

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ANGELO D. CRENSHAW)	CASE NO. CV-12-785182
)	
Appellant,)	MEMORANDUM OF
)	OPINION AND ORDER
v.)	
)	
DIRECTOR, OHIO DEPARTMENT OF)	
JOB AND FAMILY SERVICES, et al.)	
)	
Appellees.)	

FRIEDMAN, J.:

{¶1.} Angelo Crenshaw appeals the decision of the Ohio Unemployment Compensation Review Commission finding that he was terminated from Ferro Corporation (“Ferro”) for just cause and thus denying eligibility for unemployment compensation. For the reasons discussed below, the Review Commission’s decision is affirmed.

{¶2.} The record reveals the following facts. Appellant, Angelo Crenshaw, was employed as a mill operator for Ferro Corporation from February, 1988 until November, 2011. On August 16, 2011, Appellant entered into a Last Chance Agreement for failing to timely report a workplace injury. The Agreement provided that “[i]f during the two (2) ‘active’ year last chance period Crenshaw violates any shop rule . . . he will be subject to termination at the discretion of the Company.” (Director’s File, Last Chance Agreement.)

{¶3.} On October 26, 2011, Appellant entered an office where two other Ferro employees, Kyle Marbury and Jose DeJesus, were on break. Upon entering, Appellant found that all three rolling chairs in the room were occupied: Kyle Marbury sat in one chair and Jose DeJesus sat in a second chair with his feet on the third. Appellant asked DeJesus if he could use one of the chairs. After DeJesus refused, Appellant pulled the chair in which DeJesus was sitting. Appellant also tapped the top of DeJesus’s boot, after which DeJesus left the room. Appellant denies that he intended to injure DeJesus.

{¶4.} DeJesus reported the incident to his direct supervisor and to the Union President. During his conversation with them, DeJesus claimed that Appellant had assaulted him. On October 27, 2011, Appellant was suspended pending an internal investigation by Ferro. After the investigation, Ferro determined that Appellant violated Shop Rule 6: Attempting to injure others and Shop Rule 20: Carelessness with regard to the safety of co-workers. Consequently, Ferro decided he was subject to termination in light of the Last Chance Agreement. Appellant was discharged on November 1, 2011.

{¶5.} Appellant applied for and received unemployment compensation benefits for the weeks beginning December 3, 2011 through January 7, 2012. Ferro appealed the initial determination and, after reviewing the original facts and those in support of the appeal, the Ohio Department of Job and Family Services (ODJFS) found that Appellant was discharged for just cause in connection with work. The Ohio Unemployment Compensation Review Commission affirmed this finding.

Standard of Review

{¶6.} Revised Code § 4141.282 states the standard of review governing appeals to the court of common pleas challenging the denial of unemployment compensation benefits. The statute provides that “[i]f 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 . . . Otherwise, the court shall affirm the decision of the commission.” R.C. § 4141.282(H).

{¶7.} When sitting in an appellate capacity, a common pleas court has a limited power of review. Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev. (1985), 19 Ohio St.3d 15, 18. The court is not permitted to make factual findings or to determine the credibility of witnesses. Id. It is the court’s duty to determine whether the decision of the Review Commission is supported by the evidence in the record. Id.

Just Cause

{¶8.} To qualify for unemployment benefits, Appellants must meet the following criteria laid out in R.C. § 4141.29(D)(2)(a):

(D) [No] individual may . . . be paid benefits . . .

(2) for the duration of his unemployment if the administrator finds that:

(a) He . . . has been discharged for just cause in connection with work.

Therefore, the issue before this Court is not whether Appellant has the right to continue his employment at Ferro but whether Appellant has the right to receive unemployment compensation because Ferro terminated him without just cause as defined within the unemployment context.

{¶9.} In Irvine, the Ohio Supreme Court stated that “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.” 19 Ohio St.3d at 17. The question of whether or not there is fault “can only be evaluated upon consideration of the particular facts of each case.” Tzangas, 73 Ohio St.3d 694, 698. If an employer has reasonably found that an employee was at fault, the employer may then terminate the employee with just cause. Id. The purpose of the Unemployment Compensation Act is not “to protect employees from themselves . . . When an employee is at fault, he is no longer the victim of fortune’s whims, but instead is . . . responsible for his own predicament.” Id. at 697.

{¶10.} In determining whether or not there was just cause, courts must bear in mind the purpose underlying the Unemployment Compensation Act. That is, “to enable unfortunate employees who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.” Id.

Analysis

{¶11.} In the present case, Appellant was undisputedly aware that he was on a Last Chance Agreement. He also knew that under this Last Chance Agreement any violation of the written shop rules would subject him to termination at the discretion of Ferro. (Review Commission File, Hearing Officer’s Decision, pp. 3-4.) Following the events of October 27, 2011, Ferro conducted an investigation after which it determined that Appellant had

“violated Shop Rule 6: Attempting to injure others and Shop Rule 20: Carelessness with regard to the safety of co-workers.” (Director’s File, 11/01/2011 Termination Letter.)

