

FILED
COURT OF COMMON PLEAS

APR 29 2013

LINDA K. FANKHAUSER, CLERK,
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

JET RUBBER COMPANY, INC.,)	CASE NO. 2012 CV 1108
)	
Plaintiff-Appellant,)	
v.)	JUDGE JOHN A. ENLOW
)	
)	
OHIO DEPARTMENT OF JOB AND)	<u>ORDER AND JOURNAL ENTRY</u>
FAMILY SERVICES, et al.,)	
)	
Defendants-Appellees.)	
)	
)	

I. INTRODUCTION

This matter is before the Court upon appeal by Plaintiff-Appellant Jet Rubber Company, Inc. ("Employer") from the decision of Defendant-Appellee Unemployment Compensation Review Commission ("Review Commission") denying Employer's appeal of the grant of unemployment benefits to Defendant-Appellee Laura J. Bailey ("Claimant").

Upon Claimant's initial application for unemployment benefits the Director, Ohio Department of Job & Family Services ("Director"), found that Claimant had been discharged by Employer without just cause. The Director then concluded that Claimant was eligible for unemployment benefits. Employer appealed, and the Director affirmed the the decision finding that Claimant had been discharged without just cause, and Claimant received benefits. Employer appealed the Director's decision, and the matter was referred to the Review

Commission. After hearing, the Review Commission hearing officer found that Claimant had been discharged without just cause and was entitled to unemployment benefits. Employer petitioned for further review, and such review was granted. Following the Review Commission's study of the entire record, the hearing officer's decision was affirmed. The Employer then filed this present appeal.

II. STANDARD OF REVIEW

Upon appeal from the Review Commission, a reviewing court must determine whether the administrative decision is supported by the evidence in the record. The decision of the Review Commission may be overturned only if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H); *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17; *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, paragraph 1 of the syllabus.

A common pleas court may not reverse the decision of the Review Commission upon the facts if that decision is supported by some competent, credible evidence going to all the essential elements of the dispute. *Frato v. Ohio Bur. of Emp. Serv.* (1991), 77 Ohio App.3d 193, 196, citing *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 161. On close questions, where the administrative body might reasonably decide either way, a reviewing court has no authority to overturn the administrative decision. *Irvine, supra*, at 18.

III. DECISION

Employer asserts that Claimant was discharged with just cause and should not be entitled to unemployment benefits. The Director, however, maintains that Claimant was discharged without just cause.

"The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case. Determination of purely factual questions is primarily within the province of the [hearing officer] and the [review commission]." *Irvine, supra*, at 17. On close questions, where the administrative body might reasonably decide either way, a reviewing court has no authority to overturn the administrative decision. *Id.*, at 18.

The Employer has personnel policies regulating the conduct of its employees. These policies include immediate dismissal for flagrant or serious violations. In less serious instances, the employee is subject to a process of progressive discipline including verbal counseling, written reprimand, or suspension.

In the present case, Claimant was taking additional breaks and longer breaks than the personnel policies provided. But Claimant had previously been told that she could take additional breaks in her ten hour shift. When she was discharged for taking too many and longer breaks, two other employees were given warnings and suspensions for similar conduct. Claimant, however, was not given a warning or suspension prior to discharge.

The hearing officer concluded that Employer's testimony did not

establish that Claimant's activities were any more flagrant or serious as those similar violations of the other two employees, who received only suspensions. Based upon the hearing officer's findings, she rightly concluded that Claimant was discharged from his employment without just cause. Thus, Claimant was eligible for unemployment benefits.

The hearing officer's findings of fact are supported by some competent, credible evidence going to all the essential elements of the dispute. On these close factual questions, where the conclusions on the facts could reasonably be decided either way, this Court cannot overturn the Review Commission's decision. *Irvine, supra*, at 18.

IV. CONCLUSION

This Court concludes that the administrative decision in Claimant's favor is lawful, reasonable, and supported by the manifest weight of the evidence. The transcript of administrative proceedings support the determination of the Review Commission that Claimant was discharged without just cause. As the Employer discharged Claimant without just cause, Claimant became involuntarily unemployed, and thus entitled to unemployment benefits. Therefore, upon review and consideration of the motions, memoranda, and record of proceedings before the Director and the Review Commission, the Court finds that Employer's appeal is not well taken.

IT IS THEREFORE ORDERED that the appeal of Plaintiff-Appellant Jet Rubber Company, Inc., from the decision of Defendant-Appellee Unemployment Compensation Review Commission be and hereby is denied, and the decision of the Unemployment Compensation Review Commission to allow Defendant-Appellee Laura J. Bailey unemployment benefits is hereby affirmed.

Costs taxed to Employer.

The Clerk is directed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ. R. 58(B).

SO ORDERED.



JOHN A. EBLOW
JUDGE, COURT OF COMMON PLEAS

cc: Christopher J. Freeman, Attorney for Appellant
Susan M. Sheffield, Attorney for Director