COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Charles E. Campbell,	:	
Appellant,	:	CASE NO. 11CVF07-9079
-vs-	:	**JUDGE DAVID W. FAIS**
Columbus Urban League, et al.,	:	
Appellees.	:	

DECISION AND ENTRY AFFIRMING THE ORDER OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION

FAIS, JUDGE

I. INTRODUCTION

The above-styled case is before the Court on appeal under R.C. 4141.282 from a denial of unemployment benefits by decision of the Ohio Department of Job and Family Services, Unemployment Compensation Review Commission (hereinafter "Commission"). That decision, mailed June 22, 2011, disallowed further review of the assigned Hearing Officer's finding.

The Hearing Officer previously concluded that Appellant/Claimant Charles E. Campbell, *pro se* (hereinafter "Appellant") was not entitled to unemployment compensation, finding that he had quit his employment. Such a finding affirmed a previous determination by the Director that Claimant had terminated employment with just cause.

As such, the Commission found Appellant ineligible to receive unemployment compensation benefits. The record of proceedings has been filed and arguments have been offered. For the reasons identified below, the decision of the Commission must be affirmed.

II. FACTUAL AND PROCEDURAL HISTORY

Appellant was employed full-time as a quality assurance manager for the Columbus Urban

League Inc., from August 11, 2008 until August 19, 2010. During all relevant times, Appellant worked with the Head Start program and was required to participate in Cardiopulmonary Resuscitation ("CPR") training, along with an accompanying exam. There is no dispute, and Appellant readily admits, that he cheated on the resulting exam submitted on August 16, 2010.

As a consequence, Appellant offered a verbal resignation to the employer the very next day. On August 18, 2010, Appellant additionally tendered a written letter of resignation. Therein, he stated "I want to apologize to your, Head Start and Columbus Urban League for my poor judgment and unethical behavior at the Professional Development CPR Training. I was wrong to look at the answers sheet and change some of my answers. I demonstrated poor leadership, which violated my own personal standards of integrity and honesty and accept full responsibility for my actions." It was also indicated that the resignation was "effective immediately for your consideration." *Id.* at 1.

After due consideration, the Columbus Urban League accepted Appellant's resignation, effective August 19, 2010. Subsequently, Appellant made an application for unemployment compensation benefits. After being initially disallowed by Appellee Ohio Department of Job and Family Services (hereinafter "Appellee"), Appellant sought a redetermination and the matter was transferred to the Commission for a hearing.

Once Appellant's claim was heard by a Hearing Officer for the Commission, it was determined that Appellant had quit his employment without just cause, thereby precluding him from unemployment compensation. The Hearing Officer provided the following in the way of reasoning:

> "The credible evidence establishes that the claimant quit his employment with the Columbus Urban League Inc. without just cause. The Head Start Director offered sworn credible testimony that the employer, although disappointed with the claimant's behavior, had no intention of discharging the claimant. The claimant

> offered his resignation, not once, but twice. The Head Start Director initially informed the claimant that his resignation 'may not be necessary' and the claimant was offered an opportunity to retake the test as a means of making amends for his behavior. The claimant testified that he offered the letter as an 'offer' of resignation but actually wanted to be given an opportunity to continue his employment. The claimant should not have made such an offer if he did not wish to have such resignation accepted."

Decision, at 4.

Appellant has appealed this finding that was adopted by the Commission to this Court, pursuant to R.C. 4141.282.

III. STANDARD OF REVIEW

Section 4141.282(H) of the Ohio Revised Code provides the following in relevant part:

> 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.

The Ohio Supreme Court has confirmed that in reviewing decisions rendered by the Commission, courts are not permitted to make factual findings or to determine the credibility of witnesses, but merely have the duty to determine whether the Commission's decision is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Ser.*, 73 Ohio St.3d 694, 696 (Ohio, 1995). Moreover, the fact that reasonable minds might reach different conclusions is not a basis for the reversal of the Commission's decision. *Irvine v. Unemployment Compensation Review Commission*, 19 Ohio St.3d 15, 18 (Ohio, 1985).

Where the Commission might reasonably decide either way, the courts have no authority to disturb the Commission's decision. *Id.* at 17. Accordingly, the Commission's role as factfinder remains intact and a reviewing court may reverse the Commission's determination only if it is

unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas* at 697.

