



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

224 PROPERTIES, INC.)	
DBA BLUE WOLF TAVERN)	CASE NO. 2011 CV 3888
)	
Appellant,)	Judge Maureen Sweeney
)	
vs.)	
)	<u>JUDGMENT ENTRY</u>
JANI L. NEWTON, ET AL,)	
)	
)	
Appellees)	

This is an unemployment compensation administrative appeal in which the Claimant, Jani L. Newton, was ultimately granted benefits after a hearing at the Unemployment Compensation Review Commission. The Claimant's former Employer is the Appellant.

The facts show that Claimant worked as an event coordinator for the Employer, from May, 2004 until April 9, 2011. Claimant had worked for the prior business beginning in 2001, but the Employer's company was formed in May, 2004. Claimant's husband was the minority shareholder of the three shareholders in the company. In November, 2010, there were discussions about Claimant and her husband moving to another state to open a restaurant, and Claimant's husband's shares in the business were to be bought out. Negotiations began with respect to the purchase of the shares.

In April, 2011, Claimant's husband and the other shareholders held a meeting regarding the buyout. Claimant did not attend the meeting. At the meeting, Claimant's employment was discussed, including the date Claimant would stop working at the restaurant. The three shareholders agreed that Claimant's last day would be April 9, 2011. This information was reported to Claimant, while discussions were still underway for the buyout of Claimant's

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husband's shares in the business. The buyout was not completed until the end of May, 2011. Claimant was discharged effective April 9, 2011, the date agreed upon by the shareholders.

The Court is required to observe the standard of review set forth in R.C. 4141.282(H), when considering appeals of decisions rendered by the Review Commission. That section states:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

This strict standard of review was reiterated in the leading case on Ohio unemployment compensation law, *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694. In *Tzangas*, the Ohio Supreme Court specified that: “[t]he board’s role as factfinder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Id.* at 697. The standard of review in *Tzangas* has been affirmed by the Ohio Supreme Court. *Williams v. Ohio Department of Job & Family Services*, 2011-Ohio-2897 (Ohio Sup. Ct.), at ¶ 19.

Although the Review Commission’s decision should not be “rubber-stamped,” this court may not rewrite the Commission’s decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. Our only duty is to determine whether the decision of the review commission is supported by evidence in the certified record. *Roberts v. Hayes*, 2003-Ohio-5903, at ¶ 12. If support is found in the record, the court cannot substitute its judgment for that of the Review Commission. *Id.*

The determination of factual questions is primarily a matter for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511. As the factfinder, the Review Commission is vested with the power to review the evidence and believe or disbelieve the testimony of the witnesses. Even though reasonable minds could reach

different conclusions on the basis of these facts, it is not a basis for the reversal of the Review Commission's decision. *Roberts v. Hayes, supra, citing Irvine v. State of Ohio Unemp. Comp. Bd. Of Rev.*, (1985), 19 Ohio St. 3d 15, at 18. If some credible evidence supports the commission's decision, the reviewing court is required to affirm. *C.E. Morris v. Foley Construction Co.* (1978).

In this case, the Claimant was granted benefits on the ground that she was discharged without just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a). This section provides in pertinent part as follows:

(D) 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 * * * has been discharged for just cause in connection with the individual's work.

"Just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine, supra*, at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. Each case must be considered upon its particular merits. *Irvine, supra*.

Ohio case law holds that an employee is discharged for just cause when "the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests." *Kiikka v. Ohio Bur. of Emp. Services* (1985), 21 Ohio App.3d 168, 169. The employee's conduct need not rise to the level of misconduct, but there must be a showing of some fault by the employee. *Sellers v. Bd. of Review* (1981), 1 Ohio App.3d 161. As stated in *Loy v. Unemp. Comp. Bd.* (1986), 30 Ohio App.3d 1204, 1206, the "just cause" test for discharge is whether the discharge

was due to the culpability of the employee rather than due to circumstances beyond the employee's control. The determination of "just cause is a factual inquiry". *Reddick v. Sheet Metal Products Co., Inc.*, 2010-Ohio-1160 (11th District), at ¶ 19, *citing Irvine, supra*; *Kosky v. American General Corp., et al*, 2004-Ohio-1541 (7th District No. 03 BE 31, 04-LW-1371), at ¶14, *citing Irvine*. Whether just cause for discharge exists is dependent upon the particular "factual circumstances of each case". *Reddick*, at ¶ 22.

The Review Commission Hearing Officer found that the evidence demonstrated that the reason for Claimant's discharge was not due to her fault or any actions on her part, but for the reason that Claimant's husband's shares in the business were bought out by the other two shareholders and in the process, the shareholders determined Claimant's final day at work. Thus, Claimant's actions did not demonstrate the fault necessary to find just cause for discharge. Claimant did not disregard the best interests of the Employer. She was not culpable for the decision of the three shareholders. Claimant's job loss was a consequence of the buyout of her husband's shares in the business, not as a result of anything the Claimant herself did.

Based on a complete review of the certified Record, the Review Commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence. The Review Commission's decision is therefore AFFIRMED. Costs to Appellant.

OCT 16 2012

DATE


HONORABLE MAUREEN A. SWEENEY

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5