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COMMON PLEAS COURT
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TRACY M. OVERMYER
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IN THE SANDUSKY COUNTY COURT OF COMMON PLEAS

VIRGINIA NORMAN,

*

Appellant

*

Case No. 12 CV 923

-vs-

*

CONCORD CARE CENTER
OF MILAN, et al

*

JUDGMENT ENTRY

Appellee

*

* * *

BACKGROUND

Appellant, Virginia Norman, filed a timely appeal from a decision of the Unemployment Compensation Review Board which affirmed the hearing officer's redetermination finding that she was terminated from her employment with just cause.

In rendering the instant decision, this court has considered the record submitted by the Unemployment Compensation Review Commission (Commission) and the briefs filed by the parties herein.

FACTS

Appellant, Virginia Norman, was employed by appellee Concord Care Center of Milan for the period of nine years from October 31, 2002 until December 14, 2011. At the time of the separation, claimant was working as a State Trained Nurses Assistant for Concord who specializes in providing assistant living quarters to persons suffering from mental disorders and other difficulties. Sometime in December of 2011, the employees were told that a patient in the unit where the appellant worked reported that he/she observed an employee using illegal drugs. Thereafter all thirty-five employees who worked in that unit were directed to be drug tested. Concord had a written drug policy which provided that employees would be subject to random testing upon the direction of the appellee upon the occurrence of three different scenarios: a new hire, reasonable suspicion of drug use, and following an accident. Reasons one and three do not apply to these circumstances. However the parties herein are arguing whether or not reasonable suspicion existed in this case to justify the appellee to compel of drug testing of the appellant. And if so, what are the acceptable methods in conducting the testing for drugs (ie. observation of the testing),

State of Ohio, Sandusky County, SS:
I hereby certify that this is a true copy of
the original document now on file in my
office this 11th day of March
2013.

TRACY M. OVERMYER
Sandusky County Clerk of Courts

By [Signature]
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The appellant appeared for testing along with 35 other employees on December 13th and was unable to provide enough quantity of urine to complete the test. She was asked to drink more liquids but left early because she was riding with another employee who had to leave early. She made arrangements to test the next day, but again was unable to provide enough urine. She was asked to ingest more liquid and re-test. She refused to do so and left the facility. Appellant testified that the reason she left is that she did not want to endure a second strip search prior to being re-tested. She testified that she thought at that point her employment was terminated because she left without a re-test. Later that day, Concord asked if she would provide a hair sample. She declined thinking that she shouldn't have to do so because she was no longer employed by Concord.

ISSUE

Whether the June 27, 2012 decision of the Review Commission which determined appellant was terminated with just cause is unlawful, unreasonable, or against the manifest weight of the evidence?

LAW

A reviewing court may reverse a decision of the Unemployment Compensation Review Commission if the decision is, “unlawful, unreasonable, or against the manifest weight of the evidence.” Courts of appeal are not permitted to determine the credibility of witnesses or make factual findings, but must determine whether the Commission’s decision is supported by evidence in the record. *Tzangas, Plakas, & Mannos v. Administr.* (1995), 73 Ohio St.3d 694 (quoting *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15). The Review Commission’s decision must be affirmed if some competent, credible evidence in the record supports it, *Lang v. Ohio Dept. of Job & Family Serv.* Slip. Opinion No. 2012-Ohio-5366, at pg.11.

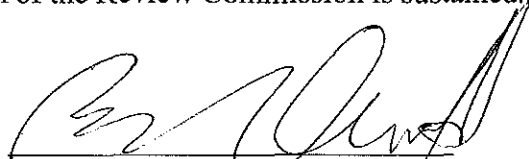
ANALYSIS AND CONCLUSION

The hearing officer’s determination that appellant was terminated from her employment with just cause is not unlawful, unreasonable, nor against the manifest weight of the evidence. The facts contained in the hearing record substantiate that appellant refused to complete the second testing procedure on December 14th (page 26 of transcript line 10). Although she says it was because it was “humiliating”, she provided no medical evidence that she was physically unable to give an adequate amount of urine. The first testing could have been completed if she had arranged for another mode of transportation from the test site since her ride had to leave early. It is also of note that her “ride” also refused to complete the re-test (see transcript page 26 beginning at line 2) on the second day. The Court is not convinced by appellant’s arguments as to lack of “reasonable suspicion”. A patient reporting drug usage by an employee who is responsible for the health and safety of a very vulnerable patient population who is possibly a drug user raises a reasonable

suspicion of illegal drug usage. She was not singled out as all 35 employees who had access to the same patient were also sent for testing. For the safety of others, such concerns need to be addressed by employers. That fact was emphasized in the *Arnold v. Kingston Care Ctr.* Case, Fulton C.P. No. 10CV000362 (May 12, 2011). Additionally the hearing officer was able to judge the credibility of the witnesses which the Court cannot question unless the facts indicate that an unlawful or unreasonable decision was rendered that was against the manifest weight of the evidence.

Therefore, this Court finds that the decision of the Review Commission is sustained.

Costs assessed to the plaintiff.



BARBARA J. ANSTED, JUDGE

cc:

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