

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

CANYON MEDICAL CENTER, INC,	□	CASE NUMBER 12CV03-3931
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APPELLANT,	□	JUDGE CAIN
]]	
vs.	□	MAGISTRATE MCCARTHY
]]	
VICKI L. NEWMAN, ET AL.,	□	
]]	
	□	
APPELLEES]]	

DECISION TO AFFIRM
AND
JUDGMENT ENTRY

CAIN, J.

This is an administrative appeal from an adjudication order issued by the Unemployment Compensation Review Commission on March 1, 2012 granting appellant's request for unemployment compensation. The commission's operative decision at the review level found that appellant's employment was not terminated for just cause in connection with her work. This decision followed a supplemental evidentiary presentation and was embodied in an adjudication order that was contrary to what earlier administrative decisions had found. Those lower decisions found appellee to be disqualified from receiving benefits in accordance with R.C. 4141.29(D)(2)(a), which disqualifies from benefits one who was fired for just cause in connection with her work.

A review of the record reveals appellee was employed by appellant for 13 months in a secretarial role dealing with medical patient scheduling. Appellant is a medical center housing a number of practicing physician's offices.

In reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court may reverse the commission's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. § 4141.282(H). Otherwise, the court must affirm such decision. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, at 696. Reviewing courts should defer to the commission's findings regarding the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

Although a reviewing court may not make factual findings or determine the credibility of witnesses, it has the duty of determining whether the evidence in the record supports the administrative agency's decision. *Tzangas*, supra at 696. The court may not reverse the decision of the agency, however, simply because it interprets the evidence differently than did the agency. *Angelkovski*, supra at 161. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the agency's decision. *Tzangas*, supra.

In the instant action, and when considering the issue of whether the discharge of appellee was for just cause, the consideration must focus on the reason the employment relationship was brought to a conclusion. "The term 'just cause' has not been clearly defined in our case law. We are in agreement with one of our appellate courts that 'there is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. 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 v. Unemp. Comp. Bd. of Review (1985), 19 Ohio St.3d 15, 482 N.E.2d 587, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.

In this case, appellant contends that the evidence did not support the finding that appellee was not discharged for good cause. Appellant asserts that good cause exists because appellee was fired for a violation of company rules and policy. By way of relevant background, appellee was praised as a good employee in her periodic performance evaluation, except for some interpersonal employee shortcomings. In June 2011, she found herself in an office squabble with a coworker. It got to the point where the supervisor directed that there be a “cooling off” period of two days.

At that time, and while at home, appellee composed a correspondence to one of the management personnel to recap the recent events and offer more of her side of the on-going friction at work. The correspondence was in the form of an email directed to the supervisor and copied to three of the medical center’s physicians.

While apparently intending to send the correspondence to just the four mentioned individuals, appellee actually sent the email to 48 of the medical center’s computer terminals. When she realized the next day what had occurred, she expressed surprise and apprehension. An IT representative was contacted who successfully blocked all but five of the digital transmissions. Following this, appellant was let go from appellant’s employ.

The first of the reasons for her employment termination was for the unprivileged transmission of an email containing malicious gossip and derogatory remarks about a co-worker. Appellant claimed her transmission was done in error

and without intent to publish the information generally. Appellant argues, however, that the commission “erroneously applied and intentional fault standard to the facts of this case” by concluding that appellee was not let go for just cause.

As noted by appellant, conscious intent to violate a work rule is not the standard to be employed in making a just cause determination. As noted above, just cause is measured by a consideration of the reason for conduct that led to the firing and whether actor, to an ordinarily intelligent person, is able to demonstrate a justifiable reason for such conduct.

Here, the conduct to be considered was the wide-spread dissemination of an email. Appellee claimed the broad transmission was due to human error. If found to be credible by the finders of fact, as was the case here, appellant’s conduct clearly can be justifiable inasmuch as one of the burdens of the human condition is susceptibility to unwitting mistake.

