

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

GENEVA M. STARR, :
 :
 Appellant, :
 : Case No. 12CVF-12-15753
vs. : (Docket No.: C2012-024116)
 :
 : (JUDGE FRYE)
DIRECTOR, OHIO DEPARTMENT OF :
JOB AND FAMILY SERVICES, ET AL., :
 :
 Appellees. :

FINAL JUDGMENT ENTRY
**AFFIRMING ORDER C2012-024116 OF THE DIRECTOR OF THE OHIO
DEPARTMENT OF JOB AND FAMILY SERVICES**

I. Introduction and Factual Record

This is an administrative appeal brought by Geneva M. Starr pursuant to R.C. § 4141.282. Ms. Starr appeals the decision of the Director of the Ohio Department of Job and Family Services which denied her unemployment benefits. Ms. Starr asks this court to find that the decision was either unlawful, unreasonable, or against the manifest weight of the evidence. Because the court concludes that the denial was not unlawful, not unreasonable and not against the manifest weight of the evidence, the court **AFFIRMS** the Director's decision.

Ms. Starr was employed by Franklin County, Ohio from April 11, 2011 to July 24, 2012. Ms. Starr was a probationary employee at the time of termination. She had been hired as a Case Manager for Franklin County's Children Services department.

Part of Ms. Starr's duties as a Case Manager involved driving from the department's office to the residence of individuals whose cases Ms. Starr was assigned for management. On January 10, 2012, in the course of employment, Ms. Starr was injured in an automobile accident. Due to her injuries, Ms. Starr was granted a temporary period of disability from work. That period ended May 15, 2012, when her

physician released her to return to work; the return to work was without any restriction on the duties she could be expected to perform.

Upon returning to work, Ms. Starr resumed her job duties. She cites Ex. 3 as demonstrating that upon return to work, she regularly saw clients as documented by mileage records and travel documentation. However, she found driving difficult due to emotional trauma related to the January accident. She began calling off work because she feared driving.

At the hearing, Ms. Starr explained she did not have adequate time to perform the work she was assigned. (Tr. P. 10, L. 1 – 13). The unexcused absences became excessive and the quality and quantity of her work declined to a level unacceptable to the employer.

Ms. Starr acknowledged that her work product suffered because of her unexcused absenteeism. She explained, “[t]hey say inability to do the duties however their (sic) all inter related. If I miss time off work then I don’t have the same time to get the work done, and that’s what I had tried to stress if I’m not there how can I be expected to perform to the same level ***.” (Tr. P. 10, L. 9 – 12).

The record is clear that Ms. Starr called off work. Lack of attendance caused her work to become seriously deficient. Because of that deficiency she was terminated from employment. As she acknowledged at the hearing, calling off work resulted in poor performance. The court understands Ms. Starr’s explanation.

However, the court does not find it an unreasonable employer expectation that an employee attend work with sufficient regularity to adequately perform the duties for which she was hired.

Although Ms. Starr bristles at the Hearing Officer’s summation that “Claimant refused to drive and was discharged by Franklin County,” the evidence shows that Ms. Starr did not attend to the work for which she was hired. While “refused” may somewhat mischaracterize her conduct, it does not transform her explanation into a legally cognizable excuse for disregarding legitimate employment expectations.

II. Standard of Review and Applicable Law

In *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, the Ohio Supreme Court set forth the law that applies to this case. The Court stated:

R.C. 4141.29 sets forth the eligibility and qualifications for unemployment benefits:

(D) * * * [N]o 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 quit work without just cause or has been discharged for just cause in connection with the individual's work * * *.

R.C. 4141.46 provides that R.C. 4141.01 through 4141.46 is to be liberally construed.

The Unemployment Compensation Review Commission's determination of whether a claimant was discharged with just cause is appealable to the court of common pleas: "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). This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 OBR 12, 482 N.E.2d 587. Thus, a reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if some competent, credible evidence in the record supports it. *Id.* In other words, a reviewing court may not reverse the commission's decision simply because "reasonable minds might reach different conclusions." *Id.*

B. Just Cause

Although it is not defined by statute, we have stated that "just cause" 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, 19 OBR 12, 482 N.E.2d 587, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 335 N.E.2d 751. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings* (1991), 58 Ohio St.3d 206, 207, 569 N.E.2d 489. "[W]hat constitutes just cause must be

analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose is 'to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.' " (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 199 N.E.2d 3.

However, we have cautioned, "The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When 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. Thus, fault is essential to the unique chemistry of a just cause termination." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697-698, 653 N.E.2d 1207.

Fault on an employee's part is an essential component of a just cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer's instructions. *Id.* at 698. Unsuitability for a position constitutes fault sufficient to support a just cause discharge. "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 substantially since the date of the original hiring for that particular position." *Id.* at paragraph four of syllabus." The Court looked to, "the purpose of the Unemployment Compensation Act." And found that "The act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 399 N.E.2d 76.

III. Discussion

The court has reviewed the record in this matter. The Hearing Officer found the facts outlined above. Those findings are supported by competent, credible evidence developed during the hearing, as cited above.

Ms. Starr's conduct makes her directly responsible for her termination. (See, *Tzangas, supra*) Economic forces over which Ms. Starr had no control did not cause her to lose her job: Ms. Starr had it within her control to abide by the attendance policies

and workplace expectations that she knew when she was hired. (See, e.g. Tr. P. 14, L. 1 – 7) These expectations remained unchanged the entire time Ms. Starr was employed as a Case Manager. (Tr. P. 16, L. 3 – 21).

When Ms. Starr called off work without a medically-supportable excuse, she acted at her own peril. The Act’s purpose is ‘to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 199 N.E.2d 3. The car accident on January 10, 2012 disrupted Ms. Starr’s life. But, she returned to work without medical restrictions. Adverse business and industrial conditions played no part in Ms. Starr’s decision to call off work.

Ms. Starr’s unexcused absences and poor work product meets the four part test of fault set forth in *Tzangas*, supra. (Employee does not meet the reasonable work expectations known at start of employment that have not changed.). The purpose of the act would be frustrated by allowing Ms. Starr to participate in a fund reserved for employees who faultlessly find themselves jobless. Whether to call off work, seek alternative methods of getting to and from work, hire an assistant to drive to and from residential appointments, or deal with personal fears in some other manner, was a decision wholly within Ms. Starr’s control. Societal economic forces played no part in that decision or in her termination by her employer. Ms. Starr’s work conduct is the sole legally cognizable reason for her unemployment.

The Order of the Ohio Department of Job and Family Services is supported by reliable, probative and substantial findings of fact. The Order is lawful as Ms. Starr was terminated for just cause in relation to the legitimate expectations of her employer. The Order is reasonable based on the manifest weight of the evidence in the record.

IV. Conclusion

The Order of the Ohio Department of Job and Family Services is **AFFIRMED** in all respects.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 05-22-2013
Case Title: GENEVA M STARR -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE ET AL
Case Number: 12CV015753
Type: JUDGMENT ENTRY

It Is So Ordered.


Richard A. Frye

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 12CV015753

Case Style: GENEVA M STARR -VS- OHIO STATE DEPARTMENT
JOB FAMILY SERVICE ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes