

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

CARESOURCE MANAGEMENT
GROUP CO.,

Plaintiff,

-vs-

LINDA M. HOWARD, et. al,

Defendants.

CASE NO. 2012 CV 08369

JUDGE MARY KATHERINE HUFFMAN

DECISION, ORDER AND ENTRY
REVERSING DECISION OF THE
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION AND
ORDERING REPAYMENT

This matter is before the court as a result of an appeal taken by Appellant, CareSource Management Group Co., from a determination of the Ohio Unemployment Compensation Review Commission, granting unemployment compensation benefits to Appellee, Linda M. Howard, a former employee of Appellant. Appellant filed its brief herein on February 19, 2013. Appellee, Director, Ohio Department of Job & Family Services filed its brief on March 19, 2103. Appellant filed its Reply Brief on April 3, 2013. Appellee, Linda M. Howard, has not made an appearance nor filed a brief herein. This matter is now ripe for decision.

I. PROCEDURAL HISTORY AND FACTS

Appellant, Linda M. Howard (hereinafter “Employee”) was hired by CareSource Management Group Co. (hereinafter “CareSource”) as a customer service representative and began

her employment on March 21, 2011. She was discharged from her employment on May 24, 2012.

On the same date she applied for unemployment compensation benefits.

The Employee received productivity adherence ratings by email notification as follows:

Email dated April 12, 2012	95%
Email dated April 17, 2012	95%
Email dated April 23, 2012	94%

However, CareSource maintained separate quality adherence ratings.

On June 13, 2012 the ODJ&FS issued its determination on the initial application and found that the Employee was discharged without just cause. The initial determination found:

The claimant was discharged by CareSource Management Group Co., (Inc.) on 05/24/2012. The employer discharged the claimant because he/she was not able to perform the required work. An individual discharged for this reason may be found at fault and, therefore, discharged for just cause if each of the following conditions has been met: 1. The individual did not perform the required work; 2. The employer made known its expectations of the individual at the time of hire; 3. The expectations were reasonable; and 4. The requirements of the job did not change since the date of hire for that particular position. In this specific case, evidence has not been submitted to establish that the claimant did not perform the required work. Ohio's legal standard that determines if a discharge is without just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge not justifiable. After a review of the facts, this agency finds that the claimant was discharged without just cause under Section 4141.29(D)(2)(a) of the Ohio Revised Code.

CareSource filed an appeal of the initial determination on July 3, 2012. That initial determination was affirmed on July 24, 2012. Thereafter, CareSource appealed the Redetermination issued on July 24, 2012. The appeal was then transferred to the Unemployment Compensation review Commission. A telephone hearing was scheduled for September 5, 2012.

Among the exhibits submitted by CareSource for the September 5, 2012 telephone hearing were the "Development Forms" issued to the Employee for unsatisfactory work performance.

Those Development Forms relate to the following:

November 22, 2011 Documented coaching for failure to meet quality average at 88.2%

January 6, 2012	Unsatisfactory Work Performance – written warning for inappropriate and rude comments to a member. Employee disagreed with the action taken.
February 9, 2012	Unsatisfactory Work Performance – final written warning for failure to maintain quality average for the month of January, 2012, where Employee’s quality average was 88.5% and the required monthly standard was 93%. Employee agreed with the action, but not with the reason.
May 24, 2012	Unsatisfactory Work Performance – resulting in termination for failure to maintain quality average for the month of April, 2012, where Employee’s quality average was 91.6% and the required monthly standard was 93%. The Employee refused to sign the form, but checked that she disagreed with the action.

At the telephone hearing testimony was received from Stephanie Beans, Employee’s team leader at CareSource. She testified that productivity standards were set at 90% and above, but quality standards for individuals in Employee’s position were 93%. The 93% quality standard was in place from the beginning of Employee’s employment with CareSource. Quality standards are determined from audited telephone calls. All calls are recorded and available for auditing. Employee could dispute the ratings. Customer service representatives in the position occupied by Employee were expected, under the quality standards, to maintain a 93% quality rating per month. Ms. Bean testified that the performance measures maintained by CareSource are reasonable and that other employees are able to meet the requirements. She also testified that Employee’s job responsibilities did not change during her term of employment with CareSource. She further testified that the 93% quality average expectation had been in place for approximately two years. In addition, customer service representatives, including Employee, had posted in their cubicle written productivity measurements. Employee testified as follows with regard to the standards in place during her employment:

Hearing Officer: Were those measurements in place well were those measurements in place when you were, discharged?

- Employee: Yes, the 93% yes, but that's not what it started out to be.
- Hearing Officer: Okay, when when you started there what did what were the measurements?
- Employee: I believe it was either 91% or 92% but it was not 93 they didn't change it to 93 until we got Streamline okay so.
- Hearing Officer: When did that happen?
- Employee: Um around November of last year and everyone had been everyone including the new hires were being trained on Streamline okay. The very last small group that was going through training for Streamline I was to be included but did not know anything about it. And the reason why I'm mentioning Streamline I had a disadvantage to it from everyone else that all around me that had Streamline okay. Because with Streamline you can just start typing in some information and it automatically checks the grievance box. I was still in Facets I still had to do everything all manually repeat repeating everything all over again into the grievance and all that so I had a disadvantage.

When questioned by a representative of CareSource during the hearing, Employee admitted that she had the poster in her cubicle that referenced the 93% standards and that she looked at it every day.

Following the telephone hearing, the hearing officer issued her decision and made the following findings of fact:

Claimant was employed by CareSource Management Group Co., Inc. from March 21, 2011 to May 24, 2012 as a Customer Service Representative accepting incoming calls. Claimant was informed that the job required her to meet both productivity and performance measurements. Claimant was informed upon hire that she needed to receive 91% in her performance measurements per month. Such measurement evaluated the quality of the service during the call. In November, 2011, claimant was informed that the minimum percentage per month for performance measurements was 93%. Claimant was working on the old system, requiring her to take additional steps to ensure quality that her co-workers were not required to take.

In January, 2012, claimant received a final written warning for achieving 88.5% quality performance measurements. In April, 2012, claimant received a 91.6% quality measurement and was discharged.

The hearing officer concluded that the Employee was discharged by CareSource without just cause in connection with work. She reasoned that:

Claimant testified that the requirements of the position changed since the date of her hiring. Specifically, the expectations of the quality performance measurements were

raised from 91% to 93%, and claimant was working on the old system, requiring her to take additional steps to ensure quality that her co-workers were not required to take.

CareSource appealed the decision of the Hearing Officer and requested a review before the Unemployment Compensation Review Commission. The Unemployment Compensation Review Commission allowed the Request for Review on October 17, 2012.

As part of the review by the Unemployment Compensation Review Commission, CareSource submitted its 2011 Service Operations Department Manual which included certain standards for employees. One such standard, entitled “Call Avoidance and Patterns of Inappropriate Behavior” provided, in part:

We have a “no tolerance” policy for rude behavior. Rude behavior is unacceptable and will not be tolerated. Discourtesy to a member, provider or internal staff may [be] grounds for termination. Level of corrective action including termination is at the sole discretion of the department Manger and HR.

Of particular importance to this appeal is the following “Quality Standards” contained within the Manual:

Quality service and proper documentation is critical to ensuring the highest level of service. Quality Monitoring ensures that we meet state requirements, and improve service with valuable information obtained through recorded interactions with our members and providers. Quality monitoring and evaluations identify trends, irregularities, and the needs of our existing membership.

The Service Operations team strives to exceed the expectations of our customers and is committed to sustaining a reputation of quality care and service. Deficiencies in service contribute to poor customer experiences and in extreme cases, sanctions from the state “Not Met” (92.9% or below) scoring will be coached, and if not corrected, will be addressed with performance corrective action.

(Emphasis contained within the original document).

CareSource also provided as an exhibit an “Acknowledgement Form” signed by Employee on June 9, 2011, which read:

All Policies and Procedures contained within the Service Operations Manual are designed to promote consistency, productivity, and operational efficiencies, at management’s discretion. Management reserves the right to make changes to the manual and its content without notice.

I have read the Service Operations Manual and I understand the expectations of each policy and/or procedure.

- »Objective of this Manual
- »Mission and Goals
- »Service Center Standards
- »Productivity and Availability Standards
- »Phone Statuses and Modes
- »Corrective Action Policy – Performance & Productivity
- »Call Avoidance
- »Attendance Policy
 - »Attendance Policy – Correction Action
- »Quality Monitoring
 - »Quality Score Dispute Procedure
- »PTO Requests
- »Schedule Change Requests
- »Personal Telephone Line Usage
- »E-Mail Usage
- »Internet Usage
- »Work Area Policies
- »Disaster Recovery
- »Emergency Contact Form
- »Employee Handbook

CareSource also supplied to the Unemployment Compensation Review Commission the Streamline Training Schedule. The schedule provided for a rolling training schedule for employees. For instance, the first ten customer service representatives began training on February 3, 2012; ten more began training on February 17, 2012, and a similar-sized group began on February 24, 2012. Another group began training on April 12, 2012, with other groups beginning training on April 17, 2012, April 24, May 2, May 3, May 8 and May 9, 2012. Employee was in the May 9, 2012 group for Streamline training. However, numerous other employees did not have a scheduled time for Streamline training. In addition, CareSource supplied a copy of the 90-day review completed by Linda Howard, Employee, on June 24, 2011. Several of her answers are important to this litigation. Employee answered specific questions as follows:

1. Is your position as it was described to you? Answer: Yes

4. Were you given adequate job training?

Answer: Yes

On November 1, 2012, the Unemployment Compensation Review Commission mailed its Decision affirming the decision of the hearing officer.

II. LAW AND ANALYSIS

Appellant, CareSource, has contended since Employee initially sought unemployment compensation benefits, that Employee was discharged for just cause in connection with her work. Appellee argues that the hearing officer properly found that Employee was not discharged for just cause.

The right to appeal from an administrative decision is not an inherent right, but instead is one conferred by statute. *See Harrison v. Ohio State Medical Board* (1995), 103 Ohio App.3d 317, 321. Where a statute confers a right to appeal, strict adherence to the statutory conditions is essential. *Holmes v. Union Gospel Press* (1980), 64 Ohio St.2d 187, 188.

Pursuant to R.C. 4141.281(A), a party may appeal a determination of unemployment benefit rights or a claim for benefits determination. “Within twenty-one days after receipt of the appeal, the director of job and family services shall issue a redetermination or transfer the appeal to the unemployment compensation review commission. A redetermination under this section is appealable in the same manner as an initial determination by the director.” *R.C. 4141.281(B)*.

Once the final decision of the review commission has been sent to all interested parties, any party may appeal the decision to the court of common pleas within thirty days. *R.C. 4141.282(A)*.

R.C. 4141.282(H) delineates the standard of review for the court of common pleas during such appeal, stating:

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.

The reviewing court is limited to the record as certified by the review commission. *Abrams-Rodkey v. Summit County Children Servs.*, 163 Ohio App. 3d 1 (2005). The court must give due deference to the agency's resolution of evidentiary conflicts, and the court may not substitute its judgment for that of the agency. *Budd Co. v. Mercer*, 14 Ohio App. 3d 269 (1984). Moreover, "[a] reviewing court may not make factual findings or determine the credibility of witnesses, and may not overturn a decision of the commission simply because it might reach a different result." *Gregg v. SBC Ameritech*, 2004-Ohio-1061, citing *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St. 3d 694, 696-697 (1995). While a reviewing court is "not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record." *Tzangas, supra.* at 696-697, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). Thus, the standard on review is a highly deferential one. *Case Western Reserve Univ. v. Statt*, 2012-Ohio-1055.

