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IN THE COURT OF COMMON PLEAS,  
CHAMPAIGN COUNTY, OHIO

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BOARD OF TRUSTEES OF ADAMS  
TOWNSHIP,

Case No. 2012 CV 191

Appellant,

Judge David C. Faulkner

- vs. -

DIRECTOR, OHIO DEPARTMENT OF  
JOB & FAMILY SERVICES, et al.,

**FINAL APPEALABLE ORDER**

Appellees.

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JOURNAL ENTRY

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Appellant, the Board of Trustees of Adams Township ("the Township"), hired Claimant, Joe J. Long ("Long"), as a part-time maintenance employee in September 2006. Long was responsible for road cleaning, repair, and maintenance. He was also responsible for cemetery maintenance.

In October 2010, Long was arrested for operating a vehicle while under the influence ("OVI"), in violation of R.C. 4511.19. He continued working for the Township until January 2011, when he was placed on unpaid leave. Long pleaded guilty to the offense on April 27, 2011, and was scheduled to have his license reinstated within three business days.

On May 10, 2011, the Township adopted Driving Rules and Regulations that prohibited employees from having one or more serious violations, such as OVI, within

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the past two years. On October 6, 2011, the Township sent Long a letter, informing him of his discharge.

On February 27, 2012, Appellee, the Director of the Ohio Department of Job & Family Services ("the Director"), issued a Redetermination finding that the Township had discharged Long without just cause in connection with his work. The Township sought further review and the matter was transferred to the Review Commission. A hearing officer issued a written decision upholding the Director's decision to allow benefits.

On May 17, 2012, the Review Commission disallowed the Township's request for review of the hearing officer's decision. The Township then filed the present appeal, seeking reversal of the Review Commission's decision to allow benefits.

This Court may reverse the Review Commission's decision only if it is unlawful, unreasonable or against the manifest weight of the evidence. R.C. 4141.282(H). A reviewing court's obligation is to consider whether the decision is based upon evidence in the record, without substituting its judgment regarding witness credibility for those of the commission. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). That reasonable minds might reach a different conclusion is not a basis for the reversal of the board's decision. *Irvine v. State Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985).

Although the Unemployment Compensation Act must be construed liberally, see R.C. 4141.46, it prohibits the payment of benefits if an employee "has been discharged for just cause in connection with the individual's work." R.C. 4141.29(D)(2)(a). "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 (1975). 30 PM 12: 48

"Just cause" exists where the employee, by his actions, has demonstrated an  
unreasonable disregard for his employer's best interests. *Kiikka v. Ohio Bur. of Emp.*  
*Serv.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8<sup>th</sup> Dist. 1985). The employee's  
conduct need not rise to the level of intentional wrongdoing or misconduct, but there  
must be a showing of some fault on the employee's part. *Tzangas, Plakas & Mannos*,  
73 Ohio St. 3d at 698. An employee is considered to have been discharged with just  
cause when the discharge was due to the culpability of the employee rather than due to  
circumstances beyond the employee's control. *Loy v. Unemp. Comp. Bd. of Rev.*, 30  
Ohio App.3d 204, 206, 507 N.E.2d 421 (1<sup>st</sup> Dist. 1986).

In this case, the Township decided to terminate Long after he was convicted of  
OVI. More particularly, the Township contends that Long was no longer insurable due  
to his conviction. It also contends that Long could not secure a commercial driver's  
license ("CDL"), an essential term of his employment, due to the conviction.

In its brief, the Township states that its insurer had informed the Township that  
Long's operation of township vehicles and equipment could expose the Township to  
liability and that its insurer may deny coverage if an accident occurred. Yet R.C.  
2744.02(B)(1) imposes liability upon political subdivisions, including townships, for  
accidents caused by the negligent operation of any motor vehicle by their employees  
when engaged within the scope of their employment and authority. Thus, a township is  
liable for such accidents, even if caused by the negligence of an employee with a

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sterling driving record. Therefore, discussion of this issue will be limited to the question of insurability.

