

DANIEL M. MORRIGAN
IN THE COURT OF COMMON PLEAS
2012 JUN 13 PM 2:17 SUMMIT COUNTY, OHIO

RITA S. DARROW)
SUMMIT COUNTY)
CLERK OF COURTS)
Appellant,)
CASE NO. CV 2011-09-5151
-vs-)
JUDGE THOMAS A. TEODOSIO
OHIO DEPARTMENT OF JOB AND)
FAMILY SERVICES et al.,)
Appellees.)
FINAL ORDER

This matter is before the Court on the appeal of Rita S. Darrow of the decision of the Unemployment Compensation Review Commission, dated August 16, 2011, reversing the Hearing Officer's Decision that was issued on December 15, 2010, and disallowing the Claimant's Application for Determination of Benefit Rights.

Appellant Rita S. Darrow was employed as a Brokerage Division Manager by Appellee Thomas Transport, Inc. from March 2008 until her termination on May 26, 2010. (Trans. at p. 5). Appellant had made plans with Jeff Thomas of Thomas Transport prior to her termination to leave her employment in July 2010. (Trans. at p. 6). On May 25, 2010, Appellant sent e-mails containing work-related information to her personal e-mail account. (Trans. at p. 8). Upon discovery of these e-mails by the employer, Appellant was terminated from her employment on May 26, 2010. (Trans. at p.7).

On June 15, 2010, the Ohio Department of Job and Family Services issued an initial determination holding that Appellant was discharged from her employment with just cause. In a redetermination decision issued on July 29, 2010, the decision was affirmed. After appeal to the Ohio Unemployment Compensation Review Commission, the Hearing Officer's

decision of December 15, 2010, reversed the redetermination decision and held that Appellant had been dismissed without just cause. On December 20, 2010, Appellee requested further review, and a new hearing was conducted on April 19, 2011. On June 22, 2011, the Ohio Unemployment Compensation Review Commission issued a decision holding that Appellant had been discharged from her employment with just cause, and was therefore ineligible for unemployment compensation benefits. Ms. Darrow now appeals said decision to this Court.

A court may reverse a "just cause" determination only if it unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Id.* The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's scope of review. *Lorain County v. State* (9th Dist. 2010), 2010 Ohio 1924. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Id.*

To be eligible for unemployment compensation benefits in Ohio, claimants must satisfy the criteria established pursuant to R.C. 4141.29(D)(2)(a), which provides that no individual may be paid benefits if discharge from employment was with just cause in connection with work.

A party is entitled to unemployment benefits if she is terminated without just cause. *Klemencic v. Robinson Mem. Hosp.* (9th Dist. 2010), 2010 Ohio 5108. "The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision." *Id.* Traditionally, in the statutory sense, "just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a

particular act.” *Id.* “The discharge of an employee is considered to be for just cause where the employee's conduct demonstrated some degree of fault such that the employee displayed an unreasonable disregard for his employer's best interests.” *Lorain County v. State* (9th Dist. 2010), 2010 Ohio 1924. “If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694.

Appellants first Assignment of Error argues that the Review Commission erred in ruling that Appellant was terminated from employment with Appellee for just cause. This Court agrees and finds that the decision of the Review Commission is not supported by evidence and was therefore unreasonable and against the manifest weight of the evidence.

The testimony of Sean Williams indicates that the Appellant was terminated from her employment because she had sent company information to a personal e-mail account. (Trans. at p.6). Mr. Williams characterizes the information as “financial like company profit/loss statement, things like that. Company revenue, customer lists, you know stuff, stuff that’s critical to our industry.” (Trans. at p. 6). Mr. Williams’ testimony also indicates the e-mails were sent to the Appellant’s personal e-mail account on May 25, 2010, and were provided to the Hearing Officer. (Trans. at p. 8). The record, as supplied to and reviewed by this Court, contains an e-mail of a gross profit report that breaks down profit by the type of order. Other documents are e-mails that were sent to Ms. Darrow referencing specific orders. There is no document that could be accurately characterized as a customer list.

The testimony reveals that the profit statements were given to Ms. Darrow on a weekly basis by Thomas Transport. (Trans. at p. 11). As indicated by the record, the other documents were sent directly to Appellants work e-mail account. Ms. Darrow also testified

that she had sent the same type of company information to her personal e-mail account since 2008 when she began working at Thomas Transport. (Trans. at p. 12). Mr. Williams testified there had not been any concerns “like this” until the e-mails of May 25, 2010. (Trans. at p. 8).

The testimony of Sean Williams makes clear that there was no prohibition against the Appellant working at home. (Trans. at p.7). He testified that she had access to company e-mail from a non-company computer and that” [s]he could’ve used her company e-mail from home.” (Trans. at p. 7).

Ms. Darrow testified that the profit statements she sent to her personal e-mail account were used in determining her commission. (Trans. at p. 11). She testified that she wanted them for her records in order to match up the gross profit from the brokerage division with her request for commissions potentially owed to her. (Trans. at p. 12). She further testified that she sent them to her personal e-mail account “[t]o protect them” in anticipation of the commissions that she was going to ask for upon leaving the company in July 2010. (Trans. at p. 13). She indicated that she felt saving and protecting the information was necessary to protect herself because other individuals at the company “were always trying to do something to intimidate me.” (Trans. at p. 12-13). She had previously made plans to leave her employment in July 2010 with Jeff Thomas of Thomas Transport. (Trans. at p. 6). There was testimony by Mr. Williams that Ms. Darrow told him that her attorney had instructed her to send the information to her personal e-mail address. (Trans. at p. 8).

The Hearing Officer determined: “Claimant knew or should have known that her conduct was highly inappropriate and would not be tolerated by the employer. Claimant’s actions constitute misconduct that will serve to suspend her unemployment compensation benefits. Claimant was discharged by Thomas Transport, Inc. for just cause in connection with work.”

The Court finds this determination unreasonable and against the manifest weight of the evidence.

The crux of Appellee's argument is that Ms. Darrow was fired for "just cause" because of theft, i.e., her sending of company information to her personal e-mail account. The Court finds no evidence for this justification. The information that Appellant sent to her personal e-mail account was made freely available to her. The testimony of Mr. Williams indicates that she could have accessed this information from her home computer without incident. The fact that she sent this information to a personal e-mail account does not change the nature of the information. There is no practical difference between her accessing the information from her home by retrieving it from her personal e-mail account as opposed to from her company e-mail account. There is no testimony that she shared the information with anyone. There is no testimony that Appellee was harmed in any way. Appellant's testimony indicates that her reason for sending the e-mails to her personal account was to protect the information, which she might require in order to collect commissions that may have been due to her upon her leaving the company in July 2010 as previously planned. She expected future commission requests to be contested by the company. Thus, her reason for saving the e-mails to her personal account was directly related to her employment.

For the above stated reasons, this Court finds the record does not contain evidence that Appellant's conduct demonstrated a degree of fault such that the employee displayed an unreasonable disregard for his employer's best interests. Under these circumstances, the Court finds that the finding of "just cause" was not reasonable, that Appellant was terminated without "just cause," and that Appellant is entitled to benefit rights. Therefore, the decision of

the Unemployment Compensation Review Commission, dated August 16, 2011, is
REVERSED.

IT IS SO ORDERED.

JUDGE THOMAS A. TEODOSIO

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.

JUDGE THOMAS A. TEODOSIO

cc: Attorney Susan M. Sheffield
Rita S. Darrow, pro se
Thomas Transport, Inc.