"A mere violation of a company work rule does not always rise to the level of fault required on the part of the employee to justify the denial of unemployment benefits. *** In determining whether [the] employee has been discharged for 'just cause' for unemployment compensation purposes, *the critical issue is not whether [the] employee has technically violated some company rule, but whether [the] employee by his or her actions demonstrated unreasonable disregard for [the] employer's best interest.*" (Emphasis added.) *Apex Paper Box Co. v. Ohio Bur. of Emp. Services*, 2000 Ohio App. LEXIS 2038, Cuyahoga County. See also, *Fredon Corp. v. Zelenak* (1997), 124 Ohio App.3d 103, 109; *Piazza v. Ohio Bur. of Emp. Services* (1991), 72 Ohio App.3d 353, 357.

In support of its position, appellant calls the court's attention to *Stark Area Reg'l Transit Auth. v. Dir., Ohio Dep't of Job & Family Servs.*, 187 Ohio App. 3d 413, 2010 Ohio 2142, 2010 Ohio App. LEXIS 1754 (Stark County 2010). In *Stark*, an employer gave his employee a form to fill out regarding whether the employee's spouse was covered by health insurance. In filling out the form, the employee made two material misrepresentations concerning his wife's coverage. Upon learning of the incorrect information being provided, the employer informed the employee that he could voluntarily resign or he would be discharged. While his claim for unemployment benefits was initially denied on the ground that he had quit without just cause, the commission concluded that the employee had been discharged without just cause. On appeal, the court held that, while it had to defer to the hearing officer's finding of fact that the employee made a mistake (not a deliberate misrepresentation) on the form, it disagreed with the conclusion that it was not an error sufficient to justify the employee's termination because the mistake went to the very heart of the purpose for the questionnaire. In other words, the claimed mistake was central to the important matter being explored.

In the case at bar, however, no assertive misrepresentations were made in any form. The mistake was not one concerning a response to an inquiry. The mistake here was simply "pressing the wrong button." Because the facts and issues in *Stark* are materially dissimilar from those in the instant action, this court finds no useful value in the holdings of the case. Thus, and upon consideration, appellant's first contention is found to be without substantial merit.

Next, appellant contends the commission ignored the manifest weight of the evidence because it ostensibly failed to consider all of appellee's disruptive

behavior leading up to the email and the damaging aftermath of her email on Canyon's work environment. Appellant observes it terminated appellee's employment because of her unprofessional and disruptive pattern of behavior.

The evidence before the commission, however, was that just one month prior to her termination, appellee was given a fine job performance evaluation. That evaluation included praise for appellee for her consistency, self-reliance and resourcefulness. The evaluation went on to note appellant "demonstrate[s] eagerness and capacity to learn" and "plans and organizes with little or no assistance" and is an "effective communicator with patients." It further noted that appellee followed through and completed all required patient scheduling and noted, that appellee "is very pleasant and professional when communicating with patients."

It is additionally noted that prior to her employment termination, appellee was not the subject of any disciplinary action concerning her work performance or issues related to her employment. If, as appellant suggests, appellee displayed an "unprofessional and disruptive pattern of behavior" (emphasis sic), that was not supported by the weight of the evidence. If appellee had a pattern of violating company rules, one would have expected to find that fully supported by warnings, reprimands, suspension or the like.

It has been held that when the reason for discharge is a policy violation, the reason can only constitute just cause if the policy was fair and was fairly applied. *Harp v. Bur. of Unemp. Comp.* (1967), 12 Ohio Misc.34; *Shaffer v. American Sickle Cell Anemia Assn.*, 1986 Ohio App. LEXIS 7116, Cuyahoga County; *Eagle-Picher Industries, Inc. v. Ohio Bur. Of Emp. Serv.* (1989), 65 Ohio

App. 3d 548, 550-551. To be "fair" a policy must be communicated to the employee. *Shafffer*, supra, *Apex Paper Box Co.*, supra.

Upon a full consideration, it is found that the decision granting unemployment benefits to appellant is not unlawful, unreasonable, or against the manifest weight of the evidence. It is therefore **affirmed**.

Accordingly, judgment is hereby granted in favor of appellee. Costs to be paid by appellant.

Copies to:

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Appellee

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Counsel for Appellee OSDJFS

Franklin County Court of Common Pleas

Date: 07-31-2012

Case Title: CANYON MEDICAL CENTER INC -VS- VICKIE L NEWMAN

Case Number: 12CV003931

Type: MAGISTRATE DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 12CV003931

Case Style: CANYON MEDICAL CENTER INC -VS- VICKIE L NEWMAN

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes