

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

MICHAEL WILLIAMS,	□	CASE NUMBER 12CV-14486
]]	
APPELLANT,	□	JUDGE CAIN
]]	
vs.	□	MAGISTRATE MCCARTHY
]]	
DIRECTOR, OHIO DEPARTMENT OF	□	
JOB & FAMILY SERVICES, ET AL.]]	
	□	
APPELLEES]]	

**DECISION TO AFFIRM
AND
JUDGMENT ENTRY**

Rendered this _____ day of March 2013

CAIN, J.

This is an administrative appeal from an adjudication order issued by the Unemployment Compensation Review Commission on November 8, 2012, denying review of its hearing officer's August 7, 2012, decision denying appellant's request for unemployment compensation. The commission's operative decision at the review level found that appellant's employment was terminated for just cause in connection with his work and he was thus disqualified from receiving benefits for the entire duration of his unemployment in accordance with R.C. 4141.29(D)(2)(a), which provides:

(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 administrator finds that:
 - (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work . . .

A review of the record reveals appellant was employed by appellee, Bob Caldwell Dodge County, Inc. In that connection, he was engaged to perform the duties and accept the responsibilities as a vehicle sales person. It came to be that after approximately seven months on the job, appellant was let go for issues concerning attendance issues, lack of honesty and other insubordination.

Appellant then filed for unemployment benefits. Thereafter, this matter journeyed through the normal administrative processes to determine appellant's eligibility to receive unemployment benefits. As referenced, the Unemployment Compensation Review Commission found that appellant's employment was terminated for just cause in connection with his work. This appeal results from that finding.

In reviewing a decision of the Unemployment Compensation Review Commission, an appellate court may reverse the Commission's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. § 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694. Reviewing courts should defer to the Commission's findings regarding the determination of purely factual issues,

such as the credibility of witnesses and the weight to be given to conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

Although a reviewing court may not make factual findings or determine the credibility of witnesses, it has the duty of determining whether the evidence in the record supports the administrative agency's decision. *Tzangas*, supra at 696. The court may not reverse the decision of the agency, however, simply because it interprets the evidence differently than did the agency. *Angelkovski*, supra at 161. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the agency's decision. *Tzangas*, supra.

To support his claim for benefits, appellant claims that although he missed time from work, it was permitted by the employer for the reason that appellant claimed he had to help care for a sick relative. That was to be accomplished between March 6 and March 9, 2012. On March 5, (the day before his excused absence) appellant called off work due to a claimed physical injury. As things came to pass, it was discovered by viewing appellant's Facebook page that he was in Las Vegas at the time he was to have been here assisting with an ailing uncle.

Upon his return to work, appellant was confronted with the situation of his creation. At that time, he told the inquiring supervisor at his place of employment that the supervisor did not have the authority to question appellant about the Las Vegas matter. When another supervisor got involved, appellant

abruptly walked out of the supervisor's office. Then, appellant was requested to leave the premises. That he refused to do until the general manager directed that he leave the premises. Thereafter, appellant's employment with the car dealership was terminated.

In attempting to justify his insubordination with respect to walking out of the supervisor's office, appellant claims that the supervisor called him a "nigger." The supervisor denied it. It was noted that appellant never mentioned the use of a racial soubriquet until several months after the event was said to have occurred. Indeed, it is the case that appellant never mentioned the alleged name calling to appellee's investigator. Nor did he bring it up at the time of his firing in terms of explaining why he walked out of meetings with supervisory personnel. In short, the credibility of appellant and his version of the pivotal facts of the case was very much in question.

Essentially, appellant contends that the evidence did not support the conclusions reached by the hearing officer. In addition to having the responsibility of providing a fair hearing, a function of the hearing officer is to receive the evidence, consider it and draw from it reasonable conclusions consistent with the quality of the evidence presented. In this regard, the hearing officer has the obligation to determine matters such as the creditability of witnesses. It is the case that "it is solely within the trier of fact's domain to assess witness credibility and the [hearing officer] is free to believe a witness completely, in part, or not at all." *Todd v. Adm'r, Ohio Dep't of Job & Family*

Servs., 2004 Ohio 2185, 2004 Ohio App. LEXIS 1948, (Ohio Ct. App., Scioto County, Apr. 20, 2004) citing *Royster v. Board of Review* (Apr. 13, 1990), Scioto App. No. 89CA1826, 1990 Ohio App. LEXIS 1640. "Credibility determinations and the weight to be given the evidence are properly for the trier of fact . . ." *WFO Corp. v. Ohio Liquor Control Comm'n*, 1996 Ohio App. LEXIS 4788 (Ohio Ct. App., Franklin County, Oct. 31, 1996).

Appellant further argues that his firing was done without just cause. When considering the issue of whether the discharge of appellant was for just cause, the consideration must focus on the reason the employment relationship was brought to a conclusion. "The term 'just cause' has not been clearly defined in our case law. We are in agreement with one of our appellate courts that 'there is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. 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.'" *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.

The critical issue in a just cause determination is not whether an employee technically violated a company rule; rather, the issue is whether the dismissal is premised on an employee's actions which demonstrate an unreasonable disregard for an employer's best interest. *Piazza v. Ohio Bur. of*

Emp. Serv. (1991), 72 Ohio App. 3d 353, 357, 594 N.E.2d 695; *Kiikka v. Ohio Bur. of Emp. Serv.* (1985), 21 Ohio App. 3d 168, 169, 486 N.E.2d 1233.

Here the displayed incidents of insubordination and fabrication do indeed support the notion that appellant was not acting in the best interest of the auto dealership. Upon a full consideration, it is found that the decision denying unemployment benefits to appellant is not unlawful, unreasonable, or against the manifest weight of the evidence.

Accordingly, judgment is hereby granted in favor of appellees. Costs to be paid by appellant.

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Franklin County Court of Common Pleas

Date: 03-14-2013

Case Title: MICHAEL WILLIAMS -VS- OHIO STATE DEPARTMENT JOB &
FAMILY SERVI ET AL

Case Number: 12CV014486

Type: DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 12CV014486

Case Style: MICHAEL WILLIAMS -VS- OHIO STATE DEPARTMENT
JOB & FAMILY SERVI ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes