

**JUN 21 2012**

IN THE ATHENS COUNTY COURT OF COMMON PLEAS

ATHENS, OHIO

*Christina*, CLERK  
OF COMMON PLEAS COURT

Julie Smallwood, : Case No. 11CI0210  
: Judge Michael Ward  
Appellant, :  
vs. : DECISION AND JUDGMENT ON  
: ADMINISTRATIVE APPEAL; FINAL  
Director, Ohio Dept. of : APPEALABLE ORDER  
Job and Family Services, :  
et al., :  
Appellees. :  
:

I. PROCEDURAL HISTORY

Appellant Julie Smallwood (Smallwood) appeals the order of the Unemployment Compensation Review Commission disallowing further review of her case, thereby denying unemployment compensation benefits. The administrative record has been filed, the parties have briefed their positions, and the appeal is submitted for decision.

II. STANDARD OF REVIEW

The following standard of judicial review governs Smallwood's appeal:

When reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court must affirm unless it concludes that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. \* \* \* All courts, whether common pleas or appellate, must apply this same standard. \* \* \* [T]he Review Commission remains the finder of fact. The fact that reasonable minds may have reached a different decision than the Review Commission is not a basis for reversal.

Dodridge v. Ohio Dept. of Job and Family Services, 4<sup>th</sup> Dist. No.

09CA3292, 2010-Ohio-696. The agency found that Smallwood was discharged for just cause; therefore, the following principles also apply:

Unemployment compensation is not available to an employee \* \*

\* who was discharged for just cause. R.C. 4141.29(D)(2)(a). Just cause in this context is that which, to an ordinarily intelligent person, is a justifiable reason for terminating an employee \* \* \*. 'If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause.' \* \* \* 'The critical issue is not whether an employee has technically violated some company rule, but \* \* \* whether the employee, by his actions, [has] demonstrated an unreasonable disregard for his employer's best interests.' \* \* \*

Astro Shapes, Inc. v. Sevi, 7<sup>th</sup> Dist. No. 09 MA 105, 2010-Ohio-750.

### III. DISCUSSION

The record supports the agency's resolution of the "just cause" discharge issue. There is competent, credible evidence that Smallwood, a traveling phlebotomist with Athens Medical Laboratory, appeared at a job site smelling of alcohol, was rude to employees and patients of customer facilities, and was negligent in the performance of her duties, including failing to respond to a "stat" request for a blood draw and leaving a tourniquet on a blood drawee's arm. Some of this evidence was presented by way of hearsay. However, hearing officers are not bound by common law or statutory rules of evidence. R.C. 4141.281(C)(2). Moreover, some of the hearsay was corroborated by Smallwood's own testimony. For example, although Smallwood denied smelling of alcohol during the November 2010 incident at a customer facility, she testified that a co-worker at her employer's laboratory "daily" told her that she smelled like alcohol. She also admitted failing to respond to the "stat" request for a blood draw.

As the result of Smallwood's performance, her employer restricted her duties to its own facility, thereby removing her from customer contact. It also changed her 4:00 a.m. to 1:00 p.m. weekday hours to 7:00 a.m. to 4:00 p.m., and required her to work a half day

every Saturday instead of her usual (approximately) two Saturdays a month.

Smallwood declined to work the new schedule, and her employer informed her she was no longer needed, thus constituting her termination.

The facts as found by the hearing officer, supported by the record, demonstrate Smallwood's unreasonable disregard for her employer's best interest. The resulting changes to Smallwood's working hours, schedule, and conditions were not substantial enough to warrant her refusal to comply with the same. Compare May v. Board of Review, 222 W.Va. 373, 664 S.E.2d 714 (2008). Accordingly, the Court finds no cause to disturb the agency's decision.

#### IV. CONCLUSION AND JUDGMENT

The Commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence. As such, it is affirmed. Costs to appellant Smallwood.



Judge Michael Ward

This is a judgment or final order, which may be appealed. The Clerk, pursuant to Civ.R. 58(B), shall serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the Clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B) and shall note the service in the appearance docket.

cc: Peggy P. Lee, Esq.  
Patricia V. Hoskins, Asst. Ohio Atty. Gen.  
Mollica, Gall, Sloan, Sillery & McCarthy

**JOURNALIZED**

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**FINAL APPEALABLE  
ORDER**