{¶12.} Ferro concluded that Appellant violated Shop Rule 6 when he pulled DeJesus’s chair. This conclusion was drawn from the statements of Kyle Marbury and Jose DeJesus. Marbury stated that “Angelo [Crenshaw] . . . slung the chair out of the way and went for the other chair.” (Director’s File, 10-28-2011 Investigation.) DeJesus testified that “[Crenshaw]. . . took the chair I was sitting in and flew me across the room.” *Id.* Meanwhile, at the March 22, 2012 hearing, Appellant testified that he “pulled [the] chair about a foot, maybe a foot-and-a-half.” (Review Commission File, Hearing Transcript, p. 11.) After considering that the statements of Marbury and DeJesus, which were entered into evidence, conflicted with Appellant’s testimony, the Hearing Officer found that “there is insufficient evidence in the record to demonstrate that Claimant was attempting to injure this individual.” (Hearing Officer Decision, p. 4.) This finding the Appellant did not violate Shop Rule 6 does not establish that the Hearing Officer’s final determination was “unreasonable” or “against the manifest weight of the evidence.”

{¶13.} Ferro’s investigation also concluded that by pulling DeJesus’s chair, Appellant violated Shop Rule 20: “carelessness in regard to . . . safety to self or others.” (Director’s File, 11-01-2011 Termination Letter.) In his brief, Appellant argues that his actions “simply do not show carelessness with regard to safety” and that “[i]t would be almost impossible for such actions to hurt or cause injury.” Appellant’s *Assignments of Error and Brief in Support*, p. 7. Even if this Court were to consider only Appellant’s version of the facts, a finding of carelessness could be supported. Moving a rolling chair on which a person is seated while his feet are not on the ground is careless and could conceivably lead to injury. In addition, the statements of Marbury and DeJesus, as well as the conclusions of Ferro’s investigation, indicate that Appellant acted more aggressively than he states. Although “reasonable minds might reach different conclusions” that does not warrant a reversal of the Review Commission’s decision. *Irvine*, 19 Ohio St.3d at 18.

{¶14.} Appellant argues that the Hearing Officer should not have considered the fact that he was on a Last Chance Agreement as a factor in her “just cause” determination.

According to Appellant, this error is shown by the Hearing Officer's statement that "claimant was careless in his actions of moving the individual and following this up with a physical touching, in light of claimant's knowledge that his job was in jeopardy." (Hearing Officer Decision, p. 4.) According to Appellant, this finding shows that had he not been under a Last Chance Agreement, the Hearing Office's determination that he acted carelessly in contravention of Shop Rule 20 would be against the manifest weight of the evidence. Appellant's *Assignments of Error*, p. 8.

{¶15.} Appellant cites to Booth v. Ohio Bureau of Empl. Servs., 1999 Ohio App. LEXIS 3157 to support his argument that the Hearing Officer should not have taken into account the Last Chance Agreement. In Booth, an employee was discharged pursuant to a last chance agreement that took absenteeism into account. Id. at *2. The employee missed work on two separate occasions while under the agreement. He was absent a third time due to "a 104 degree fever and a virus." Id. at *3. The Booth court held that although his third absence was technically a violation of the agreement, it could not be said that the employee was "at fault" for purposes of the just cause requirement in the Act. Id. at *13.

{¶16.} In contrast, Appellant's actions on October 27, 2011 were wholly within his control. As the Supreme Court in Tzangas noted:

"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 [Unemployment Compensation] Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination." 73 Ohio St. 3d at 697-698.

Thus, a consideration of the employee's fault or responsibility for his own predicament is necessary to a just cause determination. Id. at 695-696.

{¶17.} Here, despite knowing that his job was in jeopardy if he violated a Shop Rule, Appellant chose to act carelessly when he pulled DeJesus's chair and tapped his boot. The Hearing Officer found that these actions violated Shop Rule 20. Consequently, Appellant violated the Last Chance Agreement. His violation of Shop Rule 20 in light of the Last Chance Agreement constituted "just cause" in the unemployment compensation context. (Hearing Officer Decision, pp. 4-5.) Awarding Appellant unemployment benefits under

these circumstances would circumvent the purpose of the Act by protecting him from conduct fully within his control.

{¶18.} The Court finds that the Review Commission's decision is not against the manifest weight of the evidence, nor is it unlawful or unreasonable. Accordingly, the Review Commission's decision is affirmed.

IT IS SO ORDERED.



JUDGE STUART A. FRIEDMAN

DATED: 3/14/2013

CERTIFICATE OF SERVICE

Copies of the foregoing Memorandum of Opinion and Order were sent via U.S. Mail to all counsel of record this date: 3/14/2013



JUDGE STUART A. FRIEDMAN