The claimant has the burden of proving his or her entitlement to unemployment compensation benefits. *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985). A trial court "must uphold the hearing officer's decision so long as it is not unlawful or unreasonable and some competent, credible evidence supports it." *Myers v. Director, Ohio Dept. of Job and Family Services*, 2009-Ohio-6023. The court, however, does not have the discretion to consider the credibility of the witnesses in its review of the decision of the hearing officer. Instead, the sole duty of the Court of Common Pleas is to determine whether the evidence on record supported the Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App. 2d 69, 71 (1965). "The Court may not substitute its judgment***, it may not reverse simply because it interprets

evidence differently***.” *Angelkovski v. Buckeye Potato Chips, Co.*, 11 Ohio App.3d 159, 161 (1983).

An employee is ineligible for unemployment compensation benefits if he or she was terminated for just cause. O.R.C. §4141.29(D)(2)(a) provides, in pertinent part:

- (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 Director finds that:
 - (a) The individual...has been discharged for just cause in connection with the individual’s work.

“An employee is not eligible for benefits if he has ‘quit work without just cause or has been discharged for just cause in connection with [his] work.’” *Lorain County Auditor v. Ohio Unemployment Compensation Review Comm.*, 113 Ohio St. 3d 124 (2007); *see also* O.R.C. §4141.29(D)(2)(a). The Ohio Supreme Court has defined “just cause” as “that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act” *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 16 (1985), *quoting Peyton v. Sun T.V.*, 44 Ohio App. 2d 10, 12 (1975). “(T)here 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. Unemployment Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985) *quoting Peyton v. Sun T.V.*, 44 Ohio App. 2d 10, 12 (1975). In reviewing such a determination, a court is not permitted to interpret the facts or put its spin to the facts. *Gallagher v. Alliance Hospitality Management*, 2010-Ohio-1882.

“Just cause” is “conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee’s discharge.” *Carter v. Univ. of Toledo*, 2008-Ohio-1958. A determination of just cause sufficient to uphold the discharge of an employee under

a civil service rule or a labor contract does not equate to just cause to prohibit an employee from receiving unemployment compensation benefits. *See Guy v. City of Stuebenville*, 147 Ohio App. 3d 142, 2002-Ohio-849.

When an employee demonstrates by his or her actions an unreasonable disregard for the employer's best interest, there is just cause for the discharge. *Kiikka v. Ohio Bur. Of Emp. Serv.*, 21 Ohio App. 3d 168 (1985); *see also LaChappelle v. Ohio Dept. of Job and Family Serv.*, 184 Ohio App. 3d 166, 2009-Ohio-3399. "(T)he critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests.***" *Stephens v. Bd. of Rev.*, Cuyahoga App. No. 41369 (May 22, 1980); *see also Kiikka, supra*. "While the conclusions of the unemployment compensation review commission 'as to the legal import of an essentially undisputed set of facts are entitled to some deference,' the question of whether an employee was discharged with just cause is a question of law and 'the reviewing court has a duty to reverse the [commission's] decision if it is contrary to law.'" *Warren County Auditor v. Sexton*, 2007-Ohio-7081, *quoting Lombardo v. Ohio Bur. of Emp. Serv.*, 119 Ohio App. 3d 217, 221 (1997). Of particular significance herein is the decision by the Ohio Supreme Court in *Tzangas, Plakas & Mannos v. Adm. Ohio Bur. Empl. Serv.*, 73 Ohio St. 3d 694 (1995), wherein the court stated:

To find that an employee is entitled to unemployment compensation when she is terminated for her inability to perform the job for which she was hired would discourage employers from taking a chance on an unproven worker. Most employees need an employer to take a leap of faith when initially hiring them. An employer relies upon an employee's representations that she can adequately perform the required work. Likewise, an employee relies upon an employer's description of what the job will entail. The party that fails to live up to those expectations is at fault.

Unsuitability for a position constitutes fault sufficient to support a just cause termination. An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the

expectations were reasonable, and (4) the requirements of the job did not change since the date of the original hiring for that particular position.

