



IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

WANDALYN J. DAVIS	)	CASE NO. 12 CV 327
	)	COURTROOM NO. 4
	)	
APPELLANT	)	JUDGE JOHN M. DURKIN
	)	
VS.	)	
	)	JUDGMENT ENTRY
COMPREHENSIVE LOGISTICS	)	
CO. INC., ET AL	)	
	)	
APPELLEES	)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to Ohio Revised Code Section 4141.282.

In this case, the record before the Review Commission establishes that the Director, Ohio Department of Job and Family Services (“Director”) issued an initial determination on August 15, 2011 that Appellant, Wandalyn J. Davis (“Davis”) was discharged with just cause from her employment at Comprehensive Logistic Co., Inc. (“Employer”) pursuant to Ohio Revised Code Section 4141.29(D)(2)(a) and disallowed Davis’s claim for benefits. Davis timely appealed the Director’s determination and on September 16, 2011 the Director affirmed the initial determination disallowing Davis’s claim for benefits. Thereafter, Davis filed a timely appeal of the Director’s redetermination decision and the matter was transferred to the Review Commission on September 19, 2011.

A telephonic evidentiary hearing was held before the Review Commission on October 17, 2011 and November 1, 2011. The Review Commission issued a decision on

*J 2812*  
*000589*

2012 CV  
00327  
00005702939  
JUDENT



November 28, 2011 affirming the determination by the Director disallowing Davis's claim for benefits. The Review Commission found that Davis was discharged from employment with just cause in connection with work and was therefore ineligible for unemployment benefits.

On December 16, 2011, Davis timely requested a further review by the Review Commission. The Review Commission denied the request on January 4, 2012. This appeal followed.

In this case, the record before the Review Commission establishes that Davis worked as a material clerk for Employer. On July 13, 2011 Davis was involved in an inventory of parts for an automobile manufacturer. Davis attended a training session where the parameters of the inventory were discussed. Davis and others were advised that the inventory was to be a blind count and computers were not to be used unless otherwise directed. During the inventory, Davis was found with a "cheat sheet" which she made on a computer with the inventory numbers from the previous day. When Davis refused to turn over the cheat sheet to her supervisor, she was suspended and ultimately discharged for violating a direct management direction, insubordination, unsatisfactory job performance and violating Employer's code of conduct.

The procedure for reviewing a Review Commission's decision is set forth in R.C. 4141.282(H) which provides as follows:

The court shall hear the appeal on the certified record provided by the commission. 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.

To reverse, vacate or remand the matter, this Court must find that the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to support the Review Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4<sup>th</sup> Dist. 1965); *Roberts v. Hays*, 9<sup>th</sup> Dist. No. 21550, 2003-Ohio-5903, paragraph 12.

The determination of factual questions is a matter primarily for the hearing officer and the Review Commission. *Brown-Brockmyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E.2d 79 (1947). If some credible evidence supports the Review Commission's decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In this case, Davis was found to be discharged for "just cause". The "just cause" test is whether the discharge was due to the culpability of the employee rather than due to circumstances beyond the employee's control. *Loy v. Unemp. Comp. Bd.*, 30 Ohio App.3d 204, 206, 507 N.E.2d 521 (1<sup>st</sup> Dist. 1986). The Seventh District Court of Appeals considered the "just cause" issue in *Kosky v. American Gen. Corp.*, 7<sup>th</sup> Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

The record before the Review Commission contains evidence that Davis unreasonably disregarded the best interests of her employer. The Hearing Officer

determined, after considering the testimony of the parties, that Davis was discharged with just cause. The hearing officer was responsible for weighing and considering the evidence to determine if just cause existed for Davis's termination.

This Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

DATE: 3/8/13

  
\_\_\_\_\_  
JUDGE JOHN M. DURKIN