

DANIEL M. HERRIGAN

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

BARRINGTON REDSTONE, INC.,)	CASE NO.: CV 2012 08 4904
DbA RADIAL GRINDING,)	
)	
Plaintiff-Appellant,)	JUDGE CALLAHAN
)	
v.)	
)	<u>JUDGMENT ENTRY</u>
OHIO DEPARTMENT OF JOB & FAMILY)	Final, Appealable Order
SERVICES, et al.,)	
)	
Defendants.)	

On August 29, 2012, the Plaintiff-Appellant, Barrington Redstone, Inc., dba Radial Grinding ("Barrington"), filed this Administrative Appeal of the July 31, 2012 Decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") which disallowed a request for review of the Hearing Officer's decision finding the claimant, Jeffrey S. Workman ("Workman"), was discharged without just cause. The director's file, including the certified transcript of proceedings, was filed October 16, 2012. Barrington filed its brief on November 21, 2012 and the Review Commission filed a brief on December 19, 2012. Barrington filed a Reply brief on December 31, 2012. The briefing schedule is now complete and the issues raised by this administrative appeal are deemed submitted for this Court's consideration.

As a threshold matter, on December 31, 2012, Barrington filed Appellant's Request for Oral Argument. The Request is denied and the Court will proceed to rule on the issues based upon the briefs and materials submitted in support thereof.

I. Background

Workman was employed by Barrington as a shipper from October 3, 2011 to April 6, 2012. Prior to being hired, Workman worked at Barrington through a temporary agency on a probationary basis from June through September 2011. During the probationary period, Workman was viewed as very good employee and thus was hired by Barrington. However, upon his official hiring and the following seven-month period, Workman's attitude and performance changed for the worse and he was counseled and reprimanded numerous times regarding his unauthorized breaks for personal cell phone usage on the job, smoking on the premises in violation of the company policy, tardiness, and absences.

Workman was hired as a shipping and receiving clerk with his primary responsibilities being greeting customers, assisting customers unload and load parts, and tagging parts delivered by customers and entering the parts information into the computer. On April 6, 2012, Workman received a personal phone call on his cellular phone and stepped outside to take it, leaving the shipping area unattended. While Workman was outside on his personal call, a customer came in for service.

Workman's supervisor, Susan Marzano ("Marzano"), entered his work area to look for something and noticed a customer waiting. The customer advised Marzano that Workman was outside talking on his phone. Marzano went outside and asked Workman, "What the f*** are you doing?" Workman responded that he was taking a phone call. As they walked back inside, Marzano again asked "What the f*** do you think you're doing?" Workman responded that he was taking a phone call like everyone else. Marzano responded that no one else was doing that. Workman responded stated that "You don't know, whatever." Marzano replied, "If that's the

attitude you're going to have, get your sh*t and get the f*** out of here." Workman left and did not return.

Following this incident, Workman filed an application for determination of benefit rights. ODJFS issued a determination finding Workman quit without just cause and denied him benefits. Workman appealed the initial determination, which was affirmed. Workman appealed the redetermination. ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission ("Review Commission"). The Review Commission assigned the case to a Hearing Officer who held a hearing in person. The Hearing Officer reversed the redetermination, finding Workman was discharged without just cause in connection with work and granted unemployment benefits. Barrington then filed a request for further appeal, which was disallowed on July 31, 2011 and is the subject of this administrative appeal.

II. Standard of Review

R.C. 4141.282(H) governs the common pleas court's standard of review in an administrative appeal regarding a decision in an unemployment compensation review case:

"The court shall hear the appeal upon receipt of 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." R.C. 4141.282(H).

The trial court's power to review the Review Commission's decision is strictly limited to determining whether the board's decision is supported by evidence in the certified record. *Tzangas, Plakas & Mannos v. Adm'r, Ohio Bur. of Emp. Servs*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). The trial court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission. *Irvine v.*

Unemployment Comp. Bd. of Review, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). The reviewing court must defer to the commission on decisions involving close questions. *Id.* “Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].” *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, 891 N.E.2d 348, ¶7 (9th Dist.), quoting *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). As long as the certified record contains evidence supporting the Review Commission’s decision, then the trial court cannot substitute its judgment for the Review Commission’s. *Ro-Mai Industries, Inc.*, 2008-Ohio-301, at ¶8. A judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

III. Analysis

The determination of whether just cause exists for an employee's dismissal under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal. *Tzangas*, 73 Ohio St.3d 694, at paragraph two of the syllabus. “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*, 19 Ohio St.3d at 17, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). A discharge is considered for just cause when an employee demonstrates an unreasonable disregard for the employer’s best interest. *Autozone v. Herring*, 9th Dist. No. 22824, 2006-Ohio-1039, 2006 Ohio App. LEXIS 954, ¶14. The determination is not whether there has been a technical violation of a company policy, but whether the employee’s actions demonstrate an unreasonable disregard for his

employer's best interest. *Kiikka v. Ohio Bur. of Employ. Serv.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (12th Dist.1985).

The Hearing Officer considered the sole issue of whether Workman was discharged without just cause. The Hearing Officer considered the evidence and testimony of Workman, Marzano and David Harner. Marzano's testimony conflicted with that of Workman's. In particular, Marzano testified that she never swore at Workman and only told him that he would need to leave in order to diffuse the situation. Marzano claims she did not fire Workman, although she testified she had the authority to do so. In contrast, David Harner ("Harner"), owner and President of Barrington, testified that Marzano did not have authority to terminate Workman. Further, on cross-examination Harner conceded that he had told Workman upon his hiring that Marzano was his boss and whatever she says goes, no matter what. Harner also testified that Marzano was a long-term employee of 21 years and it was not her demeanor to swear at an employee.

Based largely upon the conflicting testimony between Marzano and Harner, both employees of Barrington, regarding Marzano's authority to fire an employee, the Hearing Officer adopted Workman's recitation of the facts. Both Workman and Marzano believed, albeit incorrectly, that Marzano had the authority to fire him. The Hearing Officer determined that Marzano overreacted to the situation and terminated Workman while reprimanding him for his continuous cell phone usage at work. It was determined that while Workman's cell phone usage at work was not to be condoned, it did not provide just cause for discharge.

The trial court cannot judge the credibility Workman, Marzano and Harner; make factual findings; or substitute its judgment for the Commission's when there is credible evidence in the

record to support its decision. *Irvine, supra*. Upon the review of the certified record, and the legal standard for the Court's review of the Review Commission's Decision, the Court finds there was evidence and testimony before the Review Commission to support its Decision that Marzano fired Workman while in a state of anger because he was yet again talking on his cell phone while at work and a customer was waiting. This evidence supports the Review Commission's conclusion that Workman was discharged without just cause.

IV. Conclusion

The Court finds the Decision of the Review Commission finding Workman was discharged without just cause thus allowing benefit rights, was not unlawful, unreasonable or against the manifest weight of the evidence.

Wherefore, it is the order of this Court that Barrington's appeal is found to be not well-taken and is hereby **denied**. It is further Ordered that the Review Commission's Decision of July 31, 2012 is **affirmed**.

Costs are taxed to the Appellant Barrington Redstone, Inc.

This is a final, appealable order.

IT IS SO ORDERED.

JUDGE LYNNE S. CALLAHAN

cc: Attorney Harold M. Schwarz, III
Attorney Susan M. Sheffield
Appellee Jeffrey S. Workman