IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

CLOSSMAN CATERING, LLC,

Plaintiff/Appellant

vs.

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

Defendants/Appellees

Case No. CV2012 07 2792

(Charles L. Pater, Judge)

ORDER REVERSING THE DECISION OF THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION

FINAL APPEALABLE ORDER

This is an administrative appeal pursuant to R.C. 4141.282. Plaintiff-appellant Clossman Catering, LLC. has appealed from the decision of the Ohio Unemployment Compensation Review Commission, which held that defendant-appellee Richard J. Cox was discharged by Clossman, his employer, without just cause. Based upon the pleadings and other matters of record herein, including the record of proceedings before the Review Commission, the decision of the Review Commission is REVERSED.

Cox was employed by Clossman from September 17, 2007 to February 23, 2012 as a delivery driver for the Meals on Wheels program. At the time he was hired, Cox received a copy of Clossman's inartfully drafted auto insurance/employee deductible policy which provides, in pertinent part:

> Clossman Catering, L.L.C. is responsible for paying coverage loss above the deductible amount shown in the declarations. Employees are responsible for the deductible the amount of loss to be paid no greater than $500.00. (*sic*)

> Clossman Catering, L.L.C. may payroll deduct the amount owed in which the employee is responsible for. (*sic*)

In the early morning hours of February 2, 2012, while it was still dark, Cox struck a deer while driving a Clossman vehicle, causing damage to the vehicle of more than $500.00. The parties agree that the foregoing policy applies to that collision.

Clossman maintains that Cox "steadfastly refused to comply with the Deductible Policy" by refusing to pay the $500.00. The record contains an affidavit signed by three Clossman employees, all of whom heard Cox say he refused to pay the deductible. Additionally, Clossman submitted an affidavit from Linda Niehoff, the company's Human Resources Manager, in which she states that she had a conversation with Cox on February 8, 2012 in which he became angry, told her he was not going to pay, and threatened to sue the company if anything was deducted from his paycheck. She also says in the affidavit that she reminded him that he agreed to the policy when he was hired, but he "still angrily maintained that he would not pay."

Elizabeth Forman, a managing member of Clossman, testified at the hearing to the same effect. She stated that during a conversation with Cox in mid-February, about two weeks after the accident, he told her he would not pay the deductible amount. She said that when she reminded him of the policy and told him that he could be terminated if he did not pay, Cox acknowledged that he understood both the policy and that he could be terminated for not paying, but said he still had no intention of paying.

The record contains an affidavit from another Clossman employee who overheard a portion of the conversation between Cox and Forman. According to the affidavit, Forman asked Cox if he was still refusing to pay the deductible, as required by the policy, and told him that not complying with the policy could cost him his job. Cox responded that he knew the consequence of not paying but that he was "not payin' it."

Cox testified that about a week after the accident he did have a conversation with Linda Niehoff, the company's Human Resources Manager. According to Cox, "She said, uh, now comes the bad part, you have to pay the $500, and, uh, I was pretty excited. I said . . . I said no way . . . there's no way that can be legal." According to Cox, he then said "if this is legal then I don't have a leg to stand on, but if it's not I'll scream and yell to anybody who'll listen to me." Cox said that she then responded, "Don't do anything right now." He understood that this meant he didn't need to pay right then until Niehoff spoke with Elizabeth Forman.

Cox also agreed that he had a conversation with Forman in mid-February. He testified that the following exchange took place:

> [Forman] came in and said "I hear you have a problem with paying the deductible." I said "that's right." She said, "well, my insurance company wants me to terminate you because you won't pay the deductible." I just said "okay," and she said "okay I'll . . . go get you the documentation."

Cox had had a previous accident in which he hit a deer, in 2009. Apparently, there was little if any damage to Clossman's vehicle at that time, and he was not asked to pay any amount pursuant to the deductible policy at that time. Otherwise, he had no record of any significant disciplinary action with the company.

Cox filed for unemployment benefits, and appellee-defendant Director, Ohio Department of Job and Family Services ("ODJFS") issued a determination disallowing benefits and finding that he had been discharged with just cause. Cox appealed, and in its redetermination decision, ODJFS affirmed the disallowance of benefits. Cox appealed again, and ODJFS transferred the matter to the Ohio Unemployment Compensation Review Commission. Following a hearing, a decision was issued reversing the denial of benefits and finding that Cox had been discharged without just cause. The Review Commission disallowed the request of Clossman for further review, and this appeal followed.

The standard of review which this court must follow is contained in R.C. 4141.282(H) which provides, in pertinent part, as follows:

> 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.

See also, *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Const. Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. "[W]hen reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct." (Internal quotations and citation omitted.) *Clucas v. RT 80 Express, Inc.,* 9th Dist. No. 11CA009989, 2012-Ohio-1259, par.9. The fact that reasonable minds might reach

different conclusions is not a basis for the reversal of the board's decision. *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d at 697.

Cox's claim for unemployment compensation benefits was allowed on the grounds that he was discharged without just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a). That section provides, in pertinent part:

> (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 . . . .