IV. ANALYSIS AND FINDINGS OF THE COURT

Appellant argues that the Commission's decision was mistaken. It is asserted that the Commission committed error by finding the Appellant quit without just cause. It is Appellant's position that although he admitted to cheating and submitted his resignation, he equally wanted to retake the examination and stay employed. Appellant asserts that the Director of Head Start, Maria Kee, assured him his resignation was not necessary and testified at the hearing that it ultimately was not her recommendation, but that of Columbus Urban League management. After his resignation was accepted, Appellant claims that he was further informed that he would receive unemployment compensation. Finally, Appellant maintains that Janet Ferguson, who is Ms. Kee's supervisor, was subpoenaed to testify, but did not participate at the rescheduled hearing on May 2, 2011 because she was out of the country.

It is Appellant's contention that he was treated in a different manner than others, and the Columbus Urban League's motives are questionable, as they changed their position on denying unemployment compensation several times. According to Appellant, his termination appears to be a pretext for covering up Appellant's revelations concerning Head Start's Financial Management System. Appellant submits that the Columbus Urban League made a calculated decision to prevent the disclosure of the Head Start Program Fiscal Report by removing him from the agency. It is Appellant's contention that these facts qualify as just cause, he was effectively laid off by the employer.

In response, Appellee insists that the Commission properly found that Appellant was not entitled to receive unemployment compensation benefits, as he quit his employment without just

cause. According to Appellee, Appellant offered his resignation not once, but twice. It is asserted that the facts do not portray a reasonable person that wanted to maintain employment. Appellee emphasizes that the hearing evidence confirms that Appellant was told his resignation would not be necessary, as he was nowhere near the end of the disciplinary grid, but it was tendered anyway. According to Appellee, the facts show that Appellant resigned of his own volition, without pressure from the employer, and therefore, in a voluntary manner. By choosing unemployment over a job paying wages, Appellee argues Appellant forfeited his right to benefits.

It is with these assertions, arguments and assignments of error that the Court considers the record in this proceeding.

Upon review, the Court observes that Maria Kee provided hearing testimony that the progressive discipline structure at the Columbus Urban League consists of the following five steps: (1) counseling, (2) verbal warning, (3) first written warning, (4) second written warning, and (5) suspension, along with subsequent consideration of discharge. (Transcript, Vol. 1 at 14-15). This procedure is further outlined under the rules section of the written Employment Agreement, which Appellant received at the inception of his employment. The hearing evidence reflects that only one prior incident occurred between Appellant on the employer, whereby Appellant was issued a verbal warning for absenteeism, which can be characterized as being only at the gateway stage of the disciplinary grid. *Id.* Moreover, the testimony from Appellant himself corroborates that although being explicitly instructed that a letter of resignation was not necessary, Appellant provided the same to the Columbus Urban League. (Transcript, Vol. 2 at 9, 14, 16). This proffered letter was entitled "Letter of Resignation" and even designated "effective immediately for your consideration." *Id.* While it may be true that Appellant subsequently sought to undue his offer, the

Columbus Urban League cannot be found to be unreasonable in relying upon this Letter of Resignation in accepting Appellant's notice.

Given this mostly uncontroverted testimony, this Court determines it can reasonably be inferred from the evidence that Appellant's quitting was voluntary. Once again, the Hearing Officer was free to find that testimony persuasive in light of all the evidence and circumstances, as well as the usual rules for assessing credibility. In reaching the associated factual findings, the Hearing Officer was equally permitted to find the explanation of Ms. Kee more compelling than Appellant's assertion that he was actually laid off or dismissed. Moreover, Appellant admitted to all of the underlying conduct which violated his position of trust leading up to resignation. Even if representations were made by representatives of the employer that unemployment compensation will likely be awarded, that is not their province, as that determination rests solely with the Commission as a matter of law. Furthermore, the testimony establishes that Appellant's actions were of his own volition, and by tendering his resignation on two occasions, he willingly removed himself from the employer's progressive disciplinary structure that strongly suggests he was nowhere near the fifth and final stage warranting suspension or termination.

When there is probative evidence contained in the record, the Court is not in a superior position to alter the factual conclusions reached at the hearing and Commission level. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Ser.* (1995), 73 Ohio St.3d 694, 696; *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (Ohio 1947); *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App. 3d 159 (Ohio Ct. App., Franklin County 1983).

Unemployment compensation can rightfully be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just cause" is defined

as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board, supra* at ¶¶17-19. The Ohio Supreme Court in *Irvine* further stated "each case must be considered upon its particular merits." *Id.*

In light of this authority, this Court finds that any dispute of material fact was appropriately assessed by the Hearing Officer, which is the precise role of her function. In so doing, the Hearing Officer determined that Appellant's termination was voluntary and without just cause. This Court concurs with such reasoning. Moreover, to award unemployment compensation under these circumstances is in contravention of the proposition that employees are protected by the Unemployment Compensation Act from economic forces that they have no control and not as victims of their own predicaments. *Lorain County Auditor v. Ohio Unemployment Review Comm'n*, 185 Ohio App. 3d 822 (Ohio Ct. App., Lorain County 2010). *Gossard v. Dir., Ohio Dep't of Job & Family Servs.*, 2004 Ohio 5098 (Ohio Ct. App., Hardin County Sept. 27, 2004).

Finally, Appellant suggests that circumstances may have reached a level where he either had to quit or risk being fired for allegedly exposing the employer's financial inconsistencies. The case of *Robb v. Dir., Ohio Dep't of Job & Family Servs.*, 2003 Ohio 6972 (Ohio Ct. App., Lake County Dec. 12, 2003), is instructive of circumstances where an employee resigned with just cause under a quit or be fired scenario. In *Robb*, the Court held "[t]he evidence presented at the hearing indicates that Robb was under the belief that he would be fired if he did not quit. Under this situation, a resignation cannot be considered voluntary. The determination of the hearing officer and, ultimately, the Review Commission was unreasonable and against the manifest weight of the evidence." *Id.* at ¶26.

This Court is unable to reach the same conclusion based upon the record presented in this

action. There is no persuasive evidence of an animus to improperly terminate Appellant in retaliation for exposing financial improprieties. Rather, the employer's progressive discipline concerning his employment was at its infancy. Only through the act of Appellant's tendering of both an oral and written resignation was the matter of termination ever broached. While it is obvious to the Court that Appellant had a change of heart or remorse concerning his tendered resignation, this in no way rises to the level of just cause. Furthermore, testimony found to be credible by the hearing officer exists that this was not the employer's desire. Therefore, such a history is entirely inconsistent with an employer forcing its assistant manager to quit, or alternatively be fired. Finally, Appellant has failed to show that he made reasonable efforts to remain employed and conversely, the facts suggest the opposite. See *Lee v. Nick Mayer Lincoln*, 74 Ohio App. 3d 306, 311 (Ohio Ct. App., Cuyahoga County 1991). Accordingly, just cause to terminate employment has not been demonstrated by the record.

Based on the foregoing, this Court finds that the Commission's Order is supported by the evidence and is in accordance with law. Accordingly, the Court hereby **AFFIRMS** the Order of the Commission.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

The Court finds that there is no just reason for delay. This is a final appealable order.

The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.

COPIES TO:
Charles E. Campbell
1542 McNaughten Road
Columbus, OH 43232
Appellant, *pro se*

Patria V. Hoskins, Esq.
30 East Broad Street, 26th Floor
Columbus, OH 43215
Attorney for Appellee Director, Ohio Dept. Job & Family Services

Franklin County Court of Common Pleas

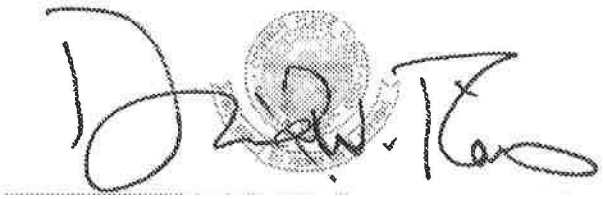
Date: 12-21-2012

Case Title: CHARLES E CAMPBELL -VS- COLUMBUS URBAN LEAGUE CUL

Case Number: 11CV009079

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David W. Fais

Court Disposition

Case Number: 11CV009079

Case Style: CHARLES E CAMPBELL -VS- COLUMBUS URBAN LEAGUE CUL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes