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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

MARCELLUS C MALONE
Plaintiff

G & S METALS PRODUCTS CO INC
Defendant

Case No: CV-11-767937

Judge: PAMELA A BARKER

JOURNAL ENTRY

96 DISP.OTHER - FINAL

THIS CASE ARISES AS A STATUTORY UNEMPLOYMENT COMPENSATION APPEAL FILED BY APPELLANT MARCELLUS MALONE UNDER R.C. 4141.282. MALONE APPEALS THE FINAL DECISION OF THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION (UCRC) THAT DENIED HIS CLAIM FOR UNEMPLOYMENT BENEFITS ON THE BASIS THAT HE WAS DISCHARGED BY APPELLEE G&S METAL PRODUCTS, CO. INC. (GSM) FOR JUST CAUSE UNDER RC 4141.29(D)(2)(A). THE STATUTORY STANDARD OF REVIEW THAT MUST BE APPLIED BY THE COMMON PLEAS COURTS IN UNEMPLOYMENT APPEALS OF UCRC DECISIONS IS SET FORTH IN RC 4141.282(H), WHICH INDICATES THAT 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.

APPELLANT WAS EMPLOYED BY GSM AS A MATERIAL HANDLER/SCANNER FROM NOVEMBER 1, 2010 UNTIL HE WAS DISCHARGED ON APRIL 8, 2011 FOR INSUBORDINATION IN VIOLATION OF GSM DISCIPLINARY POLICY (EXHIBITS 1-7). AT THE EVIDENTIARY HEARING HELD BY THE UCRC ON AUGUST 9, 2011, OPERATIONS MANAGER THOMAS ZITZMAN AND MANAGER DENNIS SOSIC OF GSM PROVIDED CREDIBLE TESTIMONY REGARDING THE FACTS THAT LEAD TO THE DISCHARGE OF APPELLANT ON APRIL 8, 2011. THE UCRC HEARING OFFICER EXERCISED HER EXCLUSIVE AUTHORITY AS THE TRIER OF FACT TO EVALUATE THE CREDIBILITY OF THE TESTIMONY GIVEN BY APPELLANT AT THIS HEARING AS WELL (EXHIBIT 1). APPELLANT HAS ONLY OFFERED AN ARGUMENT BASED ON MERE SPECULATION. FURTHER HE FAILED TO PRESENT ANY EVIDENCE AT THE UCRC HEARING TO SUPPORT HIS ARGUMENT.

BASED UPON THE CREDIBLE EVIDENCE IN THE CERTIFIED RECORD OF THE UCRC AND THE SUBSEQUENT BRIEFS FILED IN THIS MATTER WITH THE COURT, THE DECISION OF THE UCRC THAT APPELLANT WAS DISCHARGED BY GSM FOR JUST CAUSE UNDER R.C. 4141.29(D)(2)(A) WAS NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS AFFIRMED BY THIS COURT PURSUANT TO R.C. 4141.282

COURT COST ASSESSED TO THE PLAINTIFF(S).

Pamela A. Barker

Judge Signature

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