

FILED
IN COMMON PLEAS COURT
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IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

DEAN J. RYHINSKI
CLERK OF COURTS
GEAUGA COUNTY

LOUIS P. NIKSICK SR

: CASE NO: 12A000369

Plaintiff

:

JUDGE DAVID L. FUHRY

-vs-

:

OHIO DEPARTMENT OF JOB &
FAMILY SERVICES et al

: **ORDER OF THE COURT**

Defendants

:

A-6

This matter came on for consideration on Plaintiff/Appellant Louis P. Nicksick, Sr.'s ("Mr. Nicksick") Appeal filed April 18, 2012.

Mr. Nicksick appeals to the Court with respect to a final determination issued on March 28, 2012 by the Unemployment Compensation Review Commission disallowing a request for a review of the unemployment compensation decision. That decision denied Mr. Nicksick unemployment compensation for the reason that he issued a \$10 gift card to himself on December 6, 2011, and again another \$10 gift card to himself on December 13, 2011.

The claimant argues that his receipt of the two \$10 gift cards within that one week was not misconduct and did not amount to just cause in connection with his discharge.

The employer provided documentary evidence. An important part of the evidence produced by the employer was the operations manual which contains its policy and procedures. That manual provided that violations would result in disciplinary action up to and including termination. There is a prohibition against any employee receiving any discount or taking any merchandise without payment. Further, employees may not ring up their own purchases unless no one else is on duty.

Mr. Nicksick claimed that he was not trained with respect to the company policy nor did he know it existed. He indicated that the company policies as afore stated do not appear in any employee handout nor was it posted at the premises.

The assistant manager of the store advised that she thought he might be eligible for the program. Essentially, when asked if he was eligible for the program the

assistant manager said "I don't know, I guess so."

This Court must uphold the decision of the Unemployment Compensation Review Commission unless it finds that decision was unlawful, unreasonable, or against the manifest weight of the evidence. This strict standard of review was reiterated in a leading case on Ohio Unemployment Compensation Law, *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 1995, 73 Ohio St. 3d 694. That case specifically holds that the Board plays the role of fact finder.

The Court is limited in reviewing the Commission's Decision. The Court's role is to determine whether the decision is supported by evidence in the record. If so, then the Court cannot substitute its judgment for that of the Review Commission. *Roberts v. Hayes* 2003-Ohio-5903, at ¶12.

THE COURT FINDS THAT some credible evidence supports the Commission's Decision herein. Overruling a decision as being against the manifest weight of the evidence is reserved for very exceptional cases. Those are cases where the evidence weighing against the decision is more than just preponderance. *Harwell v. Grafton Corr. Inst.*, Franklin App No. 04 AP-1020, 2005-Ohio-1544 at ¶ 9.

In this case Mr. Niksick was at fault. Thus, there was just cause to discharge him under the controlling law. Mr. Niksick was duty bound to familiarize himself with the employer's policies. He had daily access to the gift cards. He should reasonably have been familiar with the gift card program since he gave out the gift cards when the employer's stock of cigarettes in certain brands was depleted. The laminated pages posted at the employee's place of business included the statement that employees were *not* eligible for the gift card program. Employees are not entitled to ring up their own purchases unless no one else is on duty. The hearing officer correctly determined, based upon testimony and documentary evidence submitted, that Mr. Niksick should have reasonably known that he should not have received two \$10 cards within one week and therefore committed sufficient misconduct to justify discharge.

The Commission appears to have arrived at its findings based upon a reasonable interpretation of the facts that support the decision. The Court does not weigh the evidence or assess creditability. There is credible support for the Review Commission's conclusion. Thus, this Court cannot substitute its judgment for that of the Review Commission.

WHEREFORE, the Court affirms the Decision of the Review Commission which upheld the termination of Mr. Nicksick's employment for just cause. The determination that Mr. Nicksick is not entitled to unemployment compensation is affirmed and the appeal of Mr. Nicksick is denied at his costs.

IT IS SO ORDERED.



DAVID L. FUHRY, JUDGE

cc: Susan Sheffield, Esq. ✓
Louis P. Nicksick, Sr. ✓

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TO THE CLERK:

Serve upon all parties, not in default for failure to appear (per Civil Rule 5-(B)), notice of this Judgment and its date of journalization.