"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." *Bates v. Airborne Express, Inc.*, 186 Ohio.App.3d 506, 2010-Ohio-741, 928 N.E.2d 1168 (2nd Dist.), quoting *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio.St.3d 15, 17, 482 N.E.2d 587 (1985); *Wilson v. Director, Ohio Department of Job and Family Services*, 8th Dist. No. 94692, 2010-Ohio-5611, par.16. Just cause for discharge need not reach the level of misconduct but there must be some fault on the part of the employee. *Johnson v. Edgewood City School District Board of Education*, 12th Dist. No. CA2008-11-278, 2010-Ohio-3135, par.11.

In order to award unemployment compensation, the just cause determination must be consistent with the legislative purpose underlying the Unemployment Compensation Act. *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, supra at 697. The Unemployment Compensation Act:

> . . . was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without

> employment through no fault or agreement of his own. . . The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. 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. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.

Id. at 697-698.

Since "fault is essential to the unique chemistry of a just cause termination, . . . the critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his or her actions demonstrated an unreasonable disregard for the employer's best interests." (Internal citations omitted.) *Johnson v. Edgewood City School District Board of Education*, supra at par.13, citing *Binger v. Whirlpool Corp.*, 110 Ohio.App.3d 583, 590, 674 N.E.2d 232 (6th Dist. 1996); *Janovsky v. Ohio Bur of Emp. Serv.*, 108 Ohio.App.3d 690, 694, 671 N.E.2d 611 (2nd Dist. 1996).

Each unemployment compensation case must be considered upon its particular merits in determining whether there was just cause for discharge. *Johnson v. Edgewood City School District Board of Education*, supra at par.14, citing *City of Warrensville Heights v. Jennings*, 58 Ohio.St.3d 206, 207, 598 N.E.2d 489(1991). The determination of just cause depends upon the "unique factual considerations" of a particular case and is therefore primarily an issue for the trier of fact. *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d at 17.

This court must conclude that the decision of the Review Commission was unreasonable and against the manifest weight of the evidence. The hearing officer acknowledged that Cox was unwilling to comply with Clossman's deductible policy,

but explained the reasoning for his decision by saying that Cox was not at fault for the accident and was not provided a deadline by which he had to reimburse the company. However, neither is a valid reason for finding that Cox was terminated without just cause.

Whether or not Cox was at fault in his collision with the deer is irrelevant. The decision to terminate his employment was based on his refusal to comply with the company's deductible policy, a policy applied to all employees, regardless of the employee's fault and regardless of the employee's financial situation. As indicated above, the hearing officer acknowledged that Cox refused to comply with that policy, a finding clearly supported by the evidence, but then improperly grafted a condition into the policy requiring that Cox be at fault in the underlying accident before repayment of the deductible applied. Since he was not at fault, the hearing officer seeminly concluded that his a refusal to pay could not have been just cause for termination.

Moreover, while the hearing officer agreed that Cox had been unwilling to pay, he inexplicably determined that Clossman nevertheless had an obligation to provide him a deadline by which to do so. Essentially, the hearing officer improperly wrote a second additional provision into the policy that did not exist. This court acknowledges that the policy is poorly worded; however, there is no question about whether Cox understood the policy. He did. Though he apparently questioned at one point whether is was "legal" to require employees to pay the deductible, he knew that the policy required that he do so, and he admitted at the hearing that refused.

A termination pursuant to company policy will constitute just cause only if the policy is fair, and fairly applied. *Sally Shaffer v. American Sickle Cell Anemia Association*, 8th Dist No. 50127, 1986 Ohio App. LEXIS 7116 (June 12, 1986). In determining whether a policy is fair, a court should look to whether the employee received notice of the policy, whether the policy could be understood by the average person, and whether there is a rational basis for the policy. Whether the policy was fairly applied is determined by looking at whether the policy instituted by the employer was applied to some individuals and not to others. *Alexander v. Lowe's Home Centers, Inc.*, 8th Dist. No. 95027, 2011-Ohio-113, par.27. Here, the policy was fair and fairly applied.

As set forth above, Cox acknowledged in writing receipt of the policy. Therefore, he clearly had notice of the company policy. Although inartfully drafted, it is also clear that the policy was written so as to be understood by the average person, and Cox clearly understood the policy. Also, there is a rational basis for the policy – encouraging employees to operate motor vehicles carefully, to avoid accidents. Finally, the evidence establishes that the policy was applied to all employees, regardless of the employee's fault and regardless of the employee's financial situation. Therefore, all criteria are met to find the policy fair and fairly applied.

It was improper for the hearing officer to create additional provisions that were not in Clossman's policy, and to then require the company to have followed them before having just cause to terminate Cox's employment. Instead, by communicating his refusal to follow a company policy and pay the deductible amount, Cox was at fault and "directly responsible for his own predicament." See, *Tsangas, Plakas &*

Mannos v. Ohio Bur. Of Emp. Serv., supra at 698. Therefore, the decision of the Ohio Unemployment Compensation Review Commission is reversed, and Cox is not entitled to benefits under Ohio's unemployment compensation system.

ENTER

Charles L. Pater, Judge

cc: Alison M. Day, Esq.
Robin A. Jarvis, Esq.

Judge
Charles L. Pater
Common Pleas Court
Butler County, Ohio