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IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

DAVID E. DUGAN,

Case No. CV2013 03 0664

Plaintiff/Appellant

(Charles L. Pater, Judge)

vs.

ORDER AFFIRMING THE DECISION OF
THE OHIO UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION

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

FINAL APPEALABLE ORDER

Defendants/Appellees

This is an administrative appeal pursuant to R.C. 4141.282. Plaintiff-appellant David E. Dugan has appealed from the decision of the Ohio Unemployment Compensation Review Commission, which held that he quit work with appellee Home Depot USA, Inc. without just cause. Based upon the certified record of proceedings before the Review Commission, that decision is AFFIRMED.

Dugan filed an application for unemployment compensation benefits when he was laid off by Beta Construction, Inc. due to lack of work. His application was allowed by the Ohio Department of Job and Family Services ("ODJFS"). ODJFS later allowed Dugan's application for federal extended unemployment compensation benefits. After being unemployed for approximately nine months, in September of 2012, Dugan was hired by appellee Home Depot into a part-time position. He was initially told that he would be working in the flooring department, which he felt qualified for because he had been in the construction trade his entire life and had substantial prior experience installing flooring. Instead, though, at his initial training Dugan was

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told that he would be trained to work in the blinds department, an area in which he had no prior experience.

Dugan's initial training with Home Depot was on the computer, but after two weeks, he quit without telling anyone at Home Depot why. Dugan testified that he quit because of the trouble he had had with the computer training due to his limited computer skills, and because he did not want to work with blinds due to his lack of prior experience. He testified, "I quit because it was . . . not a right fit for me." However, again, Dugan never discussed quitting with his supervisor or the company's human resources specialist, and never mentioned either of his reasons for quitting to anyone at Home Depot

Dugan filed an application for unemployment compensation benefits, and ODJFS denied his claim. Dugan appealed, and on November 14, 2012, ODJFS issued a redetermination decision that affirmed the denial of benefits. He appealed again, and ODJFS transferred the matter to the Ohio Unemployment Compensation Review Commission. Following a hearing, a decision was issued affirming the redetermination decision. The Review Commission disallowed Dugan's request 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), syl. "[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 decision. *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d at 697.

When evaluating whether a judgment is against the manifest weight of the evidence in a civil case, the standard of review is the same as in the criminal context. *Marrinich v. Dir., ODJFS*, 12th Dist. No. 2011-11-124, 2012-Ohio-4526, 977 N.E.2d 1088, par.20, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, par.17. That is, the court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the finder of fact "clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *Id.*, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist. 2001).

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Dugan's claim for unemployment compensation benefits was disallowed because it was determined that he quit work without just cause 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 quit work without just cause or 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.*, 73 Ohio St.3d 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 can not conclude that the decision of the Review Commission was unlawful, unreasonable, or against the manifest weight of the evidence. Instead, there is competent, credible evidence supporting the decision.

[G]enerally[,] employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify

the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore will not be entitled to unemployment benefits.

Shephard v. Ohio Dept. of Job & Family Servs., 166 Ohio App.3d 747, 2006-Ohio-2313, 853 N.E.2d 335 (8th Dist.), citing *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist. 1996); see also, *Krawczynszyn v. Ohio Bur. of Emp. Servs.*, 54 Ohio App.3d 35, 37, 560 N.E.2d 807 (8th Dist. 1989) ("An employee who resigns before providing her employer with a reasonable opportunity to correct offensive conduct in the workplace risks quitting her employment without just cause."); *Turner v. Mission Essential Personnel, LLC.*, 10th Dist. No. 11AP-961, 2012-Ohio-5470, par.9.

By contrast, courts have found employees to have quit *with* just cause where they have notified their employer of the problem before quitting, thereby giving the employers an opportunity to remedy it. See, e.g., *Turner v. Mission Essential Personnel, LLC.*, *supra* at par.9; *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d at 307, and cases cited therein. Notice to the employer is not alone enough to establish just cause; the employer must have a realistic opportunity to correct the problem. *Id.*

Here, as indicated above, Dugan failed to provide any notice to Home Depot that he was having any problems, either with his training on the computer, or with the change in job assignment. Consequently, Home Depot had no opportunity to remedy or resolve his issues. Dugan simply failed to report to work one day, as scheduled.

Thus, under the cases law cited above, he must be deemed to have quit without just cause.

Dugan has asserted that when he was hired he was told he would be working in the flooring department, and upon arriving for training he was advised that he would be working in the blinds department instead, a position for which he says he was not qualified. In *Tsangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, supra, the Ohio Supreme Court addressed an employee's "unsuitability" to perform the work required by the employer. Under certain circumstances, unsuitability to perform required work can be sufficient to find that the employee quit work with just cause and, result in entitlement to unemployment benefits. The court adopted the following test to determine whether the employee quitting because of unsuitability to perform work results in fault or no fault on the part of the employee:

An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.

Id., at 698-699.

As set forth above, this court may set aside the Review Commission's decision only where it is unlawful, unreasonable, or against the manifest weight of the evidence. *Id.*, at 696; R.C. 4141.282(H). A reviewing court does not make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the courts have no authority to upset the commission's decision. *Rubin v. Director, Ohio*

Department of Job & Family Services, 10th Dist. No. 11-AP-674, 2012-Ohio-1318, par.10, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio.St.3d at 18; *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d. 468 (1982) (noting that "[a] reviewing court can not usurp the function of the triers of fact by substituting its judgment for theirs"); *Aliff v. Director*, 10th Dist. No. 01AP-18 (Sept. 25, 2001). Rather, the court's duty or authority is to determine whether the evidence of record supports the commission's decision. *Id.* A reviewing court may not reverse the Review Commission's decision simply because "reasonable minds might reach different conclusions." *Lang v. Dir., Ohio Dept. of Job and Family Services*, 134 Ohio St.3d 296, 2012-Ohio-5366, 982 N.E.2d 636, par.11. Further, an employee's unsuitability for his or her work position is only one, but not the only, manifestation of "fault." *Chen v. Ohio Dept. of Job and Family Services*, 12th Dist No. CA2011-04-026, 2012-Ohio-994, par.18.

Here, there is sufficient competent, credible evidence supporting the Review Commission's determination. The decision finding Dugan at fault is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Review Commission is affirmed.

ENTER

Judge
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Common Pleas Court
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Charles L. Pater, Judge

cc: Robin A. Jarvis, Esq.
David E. Dugan, *pro se*