COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ANTHONY A. VOSS,	:	
Appellant,	:	**CASE NO. 11 CVF 09 11606**
-vs-	:	**JUDGE KIMBERLY COCROFT**
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,	:	
	:	
Appellees.	:	

DECISION AND ENTRY

COCROFT, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. § 4141.282(H) from an August 17, 2011 Decision of the Unemployment Compensation Review Commission ("Review Commission"). The appellant, Anthony Voss, filed a claim for unemployment benefits. On January 7, 2011 the Appellee, Director of the Ohio Department of Job and Family Services, issued an initial determination finding that appellant (claimant) was discharged without just cause by his employer, Conor ONeills ("Employer"), pursuant to R.C. 4141.29(D)(2)(a). The Director allowed the application with a benefit year beginning November 22, 2009. Upon appeal, on January 7, 2011, the Director issued a Redetermination which held that the appellant was discharged by his employer without just cause in connection work and stated that other matters which may have been addressed by the Redetermination are not relevant to this case.

The Employer appealed and the matter was transferred to the Review Commission on January 31, 2011 pursuant to R.C. 4141.281. On May 31, 2011, Hearing Officer Tonya Brady held an evidentiary hearing, via telephone. Appellant appeared and testified on his own behalf. The

Employer was represented by Laura Bianco, who presented Caroline Kaganov and Shane McCann as witnesses. In her June 13, 2011 Decision, the hearing officer reversed the Director's determination and held that the appellant had quit his job. The hearing officer concluded that the appellant "had quit work with Conor O'Neills without just cause." See June 13, 2011 Decision. The appellant filed a request for review. Thereafter, the Review Commission disallowed appellant's request for review and issued a decision affirming the findings and determination of the hearing officer. See August 17, 2011 Decision.

In the June 13, 2011 Decision, the hearing officer made the following factual findings:

> Claimant worked for the employer from April 28, 2012 to July 9, 2010. He worked as a Line Cook.
>
> On July 9, 2010, claimant walked off the line while at work. The claimant did not make any mention to Caroline Kaganov, the General Manager, or Shane McCann, a Manager, regarding his hands being irritated from wearing latex gloves, which were not mandatory.
>
> When Shane McCann approached the claimant regarding why he walked off the line, the claimant only mentioned that he was having mental issues and could not work.
>
> No one discharged the claimant.
>
> On July 9, 2010, claimant quit.
>
> See June 13, 2011 Decision.

Standard of Review

This Court must uphold the decision of the Review Commission unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St. 3d 694 (1995) and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15 (1985). While a reviewing court is not permitted to make factual findings or determine the credibility of witnesses, it does have a duty to determine whether the decision of the Review Commission is

supported by the evidence in the record.

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. When an employee is at fault, he or she is no longer the victim of fortune's whims but instead is directly responsible for his/her own predicament. Fault on the employee's part separates him/her from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination. Thus, if the employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. See R. C. 4141.29(D)(2)(a). Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699. In the facts before the Court, the record supports the finding that the appellant quit work without just cause.

Appellant's Assignments of Error

The appellant sets forth the following assignments of error:

I. The decision of the Hearing Officer was unlawful because Mr. Voss was denied due process and his right to a fair hearing, in violation of the mandatory provisions of R.C. 4141.281 and Ohio Adm. Code 4146-7-02.

A. Mr. Voss's rights to a fair hearing were unlawfully infringed by the Review Commission's failure to honor his subpoena request and the Hearing Officer's improper handling of this failure.

B. Mr. Voss was denied a fair hearing because the Hearing Officer failed to fully and fairly develop the evidence and ascertain all relevant facts.

C. Mr. Voss was denied his full rights to present evidence and examine witnesses without making an adequate inquiry into the relevancy of their testimony.

II. The decision of the Hearing Officer was against the manifest weight of the evidence because the employer did not introduce evidence to support its contention that Mr. Voss voluntarily quit his job.

The appellant was employed by the appellee Conor Oneills' Irish pub as a line cook from

April through July 9, 2010. The appellant contends that on July 9, 2010 he was required to wear powdered latex gloves because of a health department inspection. The appellant further contends that prior to July 9th, it had not been the practice of Conor O'Neills to require employees to wear latex gloves.

Due to his use of latex gloves, the appellant alleges that his hands became swollen, puffy and irritated to the point that it became difficult for him to perform his work responsibilities. Based on this difficulty, the appellant alleges that he requested alternate work assignments or to have someone cover his shift. However, the appellant contends that Conor O'Neills refused these options, berated the appellant and then fired him.

Conversely, Conor O'Neills avers that on July 9, 2010, the appellant quit his job because of mental health issues and personal problems. Moreover, the appellee avers that the appellant never stated to his employer that he could not work because his hands were irritated from wearing latex gloves.

Law and Analysis

R.C. 4141.281(C)(5) provides:

> The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. **The commission may allow or disallow the request for review.** The disallowance of a request for review constitutes a final decision by the commission. (Emphasis added).

Although R.C. 4141.281(C)(5) mandates that the Review Commission shall consider a request for review, it clearly states that it is within the Review Commission's discretion to allow or disallow the request for review. Upon a review of the record, it is clear that the Review Commission complied with R.C. 4141.281(C)(5). In its August 17, 2011 Decision the Review Commission states, in pertinent part:

> ...The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281(C)(3), Revised Code of Ohio, from the Hearing Officer's decision.
>
> Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.
>
> * * * *
>
> The Request for Review is hereby disallowed.
>
> See August 17, 2011 Decision.

Accordingly, the Review Commission was well within its discretion to disallow further review of the appellant's case.

The appellant has the burden of proving that he is entitled to employment compensation benefits. See *Vickers v. Ohio State Bur. of Emp. Serv.*, 1999 Ohio App. LEXIS 1794. The record demonstrates that the appellant chose to represent himself at the hearing stage of this administrative proceeding. Ohio law is clear that *pro se* litigants are to be held to the same standard as an attorney. With respect to procedural rules, *pro se* litigants are held to the same standards as a practicing attorney. The *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules. If the court (or administrative agency) treats a *pro se* litigant differently, the court or agency begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. See *Justice v. Lutheran Social Servs.*, 1993 Ohio App. LEXIS 2029.

Upon review, this Court concludes that the August 17, 2011 Decision of the Review Commission is lawful, reasonable and is not against the manifest weight of the evidence. Therefore, the appellant is not eligible for unemployment benefits because he was discharged with just cause. See R.C. 4141.29(D)(2)(a). The appellant asserts that his rights to a fair hearing were unlawfully infringed upon by the Review Commission's failure to honor his subpoena request. The

record demonstrates that the only documented request by the appellant for the issuance of a subpoena occurred on May 27, 2010, which was only 4 days prior to the May 31, 2010 scheduled hearing date. Clearly, it was the appellant's fault that his tardy request for a subpoena ostensibly was the reason that he did not have the requested documents in advance of the hearing. Moreover, the appellant has not demonstrated that he requested a continuance of the hearing in order to be fully prepared. The record also demonstrates that the hearing officer questioned the relevance of the appellant's personnel file since the issue to be determined was whether the appellant walked off his job on July 9, 2010. Tr. 17.

There is also evidence in the record which demonstates that the appellant already had possession of the requested personnel file. In an email exchange on April 26, 2011, the appellant requested as follows:

> My name is Anthony Voss and I would like to request a copy of my file for my Hearing over the phone

The record demonstrates that the Review Commission complied with that request the next day, on April 27, 2011 and sent the appellant via email a copy of the file he requested. When the appellant requested a copy of his file on May 27, 2011, the record demonstrates that the appellee e-mailed it to him again and acknowledged in that email that it had previously sent him the same file on April 24, 2011.

In regard to his assertion that he was denied due process, the fundamental requirements of procedural due process are notice and hearing and ultimately, an opportunity to be heard. Providing that person with notice and a hearing is all that is necessary in order to comply with due process in an administrative proceeding See *Coleman v. State Medical Board of Ohio* (10th Dist. App. 2007), 2007 Ohio 5007, 2007 Ohio App. LEXIS 4916. The record demonstrates that the appellant failed to proffer any evidence as to what would have been said by the three witnesses he intended to call. Tr.

49-50. The transcript demonstrates that the three witnesses were not in the kitchen on July 9, 2010 and thus, did not have any personal observations/knowledge in regard to the issue as to whether the appellant walked off his job. Tr. 49-50.

Clearly the hearing officer was well within her authority and exercising her discretion in restricting the testimony to relevant matters.

> While R.C. 4141.281(C)(2) requires that commission hearings satisfy due process principles, it also provides that "[i]n conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs." Thus, "[t]he hearing officer has broad discretion in accepting and rejecting evidence and in conducting the hearing in general." Bulatko at 11. "The hearing officer's discretion is tempered only to the extent that he must afford each party an opportunity to present evidence that provides insight into the very subject of the dispute." Id. (citing Owens v. Ohio Bur. of Emp. Servs. (1999), 135 Ohio App.3d 217, 220). *Howard v. Electronic Classroom of Tomorrow*, 2011-Ohio-6059 at 16.

From a review of the certified record, the nature of the proposed testimony was never proffered even after the appellant retained counsel, and filed objections to the hearing officer's decision. Thus, based on the exchange between the hearing officer and the appellant, this Court concludes that the appellant's due process rights were not violated. Tr. 49.

The appellant also asserts that the Review Commission's decision was against the manifest weight of the evidence. The appellant relies on the holding in the unreported case of *Griffith, Jr. v. Admin., Ohio Bureau of Employment Services,* Case No. 4301 (8th Dist. 1984). In *Griffith,* the court was presented with uncontested facts. In the case *sub judice*, the facts are contested. Also *Griffith* can be distinguished in that the employee in that case had completed his normal working day and most of his special overtime when he left his job. In the facts before this Court, the appellant walked off his job during the peak of the dinner time rush while in the midst of his normal shift. Clearly, the holding in *Griffith* is not applicable to the facts of the appellant's case.

Most convincing to this Court is the appellant's own testimony, as supported by the

following excerpts:

> A. I am not a quitter. I've had some horrible jobs in my life, tenfold worse that what they had in that small kitchen and I don't quit. That's not me. I, I get fired before I quit. I know it's not like the greatest quality to say that I usually get fired, but it's the truth.
>
> Tr. 39.
>
> Q. Who told you you had to go see a doctor?
>
> A. Caroline. She told me I would need a doctor's note before I could come back to work.
>
> Tr. 40.
>
> Q. Did you eventually go to the doctor's as a result of your hands being irritated?
>
> A. Actually no, I never went to the doctor…
>
> Tr. 42.
>
> Ms. Bianco: The first incident, did you leave the line and, and leave the premises of the building?
>
> Mr. Voss: That was already established that I left.
>
> Hearing Officer: Just answer the question.
>
> Mr. Voss: Yes, I left.
> Ms. Bianco: And then when you came back, you came back solely to pick up your paycheck, is that correct?
>
> Mr. Voss: Yes.
>
> Tr. 45.

The hearing officer, as the trier of fact, was presented with two different versions of the facts in this case. The hearing officer chose to believe the appellee's witnesses' version of the facts and discount the facts presented by the appellant. See *Todd v. Admr. Ohio Sept. of Job & Family Services*, 2004-Ohio-2185.

DECISION

This Court concludes that the Review Commission's August 17, 2011 Decision is lawful, reasonable and not against the manifest weight of the evidence. Accordingly, the Review Commission's Decision mailed on August 17, 2011 is hereby **AFFIRMED.** The appellant's request for an oral argument is hereby **DENIED**.

This is a final, appealable Order. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

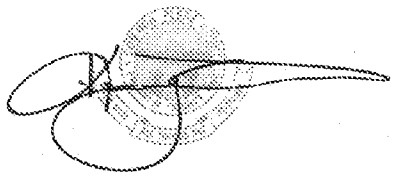
Date: 02-26-2013

Case Title: ANTHONY A VOSS -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR

Case Number: 11CV011606

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 11CV011606

Case Style: ANTHONY A VOSS -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR

Final Appealable Order: Yes