Tsangas, supra. at 698-699. However,

(a) just cause determination must also be consistent with the legislative purpose underlying the Unemployment Compensation Act: to provide financial assistance to individuals who are involuntarily unemployed through no fault or agreement of their own. ‘Where 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 Act’s intent and the Act’s protection.’

Chen v. Ohio Dept. Job & Fam. Serv., 2012-Ohio-994, quoting *Tzangas* at 697-698. An employee’s unsuitability for her work or position is only one, but not the only, manifestation of fault that can support a just cause termination. *Chen, supra.*, citing *Dublin v. Clark*, 2005-Ohio-5926.

Appellee ODJFS suggests that CareSource requests in its brief that this court determine that the decision of the hearing officer was unreasonable or against the manifest weight of the evidence.

The Second District Court of Appeals has concluded that

(t)he issues of “sufficiency of the evidence” and “manifest weight” have been essentially merged in civil cases, leaving appellate courts with the option of conducting a “civil” manifest weight analysis, in which the court reviews the trial court’s rationale and the evidence the trial court has cited in support of its decision. If competent, credible evidence exists to support the trial court’s decision, it must be affirmed.

Gevedon v. Ivey, 172 Ohio App. 3d 567, 580 (2007). “(R)eversal on the grounds of sufficiency ‘requires that the conclusion of the trial court cannot be supported by any rational view of the evidence; not just that it is suspicious.’” *Gevedon, supra.* at 581, citing *Stone Excavating, Inc. v. Newmark Homes, Inc.*, 2004-Ohio-4119.

A review of the evidence makes clear that the Employee testified that when she started her employment with CareSource the quality performance standard was “either 91 or 92% but it was not 93.” She also claims that the standard increased to 93% in November, 2011. However, her self-serving statements are directly contradicted by documents that she signed in June, 2011. On June

9, 2011 she signed an Acknowledgment Form for the 2011 Service Operations Manual, which explicitly and clearly provides that the quality performance measure was 93%. She also claims to have been disadvantaged by being one of the last of the customer services representatives to be trained on the Streamline software. She contends that since she was using an older version of the customer service software, she was required to do more than other employees, such as check a “grievance” box. Employee was not discharged for failing to check a grievance box, but instead for her consistent performance below quality performance standards. Furthermore, contrary to her testimony, other employees were not given an advantage in November, 2011, as Streamline training for employees did not begin until February, 2012. Employee received an 88.2 quality average which was documented on November 22, 2011, and an unsatisfactory work performance for inappropriate and rude comments to a member on January 6, 2012, for an incident that took place in November, 2011. She also received an unsatisfactory work performance for January, 2012, prior to the time Streamline training started for any employee. She also testified that she was disadvantaged because she was one of the last to be scheduled for Streamline training, yet she had received three documented coaching incidents related to her quality rating prior to the time Streamline training began for employees on February 3, 2012.

After reviewing the evidence herein, the court finds that the decision of the commission was unreasonable and against the manifest weight of the evidence. The court further finds, without disturbing the hearing officer’s findings of fact, that the decision of the commission cannot be supported by any rational view of the evidence. The court further finds that, as a matter of law, Employee was discharged with just cause. As such, the court hereby reverses the decision of the Unemployment Compensation Review Commission and orders that the Commission collect any overpayment to Employee.

III. CONCLUSION

For the reasons stated above, the decision of the Unemployment Compensation Review Commission is **REVERSED** and the Commission is **ORDERED** to collect any overpayment made to Employee.

SO ORDERED:

JUDGE MARY KATHERINE HUFFMAN

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED.

JUDGE MARY KATHERINE HUFFMAN

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

JUDGE MARY KATHERINE HUFFMAN

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Montgomery County Common Pleas Court
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Type: Decision
Case Number: 2012 CV 08369
Case Title: CARESOURCE MANAGEMENT GROUP CO vs LINDA M HOWARD

So Ordered

Mary H. Huffman