made to the Review Commission for review of the hearing officer’s decision. See Ohio Rev. Code § 4141.281.

⁶ June 27, 2011, Decision of State of Ohio, Unemployment Compensation Review Commission.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ September 7, 2011, Decision of State of Ohio, Unemployment Compensation Review Commission.

¹¹ See Docket, October 7, 2011 Notice of Administrative Appeal.

¹² Hearing Transcript, Page 4, ll. 17-18.

¹³ Transcript, Page 4, ll. 19-26.

¹⁴ State’s Exhibit G.

absence, and schedule herself in the registration area.¹⁵ On June 23, 2010, Appellant-Clark received Step 3 discipline¹⁶: a written warning for a statement she made concerning an employee that she accused of taking property belonging to another.¹⁷ On September 7, 2010, Appellant-Clark received Step 4 discipline: final warning for failing to report to work at her 7:30 a.m. scheduled start time because she had over slept.¹⁸

On January 25, 2011, a patient arrived at Appellee-Hospital's front check-in desk to register for her electroencephalogram ("EEG") scheduled for 8:00 a.m. that day.¹⁹ Appellant-Clark was working at the check-in desk, and mistakenly advised the patient that she did not have an appointment that day, even though Appellant-Clark's search in EPIC, the Hospital's computer system, confirmed the appointment.²⁰ Although she testified she tried to reach her team leader, it is clear that Appellant-Clark did not do so before sending the patient away.²¹ To her credit, when Appellant-Clark realized her mistake, she immediately rescheduled the patient's appointment for 11:00 a.m. that same morning.²² Appellant-Clark also admitted that later that same day, she pulled out her cell phone and read a text message while working at the registration desk.²³

Appellant-Clark freely admits that she was fully aware that 1) sending patients away without manager approval and 2) cell phone usage including text messaging and retrieval in patient care areas were violations of Hospital policy.²⁴ She also admitted that she had, in the past, disciplined other employees for these same violations of Hospital policy.²⁵ And lastly, Appellant-Clark acknowledged that she clearly understood on January 25, 2011 that her job was in jeopardy and that she was on a corrective action plan.²⁶

Appellant-Clark maintains that she did not "turn away" the patient intentionally and that patient registration is not a patient care area so that her cell phone usage did not violate Hospital policy. In short, she asserts that the events of January 25, 2011 did not justify her discharge. The Review Commission

¹⁵ State's Exhibit H, Tr. P. 7, Ll. 17-26, P. 8, Ll. 1-5.

¹⁶ Language in the Disciplinary Policy indicates that the Appellee-Hospital reserves the right to skip a step based upon the seriousness of the infraction. See State's Exhibit G, page 2.

¹⁷ State's Exhibit I, Tr. P. 8, Ll. 5-14.

¹⁸ State's Exhibit J, Tr. P.8, Ll. 14-24. Appellee-Hospital's policy requires employees to call in within two hours before the start of a shift and failure to do so is considered a no call/no show.

¹⁹ Tr. P. 5, Ll. 1-26; P. 6, Ll. 1-18.

²⁰ Tr. P. 5 Ll. 1-11. Appellant-Clark's error was due in no small part to her mistaken belief that January 25, 2011 was the following day instead of the morning in question.

²¹ Tr. P. 17, Ll. 10-17.

²² Tr. P. 18, Ll. 1-6.

²³ Tr. P. 18, Ll. 18-26, P. 19, Ll. 1-24.

²⁴ Tr. P. 17, Ll. 10-26, P. 18, Ll. 1-26, P. 19, Ll. 1-26, P. 20, Ll. 1-8.

²⁵ Tr. P. 20, Ll. 1-26.

²⁶ Tr. P. 17, Ll. 7-9.

disagreed, finding that Appellant-Clark was discharged for just cause for the violation of reasonable Hospital policies.²⁷

The Court hereby reviews this matter.

II. STANDARD OF REVIEW

A common pleas court sitting in an appellate capacity has a limited power of review.²⁸ This Court cannot make factual findings or determine the credibility of witnesses.²⁹ Rather, this Court's limited role is to determine whether the Review Commission's decision is supported by the evidence in the record.³⁰ Said another way, the Review Commission's decision cannot be reversed because reasonable minds could have reached a different result based upon the same record.³¹

III. LAW AND ANALYSIS

Just cause, in the statutory sense, is that which a person of ordinary intelligence would find justifies doing or not doing a particular act.³²

In any event, just cause determinations must be consistent with the legislative purpose underlying the Unemployment Compensation Act³³ - to provide financial assistance to an individual who has worked, was able and willing to work, but lost employment *through no fault of her own*.³⁴ When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament.³⁵ Obviously, just cause determinations depend on the unique facts of each case³⁶ and the burden of proving entitlement to unemployment compensation falls squarely upon the claimant per R.C. 4141.29 (D)(2)(a).³⁷

Importantly, the relevant inquiry as to just cause is whether her act or failure to act demonstrates an "unreasonable disregard for an employer's best interest."³⁸

Here, Appellant-Clark ignored the Hospital's clear prohibition against 1) using her cell phone while in a patient care area and 2) failing to consult with management before "turning away" the EEG patient.

²⁷ June 27, 2011 Decision, State of Ohio, Review Commission.

²⁸ *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Irvine, supra* at 17.

³³ *Id.*

³⁴ *Id.*, citing *Salzly v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 399 N.E.2d 76 (1980).

³⁵ *Tzangas*, 73 Ohio St.3d 694, 697-698, 1995-Ohio-206, 5653 N.E.2d 1207.

³⁶ *Id.*

³⁷ *Irvine, supra* at 5.

The Court finds the prohibition against cell phone usage in patient care areas reasonable and consistent with the stated policy of providing high quality patient care.³⁹ Langston testified that the registration area is clearly a patient care area as “all registration does is deal with a patient one-on-one.”⁴⁰ Therefore, Appellant-Clark’s suggestion that the patient registration area is not a patient care area is unpersuasive, particularly since the prohibition furthers the Hospital’s interests. Appellant-Clark’s “turning away” of the EEG patient in violation of Hospital policy was also in clear contravention of the Hospital’s interests.

Based upon the Court’s review of the record including Appellant-Clark’s admissions, it is clear she was on notice that her job was in jeopardy and was well-aware of the Hospital policies at issue. Despite her precarious job situation, Appellant-Clark disregarded Hospital policies, thereby threatening the Hospital’s best interests. In short, ample evidence in the record that supports the Review Commission’s decision that Appellant-Clark was terminated by the Hospital for just cause.

IV. CONCLUSION

By reason of the foregoing, the Court hereby **AFFIRMS** the Unemployment Compensation Review Commission’s decision below in all respects.

SO ORDERED:

JUDGE STEVEN K. DANKOF

THIS IS A FINAL APPEALABLE ORDER. PURSUANT TO APP. R. 4, THE PARTIES HAVE 30 DAYS TO APPEAL.

SO ORDERED:

JUDGE STEVEN K. DANKOF

³⁸ *Janovsky v. Ohio Bureau of Emp. Servs.*, 108 Ohio App. 3d 690, 671 N.E.2d 611 (2nd Montgomery, 1996).

³⁹ Patient privacy and attentiveness of care both strike the Court as logical reasons to exclude cell phone usage by employees at a hospital.

⁴⁰ Tr. P. 24, Ll. 5-14.

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So Ordered

Steven K. Dankof