IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

SUSAN J KEISER JAEGER, Plaintiff(s)/Appellant(s), -vs- DIRECTOR THE OHIO DEPT OF JOB AND FAMILY SERVICES et al, Defendant(s)/Appellee(s).	CASE NO.: 2011 CV 06503 JUDGE DENNIS J. LANGER **FINAL AND APPEALABLE DECISION, ORDER, AND ENTRY ADOPTING THE DECISION OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**

This matter is before the Court on pro se Appellant Susan J. Keiser-Jaeger's (hereinafter "Appellant") administrative appeal from a decision of the Ohio Unemployment Compensation Review Commission (hereinafter "UCRC"), filed on September 12, 2011. A written transcript of the lower proceedings were filed on October 19, 2011. See Docket. Appellee Director, Ohio Department of Job and Family Services (hereinafter "ODJFS") filed its *Motion of Appellee, Director, Ohio Dept. of Job & Family Services to Dismiss for Failure to Prosecute* (hereinafter "*Motion to Dismiss*") on December 28, 2011. *Id.* Appellant filed her *Brief of Plaintiff, Susan J. Keiser-Jaeger* (hereinafter "*Appellant Brief*") on January 3, 2012. *Id.* The case was thereafter transferred to the undersigned. On January 23, 2012, in a joint order by the Court, the Court overruled ODJFS's *Motion to Dismiss* and set submission dates on ODJFS's response brief and Appellant's reply brief. *Id.* ODJFS filed its *Brief of Appellee, Director, Ohio Department of Job and Family Services* (hereinafter "*ODJFS Brief*") on February 21, 2012. *Id.* Appellant filed her *Reply to Brief of Appellee, Director, Ohio Department of Job and Family Services* on February 27, 2012. This matter is now properly before the Court pursuant to R.C. § 4141.282.

I. FACTS AND PROCEDURAL HISTORY

This case arises out of a claim for unemployment compensation from an administrative appeal originally filed under Case Number 2009-CV-09150 on November 10, 2009 with the Court. The facts remain consistent and directly relate to the instant matter.

Appellant was employed by Liberty Nursing Center of Englewood, Inc. d/b/a Englewood Manor (hereinafter "Englewood Manor") as a housekeeper from July 11, 1994 until her termination from employment on April 9, 2009. See *Written Transcript of Proceedings*. Englewood Manor is a long-term nursing care facility, where on April 7, 2009, a resident of Englewood Manor donated their George Foreman grill for the facility's occupational therapy department's use in a therapy session scheduled for the following day. *Id.* The resident, along with Ms. Melinda Shaw, a contractual occupational therapist (hereinafter "Ms. Shaw"), claimed to have placed the donated George Foreman grill on a round table in the therapy room, where it was to remain for the following day's session. *Id.* The next day, on April 8, 2009, sometime between 6:00 A.M. and 6:30 A.M., Appellant entered the therapy room to remove trash, a duty she routinely performed in her position as a housekeeper. *Id.* According to Appellant, it was at this time she observed an unmarked box alongside the trash she routinely removed from the room. *Id.* Believing that the unmarked box was placed next to the trash to be disposed of by the housekeeping staff, Appellant took possession of the unmarked box, and according to Appellant, while disposing of the trash outside the facility, Appellant discovered that the unmarked box contained a George Foreman grill. *Id.* Appellant then placed the unmarked box containing the George Foreman grill between the front and back seats of her car and covered it with a "towel" or "sheet." *Id.*

Upon becoming an employee of Englewood Manor, each employee is given an employee handbook. *Id.* The purpose of Englewood Manor's employee handbook is to provide its employees with a working guide to the understanding of the administration of employee policies and practices, and is designed to provide pertinent employee information and benefits. *Id.* On page fourteen (14) of the Englewood Manor employee handbook under the heading "**EMPLOYEE CONDUCT AND WORK RULES**," it states as follows:

> To ensure orderly operations, Englewood Manor expects employees to follow rules of conduct that will protect the interests and safety of our residents, employees, and the organization. To

provide clarity on such matters, the following is a partial list of infractions which may result in disciplinary action, up to and including, termination:

1. *Theft of property*, whether from a resident, the facility or from a fellow employee, *will not be tolerated*. *Workers must have a supervisor's permission before removing any business materials*, tools, or other items, *including damaged goods*, or scrap material and food items.

Id. (emphasis added). Furthermore, on page twenty (20) of the employee handbook under the heading "**PROGRESSIVE DISCIPLINE**," it states as follows:

> The purpose of this policy is to state Englewood Manor's position on administering discipline for unsatisfactory conduct in the workplace.
>
> Englewood Manor's own best interest lies in ensuring fair treatment of all employees and in making certain that disciplinary actions are as prompt, uniform, and impartial as possible. The major purpose of any disciplinary action is to correct the problem, prevent recurrence, and prepare the employee for satisfactory service in the future.
>
> *Disciplinary action may call for any of four [4] steps* – verbal warning, written warning, suspension with or without pay, or *termination of employment – depending on the severity of the problem and the number of occurrences. There will be circumstances when one or more steps are bypassed depending on the nature of the infraction.*
>
> While it is impossible to list every type of behavior that may be deemed a serious offense*, the EMPLOYEE CONDUCT AND WORK RULES policy includes examples of problems that may result in immediate suspension or termination of employment.* The problems listed are not all necessarily serious offenses warranting immediate termination, but may be examples of unsatisfactory conduct that will trigger progressive discipline.
>
> By using progressive discipline, we hope that most employee problems can be corrected at an early state, benefiting both the employee and Englewood Manor.

Id. (emphasis added). The record in this case demonstrates that on February 2, 1997, Appellant signed an "**EMPLOYEE ACKNOWLEDGEMENT FORM**," evidencing that she "received the [Englewood Manor] handbook, and * * * underst[ood] that it is [her] responsibility to read and comply with the policies contained in [the Englewood Manor] handbook and any revisions made to it." *Id.*

At or around 11:00 A.M. and 11:30 A.M. on April 8, 2009, at the time of the scheduled therapy session, Ms. Shaw became aware that the donated George Foreman grill that she and the resident had placed on the round table in the therapy room the proceeding day was missing. *Id.* Ms. Shaw then proceeded to contact Appellant, who was on her lunch break, to question her about the missing George Foreman grill. *Id.* Upon questioning Appellant about the missing George Foreman grill, Appellant responded that "it was in a safe place[,]" and that she would take Ms. Shaw to where it was located. *Id.* Ms. Shaw then accompanied Appellant out to her car, where Appellant showed Ms. Shaw that she had placed the box containing the

George Foreman grill between the front and back seats of her car and had covered it. *Id.* Appellant explained to Ms. Shaw that "[she] thought [the George Foreman grill] was trash." *Id.* Upon returning the George Foreman grill to use for the therapy session, and upon informing the resident who donated the George Foreman grill where she had found it, Ms. Shaw was requested by the resident that "somebody * * * higher up" should be informed of Appellant's conduct. *Id.*

At the end of the therapy session, Ms. Shaw and the resident spoke with Ms. Kathy Vyrostek, the administrator at Englewood Manor with supervisory duties over Appellant (hereinafter "Ms. Vyrostek"), concerning Appellant's conduct. *Id.* Upon informing Ms. Vyrostek of the incident, Ms. Shaw drafted and signed a written incident report entitled "**REHAB ADDENDUM NOTE**" describing Appellant's conduct in detail. *Id.* Later that same afternoon, Appellant allegedly spoke with Ms. Shaw again, where she attempted to put in perspective the basis for inferring that the George Foreman grill was intended to be disposed of with the other trash located in the therapy room. *Id.* Thereafter, at or around 2:00 P.M. and 2:30 P.M., at the end of Appellant's work hours, Mr. Brian Garner, the director of maintenance and Appellant's then-supervisor (hereinafter "Mr. Garner"), inquired about Appellant's alleged conduct. *Id.* Appellant responded to Mr. Garner's inquiry that "[she] had screwed up." *Id.* Appellant did not volunteer any information to Mr. Garner nor describe her basis for inferring that the George Foreman grill was to be disposed of, as she allegedly did with Ms. Shaw a few hours before. *Id.* The next day, on April 9, 2009, Mr. Garner informed Appellant that Englewood Manor was terminating her employment for stealing the George Foreman grill from the facility. *Id.* Appellant was then given written notice of termination, upon which she signed. *Id.* Similar to the previous afternoon, Appellant did not volunteer any information to Mr. Garner nor describe the basis of her inference concerning the George Forman grill. *Id.* Appellant further declined to ask any questions concerning her termination upon direct request by Mr. Garner. *Id.*

That same day, on April 9, 2009, Appellant made a claim to the Director of ODJFS for unemployment compensation benefits. *Id.* On April 30, 2009, the Director of ODJFS determined that Appellant was entitled to unemployment compensation benefits, finding that "an ordinary person would find [Appellant's] discharge not justifiable" and "without just cause under [R.C. §] 4141.29(D)(2)(a)." *Id.* On May 5, 2009, Englewood Manor appealed the Director of ODJFS's decision, where on May 28, 2009, the Director of ODJFS affirmed its initial decision in a redetermination. *Id.* Englewood Manor appealed the

redetermination on June 17, 2009, where it was thereafter transferred for review to the UCRC. *Id.* A hearing was scheduled to be held telephonically by Hearing Officer Brian Laliberte on October 1, 2009 at 9:15 A.M.[1] Appellant failed to appear for the hearing, where the Hearing Officer nonetheless conducted the hearing pursuant to R.C. § 4141.281(D), with Ms. Shaw and Ms. Vyrostek testifying on behalf of Englewood Manor. *Id.* Ohio Revised Code § 4141.281(D)(6) states as follows:

> For hearings at either the hearing officer or review level, *if the appellee fails to appear at the hearing, the hearing officer shall proceed with the hearing and shall issue a decision based on the evidence of record*. *The commission shall vacate the decision upon a showing that* written notice of the hearing was not sent to the appellee's last known address, or *good cause for the appellee's failure to appear is shown to the commission within fourteen* [14] *days after the hearing date.*

R.C. § 4141.281(D)(6) (emphasis added). On October 2, 2009, Appellant telephoned the UCRC to explain that she failed to appear at the hearing because she had inadvertently marked October 2, 2009 on her calendar. See *Written Transcript of Proceedings*. However, on October 14, 2009, the Hearing Officer reversed the redetermination of the Director of ODJFS, reasoning in pertinent part, as follows:

> The claimant misappropriated the employer's property and admitted to her misconduct. The employer followed its written disciplinary policy in discharging the claimant. It did so in the best interests of its residents and to preserve its state license. The employer discharged the claimant with just cause in connection with work.

Id. On October 17, 2009, Appellant contacted the UCRC by postal mail explaining again why she had inadvertently failed to appear at the telephone hearing. *Id.* Thereafter, Appellant requested a review of the Hearing Officer's reversal of the Director of ODJFS's redetermination, where on October 28, 2009, Appellant's request for review was denied. *Id.*

On November 10, 2009, Appellant filed her *Notice of Administrative Appeal* with the Court under Case Number 2009-CV-09150. *Id.* A written transcript of the prior proceedings were also filed, and thereafter a briefing schedule was released by the Court pursuant to Local Rules 2.01(III)(A)(1)(a)(1 - 3) and 2.37(II)(B). *Id.* On July 22, 2010, the Court ordered additional briefs be submitted concerning R.C. §

[1] From the transcript provided to the Court, there were four (4) 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 of the Ohio Department of Job and Family Services 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 appeals process will be referred to as the "hearing officer level"). And fourth, an appeal can be made to the Unemployment Compensation Review Commission for review of the hearing officer's decision. See R.C. § 4141.281.

4141.281(D)(6), specifically as to whether "good cause" was shown in Appellant's contacts to the UCRC for failing to appear at the telephone hearing on October 1, 2009. *Id.* In its *Final and Appealable, Decision, Order, and Entry Remanding the Decision of the Hearing Officer and Review Commission* (hereinafter "*Remand Decision*") on September 10, 2010, the Court found that a showing of good cause was not required to be in writing by law, where the instructions provided to Appellant by the UCRC described a required showing of good cause in writing were erroneous. *Id.* The Court further found that Appellant's failure to appear at the hearing on October 1, 2009 because of her inadvertence constituted good cause for purposes of R.C. § 4141.281(D)(6). *Id.* The Court further found that the Hearing Officer's reversal of the redetermination decision by the Director of ODJFS was unreasonable because "[the Hearing Officer] did not consider [Appellant's] account of what transpired[,]" *Id.* Thus, without deciding whether Appellant's termination from employment was made with or without just cause, the Court remanded the case back to the UCRC for a new hearing. *Id.*

On June 22, 2011, in accordance with the Court's *Remand Decision*, a new hearing was scheduled to be held telephonically by Hearing Officer Donald L. McElwee on July 6, 2011 at 11:15 A.M. *Id.* Appellant made her appearance at the hearing, along with Mr. Garner and Ms. Robin Paschal, Englewood Manor's human resource coordinator (hereinafter "Ms. Paschal"), to testify on behalf of Englewood Manor. *Id.* At the hearing, Mr. Garner testified that the George Foreman grill was placed "into a box that was on the counter" of the facility's therapy room. *Id.* Mr. Garner further testified that upon inquiring about Appellant's conduct on April 8, 2009, Appellant did not attempt to put into perspective the basis for inferring that the George Foreman grill was intended to be thrown out, but merely stated that she put the George Foreman grill in her car "for safe keeping because she didn't want it to get stolen." *Id.* Mr. Garner further testified that Appellant never asked for permission to take anything out of the facility. *Id.*

Upon appearing at the hearing, Appellant testified that she found the unmarked box next to the trash the morning of April 8, 2009, and upon discovering the George Foreman grill in the unmarked box while disposing of the trash, Appellant inferred that the George Foreman grill was intended to be disposed of with the other trash because of its placement in the therapy room. *Id.* Appellant further testified that "[i]f there was something in [the trash] that [employees] might want or [employees] might think would work or * * * we could fix, since it was trash * * * it was fair game." *Id.* Appellant further testified that "[t]rash is

trash[,]" where "[i]f it's in the bag[,] it's trash." *Id.* Appellant further testified that she merely told Mr. Garner that "[she] had screwed up" and not any details concerning her basis for inferring that the George Foreman grill was intended to be disposed of with the other trash because she "grew up in a Marine Corps household and * * * spent time in the service where they drill out of you do not volunteer information unless asked." *Id.* Appellant further admitted in her testimony that "[m]y screw up came when, instead of throwing it into the dumpster I looked to see what [the object in the unmarked box] was and I put [the George Foreman grill] in my car * * *." *Id.* Appellant further admitted that on April 9, 2009, the day of her termination that she again did not volunteer to Mr. Garner her basis for inferring that the George Foreman grill was intended to be disposed of with the other trash, even after Mr. Garner had inquired whether she had any questions. *Id.* Appellant further testified that "it did not cross [her] mind" that it would help to volunteer such information to Mr. Garner, where thereafter, Appellant merely "signed the form and did what [Mr. Garner] asked." *Id.* Also, although Appellant was directly informed that she had the opportunity to ask any questions she might have of the witnesses during her appearance at the hearing, and was repeatedly invited to ask questions, she consistently declined to do so. *Id.*

On August 25, 2011, the UCRC affirmed the Hearing Officer's reversal of the redetermination of the Director of ODJFS from October 14, 2009. *Id.* The UCRC found in pertinent part, as follows:

> When [Appellant] was questioned by the maintenance director [Mr. Garner] concerning the situation she indicated, 'I screwed up.' At no time did claimant inform any members of management that she had placed the [George Foreman] grill in her because she believed it to be trash. The next day, [Appellant] was discharged by [Englewood Manor] for taking the [George Foreman] grill without permission. Again, [Appellant] gave no explanation to the employer for putting the grill in her car other than she was keeping it safe. When [Appellant] filed for unemployment benefits, she reported to [ODJFS] that she had placed the [George Foreman] grill in her car because she believed it was trash.

The UCRC further reasoned, in pertinent part, as follows:

> While [Appellant] has argued that she believed that the [George Foreman] grill was trash, [Appellant] at no time when questioned by the employer indicated that her reason for taking the grill was because it was trash. When questioned by a supervisor claimant stated, 'I screwed up.' The employer's conclusion that [Appellant] had improperly taken the grill without asking permission was a reasonable conclusion. [Appellant's] failure to give any explanation to the employer for the grill being in her back seat other than that she was keeping it safe, was not reasonable.

Id. On September 12, 2011, Appellant filed her *Notice of Administrative Appeal* with this Court under Case Number 2011-CV-06503. See Docket. A written transcript of the case's prior proceedings was thereafter filed on October 19, 2011. *Id.*

II. LAW AND ANALYSIS

A. STANDARD OF REVIEW

A common pleas court sitting in an appellate capacity has a limited power of review. *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). "If the court finds that the decision of the [UCRC] 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 [UCRC;] [o]therwise, the court *shall* affirm the decision of the commission." R.C. 4141.282(H) (emphasis added). 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. *E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, 280, 376 N.E.2d 578 (1978). Thus, a reviewing court may not make factual findings or determine a witness's credibility, and therefore must affirm the UCRC's finding if some competent, credible evidence in the record supports it. *Williams v. Ohio Dep't of Job & Family Servs.*, 129 Ohio St. 3d 332, 335, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20, citing *Irvine*, *supra* at 17-18. Factual questions remain solely within the UCRC's province. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). In other words, a reviewing court may not reverse the UCRC's decision simply because "reasonable minds might reach different conclusions." *Irvine*, *supra* at 18-19. Courts have no authority to upset UCRC decisions on close questions. *Id*. If the record reveals evidence to support the UCRC's findings, the reviewing court cannot substitute its own findings of fact for those of the UCRC. *Wilson v. Unemployment Comp. Bd. of Rev*., 14 Ohio App.3d 309, 310, 471 N.E.2d 168 (8th Dist. 1984). Therefore, on review of purely factual questions by the UCRC, a court is limited to determining whether a UCRC decision is supported by the evidence in the record. *Tzangas, supra* at 696, citing *Irvine*, *supra* at 18.

B. JUST CAUSE

A former employee has the burden of proving that they are entitled to unemployment compensation benefits under R.C. § 4141.29 because they were discharged without just cause. *Irvine*, *supra* at 17. Ohio

Revised Code § 4141.29(D)(2)(a) provides that " * * * no individual may * * * be paid benefits under the following conditions: * * * [f]or the duration of the individual's unemployment if the director finds that . . . (a) [t]he individual * * * has been discharged for just cause in connection with the individual's work." Although it is not defined by statute, courts have held that "just cause" is "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Williams*, *supra* at ¶ 22, citing *Irvine*, *supra* at 17, quoting *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E. 2d 751 (1975). Just cause has also been defined as "conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10. In any case, just cause determinations must be consistent with the legislative purpose underlying the Unemployment Compensation Act. *Williams*, *supra* at ¶ 22, citing *Irvine*, *supra* at 17, quoting *Leach v. Republic Steel Corp.,* 76 Ohio St. 221, 223, 199 N.E.2d 3 (1964).

The purpose of the Unemployment Compensation Act is to provide financial assistance to an individual who had worked, was able and willing to work, but was without employment through no fault of their own. *Id.*, citing *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980). The Unemployment Compensation Act "does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control." *Tzangas, supra* at 697-698. A determination whether there was just cause for discharge depends upon the factual circumstances of each case, taking into consideration an appellate court's limited power of review. *Williams*, *supra* at ¶ 22, citing *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489 (1991). However, 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," where "[f]ault on the employee's part separates [them] from the [Unemployment Compensation] Act's intent and the [Unemployment Compensation] Act's protection." *Williams*, *supra* at ¶ 23, citing *Tzangas, supra* at 697-698; see also *Johnson v. SK Tech, Inc*., 2nd Dist. No. 23522, 2010-Ohio-3449, ¶ 47. Therefore, fault is essential to the unique chemistry of a just cause termination, where a single incident of misconduct can create just cause for termination. *Id.*; see also *Moore v. Comparison Mkt., Inc*., 9th Dist. No. 23255, 2006-Ohio-6382, ¶ 25; see also *Gualtieri v. Stouffer Foods Corp*., 9th Dist. No. 19113, 1999 Ohio App. LEXIS 1176 at *7 (Mar. 24, 1999). The former employee must provide evidence that their discharge was without just cause by demonstrating they were without fault in the incident resulting in their termination to show they

are entitled to unemployment compensation. *Irvine*, *supra* at 17; see also *Clucas v. Rt 80 Express, Inc*., 9th Dist. No. 11CA009989, 2012-Ohio-1259, ¶ 7; see also *Markovich v. Emplrs. Unity, Inc*., 9th Dist. No. 21826, 2004 Ohio 4193, ¶ 9.

C. ANALYSIS

The foundation for which Appellant's arguments rely is her belief that that there was no just cause for her termination from employment with Englewood Manor. For purposes of review, Appellant's separate arguments are best organized into two (2) substantive components, with the first component incorporating a single subcomponent. First, Appellant argues that the new hearing on July 6, 2011 only partially addressed the order by the Court in its *Remand Decision*. See *Appellant Brief*. Appellant argues that because the new hearing did not fully address the Court's considerations, a proper hearing on the merits has yet to be conducted with Appellant's appearance, and therefore, a decision on the issue of just cause is not warranted. *Id.* Appellant argues that the Court may only review the testimonies from witnesses in the new hearing, where the *Remand Decision* "in effect – nullifie[s] the first UCRC hearing" which has been "declared [by the Court] to be unreasonable and error." *Id.* However, Appellant argues that because she allegedly has yet been given a proper hearing, any examination of the new hearing's testimonies would therefore be against the Court's *Remand Decision*. *Id.* In Appellant's single subcomponent, Appellant argues, assuming *arguendo*, as follows:

> I need to state that during the hearing I was unable to hear what was said by the other people testifying during the hearing. I did not even know what had been said by others until I received the certified copy of the transcript from the state. I heard the questions ask [sic] others by the [H]earing [O]fficer but was unable to hear their answers.

Appellant's second substantive component implicitly embodies an "unlawful, unreasonable, and against the manifest weight of the evidence" argument. Appellant argues that the record in this case is absent a number of documents that she possesses, of which "indicate a pattern by the UCRC of negligence and trying to put confusion into the process of dealing with [Appellant's] case." *Id.* However, Appellant also states that "there is more than enough information in the files * * * to * * * determine the real truth." *Id.* Appellant further argues that only Ms. Shaw had "direct knowledge of what had occurred," and all other witness testimonies at both hearings were "totally second hand, or heres[a]y," and therefore, the decision to terminate her employment was made by individuals without "direct knowledge" and therefore, was "not

reasonable." *Id.* Appellant argues throughout her *Appellant Brief* that she was never given the opportunity to present her position on her conduct concerning the incident. *Id.* Appellant implicitly argues that Englewood Manor had the responsibility to ask her specifically about the incident, where Appellant had no personal responsibility to attempt to contradict Englewood Manor's theft allegations. *Id.* Appellant further argues that it was "totally unreasonable" for Ms. Vyrostek, Ms. Paschal, Ms. Shaw, the resident owner of the George Foreman grill, and Mr. Garner to allegedly discuss the incident without her in attendance and thereafter collectively determine to terminate her employment. *Id.* Appellant further and consistently alleges that much of the UCRC's findings of fact and testimonies from both hearings were complete fabrications of the truth, where "the record shows an obvious bias against employees and for employers." *Id.*

ODJFS argues that both the Hearing Officer and UCRC properly found that Appellant's employment was terminated for just cause. See *ODJFS Brief*. ODJFS argues that the UCRC conducted the new hearing on July 6, 2011 in accordance with the Court's *Remand Decision*. *Id.* ODJFS further argues that though Appellant's arguments allege fabrication, it is "[Appellant's] arguments that strain credulity, and not the testimony or documentation presented by [Englewood Manor's] witnesses at the new hearing." *Id.* ODJFS argues that this case comes down to a question of credibility for the Hearing Officer's reversal, where in quoting *Tzangas,* though parties may factually disagree on a particular case, the fact that reasonable minds may differ on such facts is not a basis for reversing the UCRC decision in this case. *Id.*

The purpose in remanding this case was to conduct a hearing to provide Appellant with the opportunity to ask questions of witnesses, be questioned herself, and give responses on the record in view of the fact that Appellant demonstrated good cause in not appearing at the original hearing on October 1, 2009. See *Remand Decision*. Though Appellant argues that the new hearing only partially addressed the considerations by the Court in its *Remand Decision*, Appellant is mistaken. The Court ordered that Appellant be given another opportunity to appear at a telephone hearing, where only thereafter, a decision be made on the merits. Furthermore, the Court finds that its finding of good cause in its *Remand Decision* regarding Appellant's failure to appear is not likened to a complete nullification of all parties' prior testimonies from the first hearing on October 1, 2009. On review, the Court is obliged to review the complete written transcript, where the Court would expect such a demand by the parties, who in turn deserve a comprehensive examination of the record within the manifest limitations by law. The Court finds that the

only aspect that may be considered "unreasonable and error" from the telephone hearing conducted on October 1, 2009 was the lack of appearance by Appellant, which has now been remedied by the new hearing conducted on July 6, 2011. The Court's *Remand Decision* in no way invalidated any prior testimonies from the first hearing on October 1, 2009. Furthermore, while Appellant now claims that she could not hear the testimony of witnesses during the new hearing on July 6, 2011, the record reflects that Appellant actively participated in the proceedings and was able to hear sufficiently to respond to questions posed to her. In conjunction with this, Appellant elected not to ask any questions herself. Contrary to Appellant's argument, Appellant never expressed difficulty in adequately hearing the proceedings or confusion of any kind. Given these facts and circumstances, the Court finds Appellant's argument is not well-taken. All parties have now made an appearance on the record, and therefore, a decision on the issue of just cause is warranted.

The Court finds that the UCRC's decision upon remand by the Court is not unlawful, unreasonable, nor against the manifest weight of the evidence. Under the Court's limited power of review, the Court finds Appellant's testimony from the July 6, 2011 hearing to be competent and credible evidence that goes to the essential elements in determining whether Englewood Manor had just cause in terminating her employment. Appellant testified that she found the unmarked box next to the trash the morning of April 8, 2009, and upon discovering the George Foreman grill in the unmarked box while disposing of other trash, Appellant inferred that the George Foreman grill was to be disposed of because of its placement in the therapy room. However, what the Court finds most telling is Appellant's failure to convey to neither Mr. Garner nor any other party employed by Englewood Manor a single detail concerning her basis for such inference. Appellant only now attempts to argue that she did not raise such inference to Englewood Manor because she grew up in a Marine Corps household and spent time in the service where she was instructed to not volunteer information unless specifically questioned on such information. It appears from the record that Appellant has muddied the instant matter with the impression that any statement she would have made to her employer during the incident may very well have been used against her. However, the instant matter is quite distinguishable from a criminal prosecution.

Appellant's testimony is influential in determining whether Englewood Manor had just cause in terminating Appellant's employment, particularly in the context contained within the window of time the events surrounding the incident transpired. Though Appellant argues that she was never given the

opportunity to present her position on her conduct from the incident, Appellant must be held personally accountable to, at the very least, attempt to contradict Englewood Manor's theft allegations. Appellant had no less than two opportunities to do just that: on April 8, 2009 when Mr. Garner spoke with Appellant at her car as she was leaving for the day, and April 9, 2009 prior to signing the written notice of her termination from employment. The Court is convinced that a reasonable person would, at the very least, volunteer her innocence in order to protect her job. Without Appellant's perspective concerning her basis for inferring that the George Foreman grill was intended to be disposed of with the other trash in the therapy room, Englewood Manor could only rely upon Ms. Shaw's written incident report that described Appellant's conduct, as well as Mr. Garner's oral report that Appellant had only told him that "[she] had screwed up." Therefore, as the UCRC found in its decision, Englewood Manor's inference that Appellant had stolen the George Foreman grill, as made within the window of time the events surrounding the incident transpired, was a justifiable reason for terminating Appellant's employment under the circumstances and within the theft policy contained in its employee handbook. Such a finding is also within the statutory effect of the Unemployment Compensation Act, where the Court cannot protect Appellant from her own failure to, at the very least, attempt to save her job. The Court finds that Appellant was directly responsible for her own predicament, that Englewood Manor had just cause for terminating Appellant's employment, and that the decision by the UCRC on August 25, 2011 was not unlawful, unreasonable, nor against the manifest weight of the evidence.

III. CONCLUSION

The Court finds that the record establishes that the UCRC decision to affirm the Hearing Officer's reversal of the redetermination of the Director of ODJFS from October 14, 2009 to award Appellant unemployment compensation was not unlawful, unreasonable, nor against the manifest weight of the evidence. The evidence in this case clearly supports a finding that Appellant was terminated for just cause. Therefore, the Court hereby adopts the decision of the UCRC from August 25, 2011.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. LANGER

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Copies of this document were sent to all parties listed below by ordinary mail:

SUSAN J KEISER JAEGER
29 CHESTNUT ST
ENGLEWOOD, OH 45322
Plaintiff

UNEMPLOYMENT COMPENSATION REVIEW COMMISSION OF OHIO
P O BOX 182299
COLUMBUS, OH 43218
Defendant

LIBERTY NURSING CENTER OF ENGLEWOOD INC
PO BOX 340
ENGLEWWOD, OH 45322
Defendant

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General Divison

Montgomery County Common Pleas Court

41 N. Perry Street, Dayton, Ohio 45422

Case Title: SUSAN J KEISER JAEGER vs DIRECTOR THE OHIO DEPT OF JOB AND FAMILY SERVICES

Case Number: 2011 CV 06503

Type: Decision

So Ordered

Dennis J. Langer