

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
CIVIL DIVISION

KIMBERLY CARLISLE,
Plaintiff-Appellant

2013 APR -5 PM 2:37

Case No. 2012 CV 1039
(Judge Stephen A. Wolaver)

TERRI A. MAZUR, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

-vs-

OHIO DEPARTMENT OF JOBS AND
FAMILY SERVICES, et al.

JUDGMENT ENTRY

Defendants-Appellees

This an administrative appeal filed by Kimberly Carlisle, hereinafter referred to as Appellant, on October 11, 2012 for the purpose of appealing the Unemployment Compensation Review Commission's decision to disallow Appellant's request for review in Docket No. C2012-018701. The Court finds the appeal was timely filed in this Court. On January 30, 2013 Appellant filed her Brief and Assignment of Error which the Court has reviewed. On February 8, 2013 Appellee Director of Ohio Department of Jobs and Family Services filed its Brief, which the Court has reviewed. On February 13, 2013 Appellee Jeff Schmitt Auto Group filed its Brief, which the Court has reviewed. On November 26, 2012 the Ohio Unemployment Compensation Review Commission filed the certified transcript of the record of the proceedings in this case. The Court has reviewed the transcript and this matter is ripe for decision.

ADMINISTRATIVE FACTS

Appellant applied for unemployment compensation benefits after leaving her employment with the Jeff Schmitt Auto Group for a benefit year beginning April 29, 2012. On May 24, 2012 the Department of Job and Family Services granted her application for benefits.

Subsequently an appeal of the benefits was made and on July 2, 2012 the Ohio Department of Job and Family Services Director issued a redetermination affirming allowance of Appellant's claim. An appeal by Jeff Schmitt Auto Group was made from this decision and on July 23, 2012 the matter was referred to the Unemployment Compensation Review Commission. On August 14, 2012 a hearing was held and testimony was taken by telephone conferencing. On August 17, 2012 the hearing officer reversed the allowance of benefits to Appellant. This is the current status of this case and the subject of this administrative appeal.

FACTUAL ANALYSIS

The findings of facts in the decision of the hearing officer are as follows:

Claimant was employed by Jeff Schmitt Auto Group, Inc., from June 11, 2011 to April 30, 2012. Claimant last served as an executive assistant for the employer. She last reported to Steve Vangorder, general manager. Between April 4, 2012 and April 11, 2012 claimant and Mr. Vangorder exchanged a number of text messages regarding claimant's request that she perform additional duties and have her salary increased to \$60,000.00 per year. Claimant was hired at \$45,000.00 per year. Mr. Vangorder notified claimant on several occasions that he was not willing to pay her at that rate and claimant made references to quitting work and looking for another job.

On April 12, 2012 Mr. Vangorder informed claimant that he could not afford to pay that wage and that she needed to get along with Jeff Schmitt, owner, if she wanted to continue employment. Claimant communicated that she still had problems with Mr. Schmitt. Claimant had complained of sexual harassment from Mr. Schmitt in February 2012. Mr. Schmitt did not direct any sexual comments towards claimant following that date. At the conclusion of the April

12, 2012 meeting, Mr. Vangorder informed claimant that she could have the week off while he was on vacation and that they would discuss claimant's status further when he returned from vacation.

On April 26, 2012, claimant and Mr. Vangorder met to discuss claimant's employment status. On April 27, 2012 Mr. Vangorder sent claimant an electronic mail message in which he stated that he would pay claimant \$250.00 per day for the next 30 days until she left employment per their conversation and that she needed to provide advance notification when working from home. Claimant responded by stating that the agreement was for her to work from home and receive \$5,000.00 each month for the next 3 months. Mr. Vangorder responded stating the claimant's understanding was not correct and that it was agreed that she would continue for one month. Claimant again responded that she did not agree to those terms. Mr. Vangorder then sent a message informing claimant that he would pay her for the week she missed plus \$250.00 if she completed some assigned work by May 1, 2012. Claimant did not respond to the message or complete the assigned work.

Claimant did not mention sexual harassment in any of the text messages or electronic mail messages she exchanged with Mr. Vangorder that are in the record.

The reasoning of the hearing officer was as follows:

The evidence and testimony presented to the hearing officer failed to establish that claimant was discharged on April 12, 2012. The facts established that claimant quit employment because the employer was unwilling to pay her \$60,000.00 per year to work from home. Claimant sent several messages to her manager stating that she was going to quit and look for other work pursuant to his refusal to increase her salary to \$60,000.00 per year. Claimant did not

respond to the last message asking her to complete some assigned work and did not return to work following the last communication. The employer reasonably concluded that she quit.

Claimant did not act as a reasonably prudent person in quitting employment. Continuing work was available for the claimant for thirty days at \$250.00 per day pursuant to the April 26, 2012 message. Claimant failed to produce any written agreement establishing that she would be paid \$5,000.00 per month for three months to work from home. Further, claimant did not mention sexual harassment in any of the communications between herself and Mr. Vangorder that are in the record. Claimant quit Jeff Schmitt Auto Group, Inc., without just cause. Based upon this finding, Claimant received benefits to which she was not entitled and is required to repay those benefits to the Ohio Department of Jobs and Family Services.

LEGAL ANALYSIS

This Court is required under Revised Code §4141.282(H) when reviewing an appeal from the decision by the Unemployment Compensation Review Commission to determine whether that decision was unlawful, unreasonable, or against the manifest weight of the evidence. This Court is required to reverse or vacate such decision or modify such decision and enter final judgment in accordance with such modification. Otherwise this Court must affirm the decision. As it has been cited in briefs, in the case of Tzangas, Plakas & Mannos v. Oio Bur. Of Emp. Serv., 73 Ohio St.3d 694 (1995) the Supreme Court has provided guidance to the common pleas court in regard to its decision making process in this appeal. It reaffirms the law that this Court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. Most importantly it is not the option of this Court to review the commission's decision and to reverse it mainly because the Court would interpret the evidence

differently. This is not a trial de novo but merely a determination by the common pleas court to review the evidence in this case to determine whether there was a reasonable ground for the hearing officer to make the decision. While this Court should defer to the commission's determination of purely factual issues which concern the credibility of witnesses and the weight of conflicting evidence, this Court will not simply reaffirm the decision of the hearing officer. The judicial court must determine whether or not the decision of the hearing officer is supported by the facts and whether or not the hearing officer's ruling is unreasonable based upon those facts.

The singular issue before the hearing officer was whether the Appellant quit employment without just cause.

An individual is not eligible for benefits if the individual quits work without just cause.

It is the position of the Appellant that she was in several forms sexually harassed creating an untenable work environment and during her efforts to try to resolve those matters was told that if she couldn't get along with Mr. Schmitt she would be replaced. It is the position of the Appellant that she was terminated on April 12, 2012 by her employer and it was not done with just cause.

Testimony at the hearing was obtained only from the Appellant Ms. Carlisle. In addition multiple texts were admitted for consideration of the hearing officer in regard to communications between the Appellant and Steve Vangorder.

As the Appellant has indicated her last day of work was April 12, 2012 when she was fired. She also indicates in her testimony that she began her employment in June 2011. The Appellant testified that a couple of months after she began her employment she received unwelcome advances and sexual harassment as she testified from the owner of the Jeff Schmitt

Auto Group. She testified that she attempted to set them aside but in February 2012 she approached Steve Vangorder with her complaints. Steve Vangorder indicated he would address those and after that conversation it appears that the sexual harassment and unwelcome advances stopped which in part was a function of her not having further contact with the owner of the Jeff Schmitt Auto Group in the course of her employment. At this point it appears the testimony is heavily dependant upon text messages between the Appellant and Steve Vangorder. These messages take place during the month of April 2012. The messages on their face appear to be in part lighthearted between the Appellant and Steve Vangorder but primarily focused on issues dealing with her work responsibilities and primarily on a raise that she requested. The Appellant agrees in her testimony that nothing in the text messages indicates that she was fired but does testify that she was verbally advised that she was fired effective April 12, 2012. This Court notes however that many text messages are placed back and forth between the parties which do not address the fact that she had previously been fired. Indeed, many text messages from Steve Vangorder refer to her future work with them with one e-mail suggesting that she would be ending her employment sometime at the end of May 2012. This Court also notes, as the hearing officer found, the issues of sexual harassment and unwanted advances are not addressed during the April text messages between Steve Vangorder and the Appellant.

Certainly the hearing officer could conclude that whatever issues were raised as a result were either resolved after the February meeting between Steve Vangorder and Jeff Schmitt and were otherwise not part and parcel of the conversations in April between Steve Vangorder and the Appellant. The hearing officer's findings are not unreasonable, unlawful, or against the manifest weight of the evidence. The testimony in the transcript supports the findings and reasoning of the hearing officer.

While the allegations of unwanted sexual harassment are disturbing, the Appellant may have a forum to address those with either another government agency or by a lawsuit, however these matters are not before this Court. In addition this Court does not find that the connection between those allegations and the findings of the hearing officer resulted in the hearing officer's decision to be against the manifest weight of the evidence or unreasonable.

The decision of the hearing officer disallowing the claim is affirmed.

IT IS SO ORDERED.



JUDGE STEPHEN A. WOLAVER 4/5/13

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On the date stamped hereon.



RONALD L. MELLOTTTE, Bailiff