

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

APRIL ENTERPRISES, INC.,

Plaintiff/Appellant

vs.

DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES,
et al.,

Defendants/Appellees

Case No. CV2012 03 0978

(Charles L. Pater, Judge)

ORDER AFFIRMING THE DECISION OF
THE OHIO UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION

FINAL APPEALABLE ORDER

This is an administrative appeal pursuant to R.C. 4141.282. Plaintiff-appellant April Enterprises, Inc. has appealed from the decision of the Ohio Unemployment Compensation Review Commission, which held that defendant-appellee Carla Mullins was discharged by April Enterprises, her employer, without just cause. Based upon the pleadings and other matters of record herein, including the record of proceedings before the Review Commission, the decision of the Review Commission is **AFFIRMED**.

Mullins worked at the Walnut Creek Nursing Center, which is owned and operated by April Enterprises, from March 10, 2009 until her termination on August 26, 2011. At times she also worked outside her employment with Walnut Creek by traveling as a private assistant with residents of the facility. In February of 2011, John Hochwalt¹, a vice-president of April Enterprises, introduced Mullins to a Mr. Bill Kane,

¹ While referred to throughout the transcript of the hearing before the Unemployment Compensation Review Commission hearing officer as John "Hopewell," based upon the brief of appellee and other evidence in the record, the court believes that this individual's correct name is John "Hochwalt."

a resident of the facility, because Kane was interested in arranging for someone to travel with him to California in May, 2011. After the introduction was made, Hochwalt left the room and Mullins and Kane discussed the details of the trip. Ultimately, Mullins agreed to accompany Kane, and while there is no written documentation of their agreement, the only evidence presented to the Review Commission hearing officer concerning the arrangement was Mullins' testimony that Kane agreed to pay her \$60.00 per hour.

Mullins testified that before leaving for California, Kane asked her to write out three checks that he then signed, one to his grandson, one to his granddaughter, and one to Mullins in the amount of \$5,800.00, which was to pay for her services on the trip. There was evidence presented at the hearing that, because of Kane's physical condition, it was not unusual for him to ask others to fill out checks that he would then sign. Mullins calculated the amount due her based on the number of hours she expected the trip to take. However, due to a flight delay on the return trip, Kane paid Mullins an additional \$1,000.00 for additional hours she assisted him resulting from the delay. Some time later, though, Mullins admitted that she had miscalculated the number of hours involved, and she refunded \$740.00 to Kane.

Before leaving on the trip, Kane asked Mullins to retrieve a pair of headphones for him from the home he was in the process of selling. She testified that she asked her unit manager to go with her because she was not comfortable going into a resident's home alone, and her unit manager discussed Kane's request with the director of nursing before Mullins went to retrieve the headphones.

Mullins also testified that, before the trip, Kane asked her to retrieve his car from his home because he wanted to travel to and from the airport in the car rather than renting a van to transport him. Mullins discussed Kane's request with Walnut Creek's administrator before going to get the car. After retrieving it, Mullins and other Walnut Creek employees helped Kane practice getting into and out of the car, and when it was apparent that he could do so with minimal assistance, it was decided that the car could be used to transport him to and from the airport. After returning from the trip, however, Mullins did not immediately return the car to Kane's home. She testified that, due to the flight delay and her husband's work scheduling issues, she was not able to do so right away. Three or four days after she and Kane returned from California, she arranged with Kane's caregiver to return the car.

Because Kane was in the process of selling his home, he was intending to sell many of his household furnishings at an auction. According to Mullins' unrebutted testimony, after returning from the California trip, Kane asked her to look around his house to see if there were any items she was interested in purchasing from him. Mullins and Kane agreed on the price of approximately \$250.00 for an older television, tray tables and a coffee maker; however, she did not immediately pay for these items. There was a delay which Mullins attributes to Walnut Creek reassigning her to a different unit or building and her not having an opportunity to see Kane until some time had passed. Ultimately, though, she paid him the agreed upon price.

Sometime after the trip, Kane's daughter-in-law, who lives in Hawaii, complained to Walnut Creek about the amount charged by Mullins. In addition, although it is not clear from the record how or when they became involved, there was

a police investigation of some of the circumstances. No charges were ever filed; however, following an internal investigation, Mullins was terminated for "exploitation of a resident" in violation of Walnut Creek policy. This "exploitation" was alleged to consist of Mullins overcharging for her services for the trip to California, taking items belonging to Kane without immediately paying for them, and keeping his car for an extended period of time. Mullins filed for unemployment benefits, and appellee-defendant Director, Ohio Department of Job and Family Services ("ODJFS") issued a determination allowing benefits and finding that Mullins had been discharged without just cause. April Enterprises appealed, and in its redetermination decision, ODJFS affirmed. April Enterprises appealed again, and ODJFS transferred the matter to the Ohio Unemployment Compensation Review Commission. Following a hearing, a decision was issued affirming the redetermination decision. The Review Commission disallowed the request of April Enterprises for further review, and this appeal followed.

