COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

2013 APR 26 PM 12:52
BARBARA J. GEDEON
CLERK OF COURTS COMMON PLEAS COURT
CLERMONT COUNTY, OH

A&P TECHNOLOGY, INC.	:	
Plaintiff/Appellant	:	CASE NO. 2012 CVF 01486
vs.	:	Judge McBride
DANNY L. ADAMS, et al.	:	DECISION/ENTRY
Defendants/Appellees	:	

Hahn Loeser & Parks, LLP, Steven Seasly and Amanda McHenry, counsel for the plaintiff/appellant A&P Technology, Inc., 200 Public Square, Suite 2800, Cleveland, Ohio 44114.

Danny L. Adams, pro se defendant/appellee, 426 Westgate Drive, Cleves, Ohio 45002.

Robin A. Jarvis, Assistant Attorney General, Health & Human Services Section, counsel for defendant/appellee Ohio Department of Job and Family Services, 1600 Carew Tower, 441 Vine Street, Cincinnati, Ohio 45202.

This cause is before the court for consideration of an unemployment appeal filed by the plaintiff/appellant A&P Technology, Inc.

The appeal was submitted on the briefs and was taken under advisement on February 25, 2013.

Upon consideration of the appeal, the record of the proceeding, the evidence presented for the court's consideration, the written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

Defendant/Appellee Danny Adams was employed by plaintiff/appellant A&P Technology, Inc. (hereinafter referred to as "A&P Technology) as a machinist from July 6, 2010 until February 23, 2012.[1] On February 22, 2012, Todd Nelson, the machine shop manager at A&P Technology, was "talking to [Adams] about * * * bringing [him] in to day shift for further training * * *" and Nelson testified before the hearing officer that Adams "became disgruntled about it."[2] The conversation ended with Adams giving his verbal resignation and two-week notice.[3]

It was determined by A&P Technology that it would not be in the best interest of the company to allow Adams to work out the two weeks because, according to Katie Noe, the Human Resources Manager at A&P, "based on our business and the proprietary part of our business we felt it wasn't the best circumstance to have somebody here who did not want to be here."[4] Ms. Noe testified that A&P Technology has a policy that the company has the discretion when an employee voluntarily quits to waive the two-week notice period and that the company has done that on a consistent

[1] Transcript of Testimony at pg. 6.
[2] Id. at pg. 15.
[3] Id. at pgs. 6-7 and 15.
[4] Id. at pg. 19.

basis in the past.[5] She agreed it is always a concern that such an employee could try to sabotage machinery or steal equipment or a trade secret, although Nelson testified that Adams had never stolen anything and the dismissal was just a precautionary measure.[6] Adams was not paid for the two weeks for which he gave notice.[7]

After a denial of the appellee's clam for unemployment benefits within the Ohio Department of Job and Family Services, the appeal was transferred to the Unemployment Compensation Review Commission. The UCRC hearing officer noted in his findings of fact that while A&P Technology has a non-written policy which provides for the immediate discharge of an employee who gives his two-week notice, the company "was not concerned the claimant would steal proprietary property or information and the company failed to identify what, if any, proprietary information that claimant would discover in his last two weeks of employment that he did not already know from his prior work experience."[8]

The hearing officer found that the company's discharge of the appellee "based on a general concern for proprietary information is insufficient to find the claimant's discharge was reasonable[,]" and, as such, the hearing officer concluded that Adams was discharged without just cause.[9]

A&P Technology filed a timely appeal of the hearing officer's decision.[10] In its brief in support of the appeal, the appellant now argues that Adams was terminated for just cause due to insubordination.

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[5] Id. at pg. 20.
[6] Id. at pgs. 14 and 21.
[7] Id. at pg. 20.
[8] Corrected Decision issued on April 26, 2012.
[9] Id.
[10] Request for Review, May 12, 2012.

LEGAL ANALYSIS

Pursuant to R.C. 4141.282(H):

> "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."

"Determination of purely factual questions is primarily within the province of the referee and the board."[11] "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision."[12]

The appellant does not challenge the finding of the hearing officer that Adams was terminated from his employment. Instead, A&P Technology argues on appeal that his termination was for just cause.

R.C. 4141.29(D)(2)(a) provides that an individual may not be paid benefits for the duration of his unemployment if "[t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work * * * ."

"The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case."[13] In the case at bar, A&P Technology did not make an argument to the UCRC hearing officer that Adams engaged in insubordination which provided just cause for his termination. As such, the hearing officer did not make a specific factual or legal determination on that subject,

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[11] *Irvine v. State Unemployment Compensation Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587.
[12] Id. at 18.
[13] Id. at 17.

although the hearing officer did make a determination that Adams was discharged without just cause in connection with work.

There is no absolute definition of "just cause" in Ohio's case law. The Ohio Supreme Court has noted that " 'each case must be considered on its particular merits[,]' " and " '[t]raditionally, 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.' "[14]

" 'Fault on an employee's part is an essential component of a just-cause termination.' "[15] " '[C]ourts have repeatedly held that a discharge is considered for just cause where an employee's conduct demonstrates some degree of fault, such as behavior that displays an unreasonable disregard for his employer's best interests.' "[16] Some Ohio courts have held that " 'even a single incident of misconduct can create just cause for termination.' "[17]

The following acts are examples of what has been determined by various Ohio courts to constitute insubordination to the extent of providing just cause for the employee's termination: refusal to provide daily task lists despite a supervisor's instruction to do so[18]; refusal to comply with the written order of a supervisor to make certain notes on patient charts and making derogatory remarks about the supervisor[19]; intentionally refusing to comply with the order of employer to complete an assigned

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[14] Id. at 17, quoting, *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.
[15] *Sturgeon v. Lucas Plumbing & Heating, Inc.* (May 21, 2012), 9th Dist. No. 11CA010010, 2012-Ohio-2240, ¶ 7, quoting *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 951 N.E.2d 1031, 2011-Ohio-2897, ¶ 24.
[16] Id., quoting *Clucas v. RT 80 Express, Inc.* (March 26, 2012), 9th Dist. No. 11CA009989, 2012-Ohio-1259, ¶ 6.
[17] Id., quoting *Moore v. Comparison Market, Inc.* (Dec. 6, 2006), 9th Dist. No. 23255, 2006-Ohio-6382, at ¶ 25. See also, *Nellsen v. Kbi Corp./Oh. Materials, et al.* (June 18, 1982), 6th Dist. No. L-82-063, *5.
[18] *Milyo v. Board of Review, Ohio Bureau of Employment Services* (July 30, 1992), 8th Dist. No. 60841, 1992 WL 181686, *4.
[19] *Rogers v. Ohio Bureau of Employment Services* (Oct. 21, 1987), 4th Dist. No. 1660, 1987 WL 18834, *1.

task[20]; a heated exchange with a supervisor during which the employee cursed at the supervisor[21]; refusal to cooperate with the company's investigation of a fellow employee[22]; and cursing at a supervisor in front of customers and other employees.[23]

In the case at bar, Todd Nelson had a conversation with Adams about the need for additional training. According to Nelson, Adams became "disgruntled about it" and chose to tender his resignation and two-week notice. The next day, Adams was dismissed by the company and was not paid for the two weeks.

In cases such as this, it stands to reason that the seriousness of the alleged misconduct should be determined in each situation to determine if it may serve as just cause for termination. Although Adams became "disgruntled" during the subject conversation, he was not terminated at the conclusion of the conversation. While an e-mail from Nelson to Noe states that Adams's tone became "louder and angrier" throughout the conversation[24], there is no indication that Nelson considered Adams's demeanor or behavior to rise to the level of insubordination or misconduct requiring dismissal.

The appellant further argues that Adams refused an order that he obtain additional training on a different shift. However, during the conversation, Nelson did not instruct Adams to report to first shift to obtain additional training. Instead, according to Nelson's e-mail to Noe, Nelson began the conversation by asking Adams if he could

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[20] *Neilsen*, supra, at *4.
[21] *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 160, 463 N.E.2d 1280 (Ohio App. 10th Dist., 1983), overruled on other grounds by, *Galluzzo v. Ohio Bur. of Emp. Services* (Nov. 29, 1995), Champaign App. No. 95-CA-6.
[22] *Sturgeon*, supra, at ¶ 14-16.
[23] *Cochran v. Board of Review, Ohio Bureau of Employment Services* (Sept. 25, 1995), 7th Dist. No. 94CA125, 1995 WL 569167.
[24] Appellant's Motion for Summary Judgment, Exhibit C.

come to first shift to receive additional training.[25] This does not sound to the court like a direct or clear order; instead, it sounds like the beginning of a discussion of the issue. Nelson's testimony before the hearing officer is not clear about the conversation on this point and doesn't serve to clarify this issue one way or the other.[26]

The appellant indicated to the UCRC hearing officer that Adams was terminated because of a company policy to dismiss employees who have tendered their resignation and that the reason for this policy is a concern for the company's proprietary information. The hearing officer concluded, and this court agrees, that termination on that basis does not constitute just cause. The appellant now argues, despite its own witnesses' testimony, that Adams was discharged for insubordination for refusing to get additional training. However, the record does not support the appellant's position. Furthermore, the court finds that the actions of Adams on the day he gave his resignation did not rise to the level of insubordination and that he was not discharged for just cause in connection with his work.

The court finds that the decision of the hearing officer was not unlawful, unreasonable, or against the manifest weight of the evidence. Consequently, the decision shall be affirmed.

CONCLUSION

The decision of the Unemployment Compensation Review Commission hearing officer issued on April 26, 2012 is hereby affirmed.

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[25] Id.
[26] Transcript of Testimony at pg. 15.

IT IS SO ORDERED.

DATED: 4-26-2013

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 26h day of April 2013 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride