

**IN THE COMMON PLEAS COURT
GENERAL DIVISION
BUTLER COUNTY, OHIO**

LORI V. SIMMONS,

*

Case No.: CV 2011-10-3706

Appellant,

*

JUDGE: NOAH E. POWERS II

vs.

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

FILED BUTLER CO.
COURT OF COMMON PLEAS
SEP 10 2012
MARY L. SWAIN
CLERK OF COURTS

**DECISION AND ENTRY
AFFIRMING THE DECISION OF
THE REVIEW COMMISSION**

Final Appellate Order

Appellees.

*

THIS MATTER is before the Court on an administrative appeal from the decision of the Unemployment Compensation Review Commission ("UCRC") disallowing Appellant Lori Simmons' request for review of an unfavorable decision whereby it was found that her employer, Community Behavioral Health, Inc. ("CBH"), terminated her for just cause.

The matter has been fully briefed. It should be noted that Appellant did not file a reply brief in support. The Court has reviewed the certified record, briefs of counsel, and applicable law.

PROCEDURAL HISTORY

On January 27, 2011, Appellant was terminated from her position with CBH. Shortly thereafter, she filed for unemployment benefits. On February 16, 2011, Director of Ohio Department of Job and Family Services ("ODJFS"), issued an initial determination that Appellant was discharged for just cause, to wit: unsatisfactory work performance. Appellant was, therefore, ineligible for unemployment benefits. The

determination was upheld in the Director's Redetermination filed on April 4, 2011. In accordance with her appeal rights, Appellant appealed the determination to the UCRC.

On April 26, 2011, pursuant to R.C. §4141.281, ODJFS transferred the file to the UCRC. A hearing was held on June 30, 2011, which was continued in progress to July 18, 2011.

On July 19, 2011, the Hearing Officer affirmed the Director's Redetermination. Appellant then sought a review by the UCRC which was denied via its *Decision Disallowing Request for Review* mailed on September 22, 2011. Said decision is now before this Court.

BACKGROUND

Appellant was hired by CBH on February 22, 2005, as an alcohol and drug counselor, known also as a licensed chemical dependency counselor ("LCDC"). Her initial job entailed working in CBH's drug court program, but she was later transitioned to serving as a counselor in CBH's intensive outpatient treatment program; the position she was holding at the time she was terminated for nonperformance.

ANALYSIS

R.C. 4141.282(H) clearly defines the role of this Court in reviewing an administrative decision: "The court shall hear the appeal on the certified record provided by the commission. 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."

In his case, Appellant sets forth what appears to be two contentions as to why the decision of the UCRC's decision was unlawful and against the manifest weight of the evidence.

First, Appellant contends that her job changed from her initial employ and, therefore, CBH's complaints as to her inability to properly bill are insufficient to rise to the level of just cause. *Tzangas v. Administrator, Ohio Bureau of Employment Services* (1995), 73 Ohio St.3d 694, 698-699. A review of the entire record supplied by the UCRC shows that the standard for just cause cited in *Tzangas* was used throughout the determination of Appellant's eligibility for benefits.

Additionally, the record is replete with references to assistance and meetings regarding CBH's concerns with Appellant's performance, which was also considered at all levels of Appellant's case. The Court, therefore, finds that Appellant's first contention is without merit.

Appellant's second contention as to why the UCRC's determination should be set aside appears to focus on her failure to attend the July 18, 2011 hearing, which was continued in progress from June 30, 2011. Appellant contends that she missed the hearing due to a medical emergency and provided, via fax, what appears to be a sheet indicated that she was admitted to Ft. Hamilton Hospital on July 19, 2011, one day after the hearing. The document states that it is page one of three, and does not provide any information regarding Appellant's visit to the hospital, as the majority of the information appears to have been redacted. The fax was provided to the UCRC on July 25, 2011.

R.C. §4141.281(D)(5) provides:

For hearings at either the hearing officer or review level, if the appealing party fails to appear at the hearing, the

hearing officer shall dismiss the appeal. The commission shall vacate the dismissal upon a showing that written notice of the hearing was not sent to that party's last known address, or good cause for the appellant's failure to appear is shown to the commission within fourteen days after the hearing date.

As provided above, Appellant could request that the Commission vacate its decision upon a showing that Appellant did not get notice, which Appellant does not contend, or that she missed the hearing for good cause. In this case Appellant, within fourteen days of the hearing date, faxed what she believes was a good cause for her to miss the hearing.

The UCRC in its *Decision Disallowing Request for Review*, mailed September 22, 2011, stated that “[u]pon consideration thereof, and upon a review of the **entire record**, the Commission concludes that the request for Review should be disallowed.” (Emphasis added.) As indicated above, the record provided to this Court contains a document dated one day after the hearing from a hospital which indicated that Appellant was seen for some undisclosed reason. Additionally, the record contains a letter by Appellant provided in conjunction with the document from Ft. Hospital in which she stated that due to a medical emergency she was unable to attend the July 18, 2011 hearing.

Therefore, the Court finds that when issuing its decision, the UCRC took into consideration Appellant's attempt to set forth a good cause for her failing to appear at the hearing.

“While ‘good cause’ is not defined under Ohio Unemployment Compensation Law, the Ohio Supreme Court has dealt with the term in workers compensation cases. In *Hawkins v. Inds. Comm. Of Ohio*, the Supreme Court found that ‘good cause’ for a change of payment request can be established through unforeseen or changed

circumstances.” *Lorain County Auditor v. Unemployment Compensation Review Commission*, 9th Dist. No. 03CA008412, 2004-Ohio-5175, at ¶ 11, citing *State ex rel. Hawkins v. Indus. Comm. Of Ohio*, 100 Ohio St.3d 21, 2003-Ohio-4765, at ¶ 7. The Court held that “good cause requires a lack of culpability of the part of the appealing party.” *Lorain County* at ¶ 18. In this case, Appellant simply provided a blank document from a hospital dated the day after her hearing was set. The Court, therefore, finds that Appellant’s second contention is without merit.

CONCLUSION

The Court, based solely upon the certified record provided, as required by R.C. §4141.282(H), finds that the decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence.

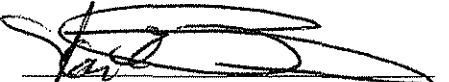
THEREFORE, THE COURT FINDS Appellant Lori Simmons’ appeal not well taken.

ENTRY

IT IS, THEREFORE, ORDERED that the decision of the Unemployment Compensation Review Commission, be, and the same is hereby **AFFIRMED**.

JUDGE NOAH E. POWERS II
Common Pleas Court
Butler County, Ohio

SO ORDERED:


NOAH E. POWERS II, JUDGE

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JUDGE NOAH E. POWERS II
Common Pleas Court
Butler County, Ohio