The standard of review which this court must follow is contained in R.C. 4141.282(H) which provides, in pertinent part, as follows:

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.

See also, *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

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"[W]hen reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct." (Internal quotations and citation omitted.) *Clucas v. RT 80 Express, Inc.*, 9th Dist. No. 11CA009989, 2012-Ohio-1259, par.9. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d at 697.

Mullins claim for unemployment compensation benefits was allowed on the grounds that she was discharged without just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a). That section 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 . . . has been discharged for just cause in connection with the individual's work

"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." *Bates v. Airborne Express, Inc.*, 186 Ohio.App.3d 506, 2010-Ohio-741, 928 N.E.2d 1168 (2nd Dist.), quoting *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio.St.3d 15, 17, 482 N.E.2d 587 (1985); *Wilson v. Director, Ohio Department of Job and Family Services*, 8th Dist. No. 94692, 2010-Ohio-5611, par.16. Just cause for discharge need not reach the level of misconduct but there must be some fault on the part of the employee. *Johnson v. Edgewood City School District Board of Education*, 12th Dist. No. CA2008-11-278, 2010-Ohio-3135, par.11.

In order to award unemployment compensation, the just cause determination must be consistent with the legislative purpose underlying the Unemployment Compensation Act. *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, supra at 697. The Unemployment Compensation Act:

. . . was intended 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. . . The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. 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. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.

Id. at 697-698.

Since "fault is essential to the unique chemistry of a just cause termination, . . . the critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his or her actions demonstrated an unreasonable disregard for the employer's best interests." (Internal citations omitted.) *Johnson v. Edgewood City School District Board of Education*, supra at par.13, citing *Binger v. Whirlpool Corp.*, 110 Ohio.App.3d 583, 590, 674 N.E.2d 232 (6th Dist. 1996); *Janovsky v. Ohio Bur of Emp. Serv.*, 108 Ohio.App.3d 690, 694, 671 N.E.2d 611 (2nd Dist. 1996).

Each unemployment compensation case must be considered upon its particular merits in determining whether there was just cause for discharge. *Johnson v. Edgewood City School District Board of Education*, supra at par.14, citing *City of Warrensville Heights v. Jennings*, 58 Ohio.St.3d 206, 207, 598 N.E.2d 489(1991). The determination of just cause depends upon the "unique factual considerations" of

a particular case and is therefore primarily an issue for the trier of fact. *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d at 17.

This court can not conclude that the decision of the Review Commission was unlawful, unreasonable, or against the manifest weight of the evidence. Walnut Creek's Employee Handbook lists certain offenses for which an employee may be immediately terminated. These include "misappropriation of a resident's possessions." In addition, the facility's Abuse Prohibition Policy defines various conduct as "abuse," including misappropriation of property, which is defined as:

[T]he deliberate misplacement, exploitation or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

Mullins was terminated under these policies for overcharging for her services for the trip to California, taking items belonging to Kane without immediately paying for them, and keeping his car for an extended period of time. However, the hearing officer found this termination to be without just cause because none of the alleged acts occurred "in connection" with Mullins employment with Walnut Creek. This court agrees. Although Mr. Hochwalt initially introduced Mullins to Kane, all of the alleged misconduct occurred in connection with the trip to California, not in connection with services performed by Mullins in her capacity as an employee of Walnut Creek.

Moreover, this court can not find that the record demonstrates sufficient "fault" on the part of Mullins to constitute an unreasonable disregard for employer's best interests. Mullins and Kane negotiated the monetary terms of their agreement, and there was no evidence presented at the hearing that Kane was not competent or paid Mullins in excess of the amount the two of them negotiated. While the \$60.00 hourly

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rate charged by Mullins does seem high to this court, there was no evidence presented at the hearing to establish that the rate was, in fact, excessive for the type of services rendered by Mullins. It was, of course, April Enterprises' burden to provide such evidence, and it did not.

In addition, Mullins clearly followed proper procedures when obtaining Kane's headphones at his request, satisfactorily explained the delay in her return of his vehicle, which she arranged with his caregiver, and paid for the items Kane invited her to purchase. Therefore, the decision of the Review Commission is affirmed.

ENTER



Charles L. Pater, Judge

cc: Michael A. Hochwalt, Esq.
Robin A. Jarvis, Esq.

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