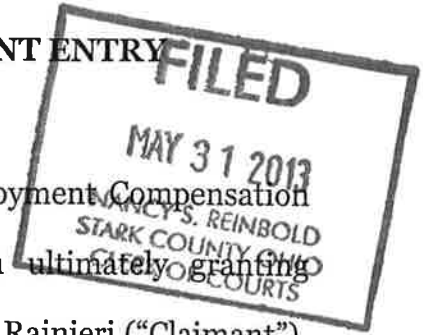


IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

FRESH MARK, INC.,)
) CASE NO. 2013CV00185
)
) Appellant,) JUDGE HAAS
)
)
) v.)
)
) U.C. REVIEW COMMISSION, et al.,) JUDGMENT ENTRY
)
) Appellees.)



This appeal arises as a result of an Ohio Unemployment Compensation Review Commission's ("Review Commission") decision ultimately granting unemployment compensation benefits to Appellee, Joseph Rainieri ("Claimant"), a former employee of Appellant, Fresh Mark, Inc. ("Employer").

Employer has appealed the decision of the Review Commission. On, January 17, 2013, Appellant filed a Notice of Appeal with this Court. On March 25, Appellant filed a brief in support of its appeal. On April 12, 2013, Appellee, Director, Ohio Department of Job and Family Services ("ODJFS") filed its brief. Additionally, Appellee, Joseph V. Rainieri, filed a brief. Thereafter, on April 25, 2013, Appellant filed a reply brief.

Procedural History

Appellee Director issued an initial determination allowing Claimant's application for benefits. The Employer filed a timely appeal. In a redetermination decision, the Director held that Claimant was discharged from employment without just cause, and allowed Claimant's application for benefits.

The Employer filed a timely appeal of the Director's redetermination decision. On October 12, 2012, the Director transferred jurisdiction to the Review Commission pursuant to R.C. 4141.28(G).

On November 8, 2012 and November 29, 2012, the Review Commission conducted a telephonic evidentiary hearing. In her decision, the hearing officer held that the Claimant had been discharged from employment without just cause, and was therefore eligible for unemployment compensation benefits. It is from this decision that the Employer now appeals to this Court.

Statement of Facts

Claimant worked as a maintenance technician for Employer, Fresh Mark, beginning in October 2002 until Claimant was discharged from employment on July 26, 2012. On July 15, 2002, Claimant had completed an application for employment with the Employer. On the application, Claimant answered the question, "[h]ave you ever been discharged by your employer", as "no". Claimant had been discharged by his previous employer, Land O' Lakes, but at the time of his application with the Employer, Claimant's discharge from Land O' Lakes was pending as an arbitration.

On April 2, 2012, Claimant filed a complaint with OSHA regarding working conditions at the Employer's place of business. Claimant was on FMLA leave from May 10, 2012 until July 9, 2012. Upon his return from leave, Claimant was placed on disciplinary suspension pending a hearing. Claimant was discharged on July 26, 2012 for falsification on his employment application.

Standard of Review

Unemployment compensation appeals are error proceedings, not proceedings *de novo*.¹ This Court has the duty to determine whether the Review Commission's decision is supported by law and facts.² A decision supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence.³

In determining whether just cause exists, the UCRC "must consider whether granting benefits would serve the underlying purpose of unemployment compensation – that is providing financial assistance to individuals who become unemployed through no fault of their own."⁴ As stated in *Loy v. Unemp. Com. Bd.*, the "just cause" test for discharge is whether the discharge was due to the culpability of the employer rather than due to circumstances beyond the employee's control.⁵

A reviewing court may reverse "just cause" determinations "if they are unlawful, unreasonable, or against the manifest weight of the evidence."⁶ A Review Commission's decision cannot be reversed simply because reasonable minds might reach different conclusions.⁷

Decision Not Unlawful, Unreasonable, or Against the Manifest Weight of the Evidence

¹ *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 13-14.

² *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17.

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

⁴ *Hartless v. Director*, ODJFS, 2011-Ohio-1374.

⁵ (1986), 30 Ohio App.3d 1204, 1206.

⁶ *Tzangas, Plakas & Mannos* (1995), 73 Ohio St.3d 694 quoting Irvine, supra.

⁷ *Id.* at 697.

The Ohio Bureau of Employment Services can deny a claimant/employee unemployment benefits if the claimant/employee quits his job without just cause or has been discharged for just cause in connection with his work. R.C. §4141.29(D)(2)(a). “Just cause” is defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.”⁸ The *Irvine* Court further stated that “each case must be considered upon its particular merits.”⁹

A reviewing court may reverse “just cause” determinations “if they are unlawful, unreasonable, or against the manifest weight of the evidence.”¹⁰ A Review Commission’s decision cannot be reversed simply because reasonable minds might reach different conclusions.¹¹

While the Employer now argues that Claimant was also terminated for job performance issues, the Employer’s representative testified that the falsification was the only reason for Claimant’s termination. For purposes of this appeal, this Court will only consider the administrative record and not any disciplinary history

The hearing officer concluded that because Claimant’s discharge from Land O’Lakes was not final until the termination became final as a result of the arbitration process, Claimant could not have falsified his 2002 application to work at Fresh Mark. The hearing officer’s conclusion is supported by the evidence. Not only did Claimant reasonably believe that his termination from

⁸ *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12

⁹ *Id.* at 17.

¹⁰ *Tzangas, Plakas & Mannos* (1995), 73 Ohio St.3d 694 quoting *Irvine*, supra.

¹¹ *Id.* at 697.

Land O'Lakes was not final since his termination was still pending arbitration, but the record demonstrates that Land O'Lakes human resources was treating the matter as pending arbitration.

Upon review of the evidence in the administrative record and the evidence presented at the hearing, the Court finds that the hearing officer's conclusion that Claimant was terminated without just cause is reasonable and not against the manifest weight of the evidence.

Accordingly, it is hereby

ORDERED, ADJUDGED and **DECREED** that the Review Commission's Decision is hereby **AFFIRMED**. This is a final appealable order and there is no just cause for delay.

IT IS SO ORDERED.



JOHN G. HAAS, JUDGE

To: Atty. Tod T. Morrow
Atty. Susan M. Sheffield
Atty. Thomas James Griffith