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After reviewing the record, the Court cannot conclude that the Hearing Officer erred when she found that the Township was never informed that Long would not be covered. In that regard, Trustee Pullins testified that the Township's insurer informed a Township representative during a phone conversation that it would not insure the Township if Long was involved in an accident because of the OVI. See Hearing Transcript ("Trans.") at p. 20, lines 12-26. Trustee Pullins also admitted, however, that the Township never received a written notification to this effect. *Id.* at p. 21, lines 1-12. Rather, Trustee Pullins admitted that the Township had only received a letter suggesting that the Township's insurer might choose to deny coverage. *Id.* Fiscal Officer Kies concurred in this admission at the hearing. *Id.*

The Township also claims that Long could not obtain a CDL as a result of his conviction and that obtaining this credential was an essential part of his job description. The record before the Court suggests otherwise. In that regard, Fiscal Officer Kies admitted that Long never obtained a CDL, even though it was part of his written job description, a document that Long signed on December 8, 2006. *Trans.* at p. 13, line 6 to p. 14, line 10. Trustee Pullins also testified that Long would simply state that he was working on getting his CDL whenever the issue was brought to his attention. *Id.* at p. 20, lines 7-11.

The Township contends that *Mayes v. Ohio Bureau of Emp. Serv.*, 32 Ohio App.3d 68, 513 N.E.2d 818 (10<sup>th</sup> Dist. 1986), is factually similar to the present case and should control the outcome. In *Mayes*, a school bus driver was terminated following her

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conviction for OVI. This incident occurred during non-work hours while Mayes was driving her personal vehicle. She was subsequently denied unemployment compensation benefits because she had been discharged for just cause in connection with her work pursuant to R.C. 4141.29(D)(2)(a), a decision that was upheld on appeal.

In its decision, the Tenth District Court of Appeals noted that R.C. 3327.09 requires school districts to procure vehicle liability insurance for the transportation of its school children. *Mayes*, 32 Ohio App.3d at 69. Furthermore, the school district's insurer had informed the district that Mayes was uninsurable as a school bus driver due to her OVI conviction. The district also revoked her school bus driver certification as a result of her insurability. Since Mayes was no longer insurable, the school district had no alternative but to terminate her employment. *Id.* at 69-70.

The Court believes that *Mayes* is factually distinguishable from the present case. In that regard, the Township was never informed that Long's OVI conviction rendered him uninsurable. While the Township claims that Long could not obtain a CDL on account of his conviction, the record also shows that he had worked for the Township for more than four years without securing this credential.

From the record, it appears that the Township's fundamental premise is that "just cause" exists under 4141.29(D)(2)(a) whenever an employee is convicted of OVI. While a criminal conviction or criminal activity may give rise to "just cause," thereby making the claimant ineligible for benefits, it must also be noted that the claimants' conduct in these cases also violated specific employment policies. See *Harris, Meyer, Heckman & Denkwalter v. Havens*, 2d Dist. Champaign No. 2012-CA-21, 2012-Ohio-5794, ¶8.

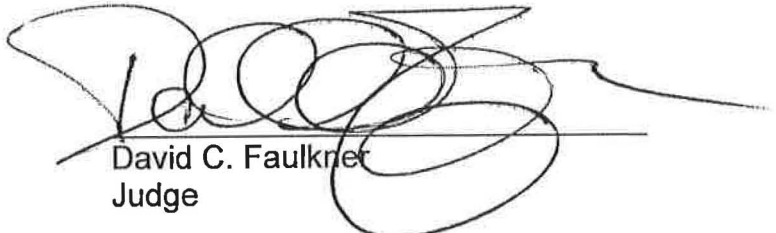
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In this case, however, there is no evidence that Long's conduct violated a then-existing employment policy. While the Township thereafter adopted a driving policy that prohibits employees from having one or more serious violations, such as OVI, within the past two years, this policy was not adopted until May 10, 2011, months after Long's arrest and his subsequent placement on leave. See Trans. at p. 10, lines 15-20.

Absent some breach of an existing employment policy, this Court, like the Review Commission, cannot conclude that the OVI conviction, by itself, constituted "just cause" for Long's termination.

After reviewing the record, this Court finds that the Review Commission's decision is not against the manifest weight of the evidence or otherwise unlawful or unreasonable. The record does not show that Long's OVI conviction rendered him uninsurable or otherwise unable to perform the basic functions of his job. Nor does the record show that the conviction breached a then-existing employment policy. Therefore, the Review Commission did not err when it found that Long was discharged without just cause in connection with his work and its decision is AFFIRMED,

IT IS HEREBY ORDERED that the Review Commission's decision is AFFIRMED.

  
David C. Faulkner  
Judge

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CLERK OF PLEAS COURT  
CHAMPAIGN COUNTY, OHIO

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