

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED

SEP 24 2012
Dennis Helmick

DENNIS S. HELMICK, Judge

KIMBERLY L. NORMAN,
Plaintiff,

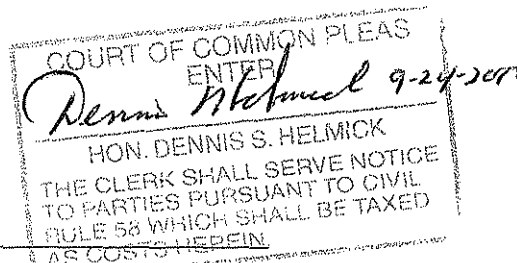
-v-

SAYVA HEALTH CARE, et al,
Defendants.

CASE NO. A1108034

JUDGE DENNIS S. HELMICK

ENTRY AFFIRMING THE MAY
21, 2012 MAGISTRATE'S ORDER



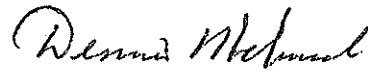
This action has come before the Court pursuant to Appellant Kimberly Norman's appeal from the Unemployment Compensation Review Commission's September 15, 2011 Decision. This Decision found that Kimberly Norman had been discharged by Sayva Health Care Inc. with just cause¹.

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 Commission². The reviewing Court must follow this standard in assessing just cause determinations¹.

¹ Decision of the Magistrate May 21, 2012.

² R.C. 4141.282(H).

After reviewing the case file as well as the file from the Compensation Bureau dated November 28, 2011, the Court finds that the administrative decision by the Review Commission was a proper just cause determination. Therefore, the May 21, 2012 Decision of the Magistrate is hereby AFFIRMED.



DENNIS S. HELMICK, Judge

September 24, 2012

CERTIFICATE OF SERVICE

The Court hereby certifies that a copy of the above Entry Affirming the May 21, 2012 Magistrate's Order was served by ordinary U.S. Mail on September 24, 2012, upon the following:

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

Geoffrey P. Damon, Esq.
214 East Ninth St.
5th Floor
Cincinnati, OH 45202



DENNIS S. HELMICK, Judge

IN THE COMMON PLEAS COURT OF
HAMILTON COUNTY, OHIO

KIMBERLY L. NORMAN,

Appellant,

v.

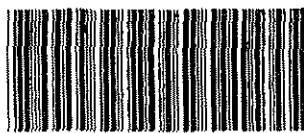
SAYVA HEALTH CARE, et al.,

Appellees.

Case No. A1108034

Judge Dennis S. Helmick

MAGISTRATE'S DECISION



D97720461

RENDERED THIS 21st DAY OF MAY, 2012

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") September 15, 2011 Decision Disallowing Request for Review of the July 28, 2011 Review Commission hearing officer's Decision finding that Appellant Kimberly L. Norman ("Appellant") was discharged by Sayva Health Care Inc. ("Sayva") with just cause.¹ This appeal, filed pursuant to R.C. 4141.282, was taken under submission upon the conclusion of oral arguments made before the Common Pleas Magistrate.

BACKGROUND

The Appellant filed for unemployment compensation benefits. Appellee Director, Ohio Department of Job and Family Services ("Director"), issued an initial determination that disallowed benefits finding that the Appellant quit work without just cause. After appeal, the Director issued a modified Redetermination but the Director affirmed that portion of the initial determination that disallowed benefits finding that the Appellant quit

¹ Decision of the Review Commission mailed July 28, 2011.

work without just cause. The Appellant filed an appeal from the Redetermination. The Director transferred jurisdiction to the Review Commission.

An evidentiary hearing was held before a hearing officer for the Review Commission. The hearing officer held that the Appellant was discharged for just cause. The Appellant's request for further review by the Review Commission was disallowed.

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.² Otherwise, the court shall affirm the decision.³ The reviewing court must follow this same standard in assessing just cause determinations.⁴ The determination of factual 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.⁵

DISCUSSION

The Appellant worked for Sayva as a Licensed Practical Nurse.⁶ The Appellant's sister, Sabrina Chapman, was the Director of Nursing ("DON") when she applied for the LPN position. The Appellant's application does not indicate that the Appellant had any work restrictions. The Appellant's application states that she is available for weekends, overtime, fulltime or part time. The Appellant was hired as an

² R.C. 4141.282(H).

³ *Id.*

⁴ *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17-18, 482 N.E.2d 587 (1985).

⁵ *Tzangas, Plakas and Mennos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694, 697, 653 N.E.2d 1207 (1995). See also *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App. 3d 159, 161-162, 463 N.E.2d 1280 (1983) (overruled in *Tzangas* for other reasons).

"at will" employee. Appellant was not a member of a union nor did she have an employment contract with the Sayva.

A new DON took over at Sayva on March 23, 2011, and the Appellant was asked to change her work schedule by the new DON. Sayva offered the Appellant Sundays off from work after she explained that she could not work on Sundays because of church. Sayva wanted the Appellant to work Thursdays from 7:00 a.m. until 3:00 p.m. The Appellant has school on Thursday from 6:00 p.m. to 10:00 pm. The Appellant refused to work on Thursday during the day. (Tr. pp. 10, 16). The Appellant offered instead to work fewer hours by not working Thursdays and allowing another person to work her Wednesdays. Sayva discharged the Appellant after she refused to work the requested schedule.

The Appellant contends that the decision of the Review Commission was unlawful, unreasonable and against the manifest weight of the evidence because the Employer failed to appear for the hearing before the Review Commission and provide testimony that was contrary to the Appellant's testimony indicating that she was discharged because representatives from Sayva were retaliating because her sister quit employment.

ODJFS contends that the evidence shows that the Appellant refused to work the schedule that was recommended by Sayva without legal right to do so. Further, it contends that the Appellant's testimony is sufficient to affirm the decision of the Review Commission because the Appellant admitted in her testimony that Thursday hours were offered to her by Sayva in exchange for Wednesday hours and she refused to work

⁹ (Tr. p. 5) Unless otherwise noted, references are to specific pages of the transcript of the hearing held on July 14, 2011.

them because she did not want to work on a day that she had to report to school during the evening.

An applicant is not entitled to unemployment benefits if she is discharged for just cause. R.C. 4141.29(D)(2)(a). Just cause is defined by the courts as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act."⁷ Each case must be considered upon its particular merits.⁸

Ohio case law holds that an employee is considered to have been discharged for just cause when "the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests."⁹ The employee's conduct need not rise to the level of misconduct, but there must be a showing of some fault on the employee's part.¹⁰

The Court finds that there is credible evidence to support the hearing officer's decision. The Appellant demonstrated an unreasonable disregard for Sayva's best interest when she refused to work the recommended schedule without good reason. The evidence does not show that Sayva retaliated against the Appellant. The Court is restrained from making its own factual determination in a case if a judgment is supported by some competent credible evidence.¹¹ The Decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence.

⁷ *Irvine v. Unemployment Comp. Bd.*, 19 Ohio St.3d at 15, 482 N.E.2d 587 (1985).

⁸ *Irvine, supra.*

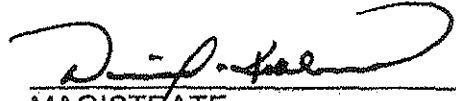
⁹ *Kiikka v. Ohio Bur. of Emp. Services*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (1985).

¹⁰ *Sollers v. Board. of Rev.*, 1 Ohio App.3d 161, 440 N.E.2d 550 (1981).

¹¹ *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 678 (1978).

DECISION

The Decision of the Unemployment Compensation Review Commission is hereby AFFIRMED.



MAGISTRATE

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

Geoffrey P. Damon, Esq.
214 East Ninth Street, Fifth Floor
Cincinnati, OH 45202

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: 5/23

Deputy Clerk: 