

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

COMMON PLEAS COURT  
2013 JAN -7 PM 2:29

PHN MOTORS, LLC

Appellant,

vs.

JENNIFER M. JOSEFCZYK, et al.

Appellees.

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CASE NO.: 12CIV0472

JUDGE COLLIER

JOURNAL ENTRY WITH  
INSTRUCTIONS FOR SERVICE

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

The Magistrate issued a decision in this matter on December 18, 2012. The Clerk of Courts mailed a copy of the decision to the parties as instructed on December 19, 2012. On January 4, 2013, the Director, Ohio Department of Job and Family Services, filed objections to the Magistrate's Decision.

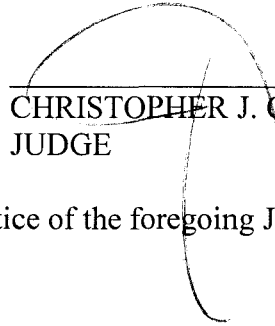
Civil Rule 53(D)(3)(b) mandates objections to a magistrate's decision be filed within fourteen days of the filing of a magistrate's decision. In this case, any objections were required to have been filed no later than January 2, 2013. The Director's objections were not filed until January 4, 2013, sixteen days after the magistrate's decision was filed. Accordingly, the Director's untimely objections will not be considered.

This court has reviewed the entire record. The Magistrate did not err by finding the State of Ohio Unemployment Review Commission hearing officer issued selectively incomplete, inaccurate findings of fact. The hearing officer's conclusions were unreasonable and against the manifest weight of the evidence. The claimant's separation from employment was not without just cause.

After careful independent review of the Magistrate's Decision of December 18, 2012, the Court finds there is no error of law or other defect on the face of the Magistrate's Decision. No timely objections having been filed, the Court, on its own judgment, hereby adopts and affirms

the Magistrate's Decision in full. The decision of the hearing officer allowing the claimant's claim for unemployment compensation is reversed. The claimant is not entitled to receive unemployment compensation as a result of her separation from the employment of PHN Motors, LLC.

IT IS SO ORDERED.

  
CHRISTOPHER J. COLLIER  
JUDGE

The Clerk of Courts is instructed to send notice of the foregoing Journal Entry to the following parties or their counsel of record.

- Atty. Mills
- Atty. Snyder
- Jennifer Josefczyk

Notice of this Entry was mailed by the Clerk of Courts on Jan. 10, 2013.

  
DEPUTY CLERK OF COURT

**"FINAL APPEALABLE ORDER"**

**IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO**

COMMON PLEAS COURT  
2012 DEC 18 PM 2:43

PHN MOTORS LLC

Appellant,

vs.

JENNIFER M. JOSEFCZYK, et al.

Appellees

CASE NO.: 12CIV0472

JUDGE COLLIER

MAGISTRATE LEAVER

**MAGISTRATE'S DECISION WITH  
INSTRUCTIONS FOR SERVICE**

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

This matter, having been fully briefed in accordance with the Court's previously issued scheduling order, came on for non-oral decision on December 3, 2012.

The Magistrate finds as follows:

**FINDINGS OF FACT**

1. A complete transcript of the proceedings before the State of Ohio Unemployment Review Commission hearing officer has been properly filed.
2. The hearing officer found the claimant, Jennifer M. Josefczyk, was discharged without just cause in connection with work and was therefore not disqualified from receiving unemployment compensation.
3. Specifically, the hearing officer made the following findings of fact:

Claimant was employed by PHN Motors LLC from January 1, 2009 until November 2, 2011. She worked as a Service Writer and was paid hourly.

On November 2, 2011, claimant was asked whether or not she had ever scheduled a fictitious customer in the employer's customer schedule. The employer believed that by inputting fictitious customers, claimant was reducing her workload and allowing her to leave early. Claimant admitted to inputting fictitious customer's[sic], but claimed all of the schedulers did that. She also claimed to have put the time into the schedule in order to lighten the schedule whenever the shop became too busy. Claimant presented a co-worker in the hearing who confirmed claimant's testimony. Mr. Greg Flaker, admitted to the employer and in

this hearing, that adding fictitious customer's [sic] was common practice. Claimant was immediately discharged for the behavior. No other employee's [sic] were discharged.

4. From the findings of fact the hearing officer "reasoned":

Claimant did not receive any warning for this behavior, even though the practice was so pervasive that claimant could not have been aware that scheduling in this manner as [sic] against the employer's policy. Furthermore, it is apparent from the evidence that the employer did not enforce this rule uniformly. As the employer did not establish that the claimant's behavior was so egregious to constitute immediate discharge, the Hearing Officer finds that claimant was discharged by PHN Motors LLC without just cause in connection with work.

5. A reviewing Court is required to review the record provided by the commission. If the Court finds from the record that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, the Court shall reverse, vacate or modify the decision, or remand the matter to the commission.

6. The Appellant has attached Exhibits 6 and 7 to the Appellant's brief. After conducting a case management conference with the parties, the Magistrate was able to determine these two exhibits were not part of the official record and will not be considered.

#### DISCUSSION AND CONCLUSIONS OF LAW

1. The "findings of fact" as issued by the hearing officer are selectively incomplete. Almost all evidence and testimony favoring the employer was ignored by the hearing officer as if it was never presented. This is not the same as situations where some evidence was found to lack credibility. There was no finding as to any lack of credibility. To the contrary, the evidence was simply disregarded as if it didn't exist.

2. For example, the hearing officer found "no other employee's [sic] were discharged". While this is technically true, it completely mischaracterizes the facts. It is undisputed from the transcript only two employees admitted engaging in fictitious scheduling---the claimant as

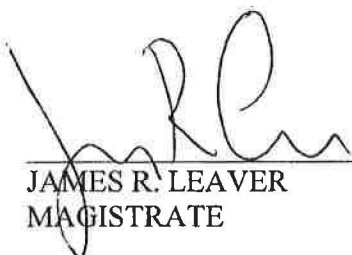
well as co-worker Greg Flaker. However, the hearing office ignores the fact Mr. Flaker admits he initially lied about his fictitious scheduling. The hearing officer ignores the fact Mr. Flaker then quit his job within a week and therefore couldn't be fired. Evidence from four other employees clearly establishing the only two employees admitting to engaging in the fictitious scheduling were the claimant and Greg Flaker was not addressed by the hearing officer.

3. The claimant asserted she was never subject to prior discipline. The Appellant disputed this fact, stating there were past verbal warnings as well as a written warning. Without resolving the credibility of the conflicting assertions, the hearing officer completely ignored the employer's assertion of past disciplinary issues and reasoned the "Claimant did not receive any warnings for this behavior, even though the practice was so pervasive that claimant could not have been aware that scheduling in this manner as [sic] against the employer's policy." To the contrary, the undisputed evidence in the record reveals the claimant's conduct was clearly prohibited by two different provisions of the employee handbook; the claimant admitted receiving the handbook; and the claimant admitted knowing it was wrong. To reach this conclusion, the hearing officer had to ignore the claimant's own admission that the employer handbook, of which the claimant was aware, specifically prohibited the conduct engaged in by the claimant in two separate provisions.
4. The hearing officer ignored altogether undisputed evidence offered by the employer that: (1) the claimant's conduct financially hurt the dealership; (2) the claimant's conduct financially hurt the individual service technicians, and (3) the claimant's conduct detrimentally effected the legitimate customer's ability to obtain service on their vehicles because of the fictitious service times.

5. Furthermore, even if the actual findings of fact made by the hearing officer were an accurate characterization of the evidence presented, the findings of fact made by the hearing officer do not support the hearing officer's subsequent "reasoning".
6. The hearing officer reasoned the claimant "...could not have been aware that scheduling in this manner as [sic] against the employer's policy". To the contrary, the undisputed evidence showed the conduct was prohibited by two different provisions of the employee handbook; the claimant admitted receiving the handbook; and the claimant admitted knowing it was wrong.
7. The hearing office further "reasoned" it was apparent from the evidence that the employer did not enforce this rule uniformly. The undisputed evidence clearly shows otherwise. When the dealership management first suspected fictitious scheduling, the claimant was questioned. After admitting to the allegation, she was fired. The second scheduler initially lied when questioned. Within a week he quit. Obviously, if an employee has already quit they can't really be retroactively fired. The third scheduler denied any fictitious scheduling and no longer works at the dealership. The hearing officer's conclusion that the employer did not enforce the rule uniformly is unreasonable and against the manifest weight of the evidence.
8. Lastly, the hearing officer found "...the employer did not establish that the claimant's behavior was so egregious to constitute immediate discharge..." Generally, an employee is not eligible for unemployment benefits if the employee quits without just cause or the employer discharged the employee for just cause in connection with the employee's work. Just cause is simply that, which to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. Even if we assume "just cause" actually goes so far as to

require employers to forewarn employees that deceitful and dishonest conduct that harms the employer is grounds for discharge, the employer did so through its handbook.

9. Under the undisputed facts of this case, the hearing officer's decision was unreasonable and against the manifest weight of the evidence. To hold otherwise places the employer in the position of having to choose between tolerating financially harmful, deceitful and dishonest conduct by its employees or paying a price for refusing to allow it. The decision of the hearing officer allowing the claimant's claim for compensation shall be reversed. The claimant's separation from employment was not without just cause and the claim shall be disallowed.
10. Costs of this action shall be assessed to the claimant.



JAMES R. LEAVER  
MAGISTRATE

No party shall assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

The Clerk of Courts is instructed to serve this Decision on the below listed attorneys or parties:

Atty. Mills  
Atty. Snyder  
Jennifer M. Josefczyk

Copies of this Order were mailed by the Clerk of Courts on Dec. 19, 2012.



Dorinda M. Lucas  
Deputy Clerk of Court