

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

SHAWN TURNER,

CASE NO. 2012 CV 02864

Appellant,

JUDGE STEVEN K. DANKOF

-vs-

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES, et al,

FINAL AND APPEALABLE, DECISION,
ENTRY AND ORDER AFFIRMING THE
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION'S
DETERMINATION THAT APPELLANT
WAS FIRED FOR JUST CAUSE

Appellees.

This matter is before the Court on Appellant Shawn Turner's April 20, 2012 administrative appeal from a decision of the State of Ohio Unemployment Compensation Review Commission ("Review Commission") ("Appellant-Turner's Appeal"). On June 1, 2012, a written transcript of the administrative proceedings was filed. On August 10, 2012, Appellant-Turner filed his Brief. On August 21, 2012, the Brief of Appellee Director, Ohio Department of Job and Family Services ("Appellee-ODJFS") was filed; and on September 10, 2012, the Brief of Appellee Accutech Films, Inc. ("Appellee-Accutech") was filed. On September 14, 2012, Appellant-Turner filed his Reply.¹ This matter is now properly before the Court pursuant to R.C. 4141.282.

I. STATEMENT OF THE CASE AND FACTS

On October 12, 2011, Appellant-Turner made a claim to Appellee-ODJFS for unemployment compensation. On November 10, 2011, Appellee-ODJFS denied Appellant-Turner's application for unemployment compensation benefits, and issued a decision accordingly.² On December 1, 2011, Appellant-Turner appealed the decision, seeking a redetermination, and on December 23, 2011, the decision was

¹ More accurately, Appellant-Turner filed two replies, although the Court's order clearly indicated one was sufficient.

² November 10, 2011, Determination of Unemployment Compensation Benefits.

modified and benefits were allowed.³ On December 28, 2011, Appellee-Accutech appealed, and the case was transferred to the Review Commission for determination.⁴

On January 10, 2012, a Notice of Telephonic Hearing set for January 23, 2012, at 3:30 p.m. was sent by the Review Commission.⁵ Appellant-Turner called in for his hearing, represented by Attorney Chad Burton; conducted by Hearing Officer Valerie A. Roller (“Hearing Officer Roller”).⁶ Appellee-Accutech was represented by Attorney Brian Niemeyer.⁷ Ms. Kelli Steinbrunner (“Steinbrunner”), Human Resources Manager, testified as a witness on behalf of Appellee-Accutech.⁸

On February 21, 2012, Hearing Officer Roller issued a decision *reversing* the Director’s Redetermination and finding that Appellant-Turner was discharged for just cause from his employment with Appellee-Accutech.⁹ Hearing Officer Roller also ordered that Appellant-Turner immediately repay any benefits he previously received.¹⁰

On March 13, 2012, Appellant-Turner requested review of the Review Commission’s decision — Appellant-Turner’s request for review was denied on March 22, 2012.¹¹ On April 20, 2012, Appellant-Turner initiated his instant administrative appeal.¹²

Appellant-Turner worked for Appellee-Accutech from September 30, 2002, through October 17, 2011.¹³ Immediately before his termination, Appellant-Turner’s last position title was “Director of Sales”.¹⁴ Appellee-Accutech alleges a series of events that led to Appellant-Turner’s termination: specifically, an e-mail exchange on October 13, 2011, with Mr. Bornhorst regarding Appellant-Turner’s failure to complete a

³ Director’s December 23, 2011 Redetermination.

⁴ January 5, 2012 Notice from Unemployment Compensation Review Commission

⁵ From the transcript provided to the Court, there were four levels of the administrative review process in this case. First, the claimant-employee applies to the Director of the Ohio Department of Job and Family Services for unemployment compensation. Second, an appeal is made to the same Director for a redetermination. Third, an appeal may be made to the Unemployment Compensation Review Commission, where a hearing officer holds an on the record hearing, and issues a decision. (This level of the administrative process will be referred to as the “hearing officer level”). Fourth, an appeal can be made to the Review Commission for review of the hearing officer’s decision. See Ohio Rev. Code § 4141.281.

⁶ June 27, 2011, Decision of State of Ohio, Unemployment Compensation Review Commission.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ March 22, 2012 Decision of State of Ohio, Unemployment Compensation Review Commission.

¹² See Docket. April 20, 2012 Notice of Administrative Appeal.

¹³ January 23, 2012 Hearing Transcript (“Tr.”), Page 24, ll. 15-18.

¹⁴ Tr. P. 24, ll. 19-22.

form and his subsequent refusal to attend an in-person meeting.¹⁵ Additionally, Appellant-Turner had previously been warned that his communication skills required improvement.¹⁶ Specifically, Appellant-Turner was informed that e-mails he sent to other employees were unprofessional.¹⁷

The Court hereby reviews this matter.

II. STANDARD OF REVIEW

The Unemployment Compensation Review Commission's determination is appealable to the court of common pleas.¹⁸ This Court cannot make factual findings or determine the credibility of witnesses.¹⁹ Rather, this Court's limited role is to determine whether the Review Commission's decision is supported by the evidence in the record.²⁰ In other words, the court may not reverse the commission's decision simply because reasonable minds might reach a different conclusion.²¹

Courts may reverse, vacate, or modify the Review Commission's determination regarding "just cause" only if "the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence."²² Courts have no authority to upset the Review Commission's decisions on close questions, i.e., where the Review Commission might reasonably decide either way.²³ Courts should only reverse a Review Commission determination reaching an unreasonable conclusion from essentially undisputed evidence at the administrative hearing.²⁴

III. LAW AND ANALYSIS

Although undefined by statute, "just cause" has been determined by the Court to mean, "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."²⁵ Determinations of whether "just cause" exists in a particular circumstance must be analyzed in conjunction

¹⁵ Tr. P. 10, ll. 9-26, P. 11, ll. 1-22.

¹⁶ Tr. P. 12, ll. 1-25.

¹⁷ *Id.*

¹⁸ *Williams v. Ohio Dept. of Job and Family Serv.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² R.C. 4141.282; see also *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985); *Tzangas v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995), at paragraph one of the syllabus.

²³ *Irvine* at 18.

²⁴ R.C. 2506.04; *Madison Twp. Bd. of Trustees v. Donohoo*, 2nd Dist. No. 14007, 1994 Ohio App. LEXIS 4595 (October 12, 1994).

²⁵ *Williams*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, at ¶ 22.

with the legislative purpose underlying the Unemployment Compensation Act²⁶ - to enable unfortunate employees, who become and remain involuntarily employed by adverse business conditions, to subsist on a decent level.²⁷ The Act, however, is not intended to protect employees from themselves, but to protect them from economic forces that they do not control.²⁸ 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.²⁹

"Just cause" determinations are fact sensitive and must be determined on a case-by-case basis.³⁰ The burden of proving entitlement to unemployment compensation falls squarely upon the claimant per R.C. 4141.29 (D)(2)(a).³¹ Termination for "just cause" requires fault on the part of the employee.³² Fault may manifest itself in the form of willful or heedless disregard of a duty, violation of employer instructions, or unsuitability for a position.³³

In this case, Appellant-Turner refused to attend meetings and to fill out work-related forms at the direct request of his superior. Moreover, Appellee-Accutech had previously warned Appellant-Turner about unprofessional communications via e-mail, directing him to improve his communication skills toward his fellow co-workers.

Appellant-Turner argues that his actions and statements were misunderstood and/or were taken out of context by Appellee-Accutech. The Review Commission determined that whatever Appellant-Turner's intention, the record reflected disruptive behavior by Appellant-Turner, and that Turner's actions were contrary to his superior's directions. Consequently, the Review Commission determined that Appellant-Turner was terminated for "just cause" as a result of his insubordination.

Although reasonable minds might conclude that Appellant-Turner's actions and words may have been misunderstood, ample evidence exists in the record that reasonably led the Review Commission to conclude that Appellant-Turner's conduct was insubordinate. Therefore, the Review Commission's decision

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587.

³² *Williams*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, at ¶ 24.

³³ *Id.*

to deny Appellant-Turner's unemployment benefits was not unlawful, unreasonable, or against the manifest weight of the evidence.

IV. CONCLUSION

By reason of the foregoing, the Court hereby **AFFIRMS** the Unemployment Compensation Review Commission's decision below in all respects including Appellant-Turner's repayment of any and all unemployment benefits previously received.

SO ORDERED:

JUDGE STEVEN K. DANKOF

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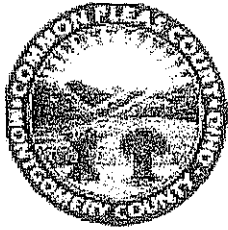
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Case Title: SHAWN TURNER vs UNEMPLOYMENT
COMPENSATION REVIEW COMMISSION
Case Number: 2012 CV 02864
Type: Decision Confirming Admin. Agency Decision

So Ordered

A handwritten signature in black ink, appearing to read "Steven K. Dankof", is written over a horizontal line.

Steven K. Dankof