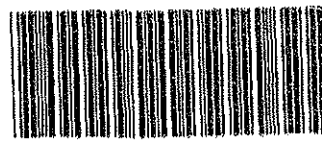


IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



D98461857

ENTERED
JUL 16 2012

KENNETH E. JOHNSON,

Case No. A1108039

Appellant,

Judge Nadine Allen

vs.

ENTRY ADOPTING THE
MAGISTRATE'S DECISION

DYK INCORPORATED, et al.,

Appellees.

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that disallowed benefits to the Appellant Kenneth Johnson. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, oral arguments, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

ENTER

JUL 16 2012

JUDGE NADINE ALLEN

NADINE L. ALLEN, JUDGE

MAGISTRATE

JUL 12 2012

HAS BEEN

3
B

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

KENNETH E. JOHNSON, et al.,

:

Case No. A1108039

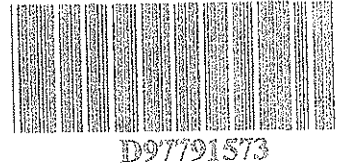
Plaintiffs,

:

Judge Allen

v.

:



DYK INCORPORATED, et al.,

:

MAGISTRATE'S DECISION

Defendants.

:

RENDERED THIS 25th DAY OF MAY, 2012.

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") May 27, 2011 Decision affirming the April 13, 2011 Ohio Department of Job and Family Services' ("ODJFS") Redetermination that claimant Kenneth E. Johnson ("Johnson") resigned from his position with DYK Incorporated ("DYK") without just cause.¹ This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' filed briefs on May 9, 2011.

BACKGROUND

Johnson was employed by DYK as a laborer, beginning on September 8, 2010.² On October 19, 2010 Johnson began feeling ill at work.³ Johnson notified his supervisor, Ron Toth ("Toth"), and went immediately to the hospital.⁴ Johnson was diagnosed as having a stroke and remained in the hospital for three (3) days.⁵ Johnson called Toth on October 20, 2010 and indicated he would not return to work due to this medical

¹ / *In re claim of Kenneth E. Johnson, H-2011013049.*

² / *Id.*

³ / *Id.*

⁴ / *Id.*

⁵ / *Id.*

←

condition.⁶ Johnson drove himself to the job site approximately a week later to pick up his final pay check and had no further contact with DYK.⁷

Johnson filed an Application for Determination of Benefit Rights for a year beginning on February 20, 2011.⁸ The ODJFS Director issued a Redetermination on April 13, 2011 finding that Johnson quit his job at EMS without just cause.⁹ Johnson appealed the Redetermination on May 4, 2011.¹⁰ On May 25, 2011, the Review Commission conducted a hearing on the appeal.¹¹ Following that hearing, the Review Commission issued a decision affirming the Redetermination and finding that Johnson quit his job without just cause on May 27, 2011.¹² Johnson appealed the Decision of the Review Commission to this Court, seeking reversal of his disqualification for unemployment benefits.¹³

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was “unlawful, unreasonable, or against the manifest weight of the evidence”, it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.¹⁴ Otherwise, the court shall affirm the decision.¹⁵ The reviewing court must follow this same standard in assessing just cause determinations.¹⁶ The determination of factual

⁶ / *Id.*

⁷ / *Id.*

⁸ / *Id.*

⁹ / *Id.*

¹⁰ / *Id.*

¹¹ / *Id.*

¹² / *Id.*

¹³ / Brief of Appellant, filed on February 29, 2012.

¹⁴ / Ohio Rev. Code § 4141.282(H) (West 2008).

¹⁵ / *Id.*

¹⁶ / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.¹⁷

JUST CAUSE

The Ohio Revised Code states:

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 quit work without just cause or has been discharged for just cause in connection with the individual's work[.]¹⁸

Each just cause determination must be based upon the merits of the particular case.¹⁹

‘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.’ ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists “to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis *sic.*) *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 123, 199 N.E.2d 3, 5. “The [A]ct 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.’ ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 52, 399 N.E.2d 76, 79. Thus, while a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.

¹⁷ / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).

¹⁸ / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).

¹⁹ / *Irvine*, *supra*, at 17.

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.²⁰

DISCUSSION

Johnson argues that the Decision of the Review Commission should be reversed because he was physically incapable of performing any work for DYK.²¹ Pursuant to R.C. §4141.29, a worker is eligible to for unemployment benefits when he is “able to work and available for suitable work”.²² Johnson argues he was completely unable to perform any type of work between October 20, 2010 and February, 2011, and did not claim benefits until he was able to work, at which time he was informed that DYK had no work for him because it had completed the project which it was contracted to perform.²³

The Ohio Supreme Court, in discussing employees’ resignation due to health issues, stated the following:

An employee’s voluntary resignation on the basis of health problems is without just cause within the meaning of R.C. 4141.29(D)(2)(a) when the employee is physically capable of maintaining a position of employment with the employer, but fails to carry her burden of proving that she inquired of her employer whether employment opportunities were available which conformed to her physical capabilities and same were not offered to her by the employer.²⁴

Johnson argues that the Review Commission erroneously focused solely on the “inquiry” portion of the *Irvine* standard.²⁵ According to Johnson, because he was unable

²⁰ / *Tzangas*, supra, at 697-98.

²¹ / Brief of Appellant, at 5.

²² / *Id.*

²³ / *Id.*

²⁴ / *Irvine v. Unemployment Compensation Board of Review* (1985), 19 Ohio St. 3d 15.

²⁵ / Appellant, at 7.

to perform any work or maintain any position with DYK, the threshold issue of the *Irvine* standard is not satisfied and, therefore, he should not have to carry the “inquiry” burden.²⁶

ODJFS argues that Johnson’s resignation was without just cause because he failed to advise DYK that his medical condition required that he quit employment or inquire about alternative positions with DYK before he quit employment on October 20, 2010.²⁷ According to ODJFS, it is well-settled that anyone who quits employment and expects to be paid unemployment benefits has a duty to try to rectify any issue with the employer before quitting, and that Johnson is no exception to the rule.²⁸ We agree. The court finds that Johnson had a duty to give DYK proper notice of his condition and an opportunity to rectify his employment situation before he voluntarily resigned, and waiting until after his claim for benefits was denied to give proper documentation is not sufficient.

The court finds that the Review Commission’s May 27, 2011 Decision finding Johnson quit his job without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the court finds that Johnson’s appeal is not well-taken.

DECISION

The unemployment compensation appeal of Appellant Kenneth E. Johnson is DENIED. The findings of the Unemployment Compensation Review Commission are AFFIRMED IN FULL. If this Decision is adopted by the trial Court, Claimant must comply fully with the May 27, 2011 Decision of the Unemployment Compensation Review Commission.

²⁶ / *Id.*

²⁷ / Brief of Appellee, at 5.

²⁸ / *Id.*



DAVID M. KOTHMAN
MAGISTRATE,
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

Robin A. Jarvis, Esq.
Assistant Attorney General
1600 Carew Tower
441 Vine Street
Cincinnati, OH 45202

Ryan K. Hymore, Esq.
Basil W. Mangano, Esq.
Counsel for Appellant
10901 Reed Hartman Hwy., Ste. 207
Cincinnati, OH 45242

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 5/30 Deputy Clerk: 