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COURT OF COMMON PLEAS

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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

KRISTI J. KRAUSE,

Appellant,

vs.

OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES,

Appellee.

* Case Number: CV 2010 07 3185

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* Judge Andrew Nastoff

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* ENTRY AND ORDER
* REMANDING MATTER
* TO REVIEW COMMISSION

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* FINAL APPEALABLE ORDER

This matter is before the Court on an appeal from a decision of the Ohio

Unemployment Compensation Review (“Review Commission”), disallowing
unemployment compensation benefits. For the following reasons this matter is remanded
for a new hearing before the Review Commission.

Appellant Kristi Krause (“Krause”) initially filed for unemployment compensation
benefits on September 2, 2009, after Interim Home Styles of Greater Cincinnati (“Interim”)
discharged her from employment as a home health aide. Interim discharged Krause on
August 31, 2009 for violating its policy regarding patient confidentiality. The director of
the Ohio Department of Job and Family Services initially allowed Krause’s application for
benefits based upon a finding that she was discharged without just cause. Specifically, the
director found that Interim failed to establish that Krause negligently or willfully
disregarded the policy in question. Interim appealed, and the director’s redetermination
affirmed the allowance of benefits. On Interim’s appeal of the redetermination, a hearing
officer held a telephonic hearing and, finding Krause was discharged for just cause,

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

reversed the director. Krause's request for review before the Review Commission was denied. Krause now appeals to this Court. On appeal, Krause argues that the hearing officer's decision is not supported by the record. Krause also argues that the hearing officer failed to review and consider the entire record before reversing the director's allowance of benefits.

R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with his work." The term "just cause" has been defined "in the statutory sense, [as] that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751. The determination of just cause must be analyzed in conjunction with the purpose of the unemployment compensation act: to provide financial assistance to individuals who remain involuntarily unemployed due to adverse business and industrial conditions. *Irvine, supra*. "It is well established that 'fault is essential to the unique chemistry of a just cause termination.'" *Binger v. Whirlpool Corp.* (1996), 110 Ohio App.3d 583, 590, 674 N.E.2d 1232, quoting *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1985), 73 Ohio St.3d 694, 653 N.E.2d 1207. The dispositive issue is not whether the employee "technically" violated a company rule, but whether the employee demonstrated an unreasonable disregard for the employer's interests. *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061, ¶ 25, quoting *Piazza v. Ohio Bur. of Emp. Serv.* (1991), 72 Ohio App.3d 353, 357, 594 N.E.2d 695.

Whether just cause exists depends on the factual circumstances of each case and is largely an issue for the hearing officer. *Irvine*, supra, at 17. The resolution of factual questions rests within the province of the hearing officer and the Review Commission, and upon appeal, a trial court may reverse a hearing officer's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine*, supra, at 17-18.

Ron Durham represented Interim as its human resources manager at the telephonic hearing. Durham testified that Interim hired Krause as a home health aide on June 11, 2009 and fired her on August 31, 2009, shortly after she finished attending to a male client at his residence. According to Durham, that client had a habit of harassing Krause throughout her tenure, and on that date asked to see her naked. Durham testified that Krause informed her husband of the harassment and in doing so divulged the client's name and address. Durham believed that Krause met her husband down the street from the client's residence and informed the client that her husband was aware of the harassment. Durham stated that Krause's conduct placed the client in physical danger and that she was discharged for violating Interim's policy of client confidentiality, the Health Insurance Portability and Accountability Act ("HIPAA"), and Interim's code of ethics and professional behavior. According to Durham, Krause should have contacted Interim immediately after the harassment occurred so that Interim could authorize her removal from the client's residence, as opposed to contacting her husband. Durham stated that Interim was compelled to discharge Krause because federal regulations prohibit it from employing individuals who have violated HIPAA.

Krause appeared at the hearing *pro se*. On direct examination conducted by the hearing officer, Krause testified that on her last day of employment her husband telephoned after spotting her from a car wash across the street from the client's residence. Krause acknowledged that she told her husband about the harassment, but denied revealing the client's name or address. Krause further acknowledged that her husband telephoned Interim once he was aware of the harassment, but denied telling the client that her husband was in the neighborhood and aware of the harassment.

The hearing officer issued a decision reversing Krause's benefits allowance and ordering the repayment of approximately \$6,650 in previously approved benefits. The decision's Findings of Fact adopt Durham's testimony in-full. The decision's Reasoning is reproduced below, in its entirety:

After a client made a sexually inappropriate statement to her, claimant informed her husband. She did not immediately report the client's statement to the employer as required. Claimant gave her husband the client's name and directions to his house. The client feared for his safety because claimant informed him that she told her husband what he said. He also knew that claimant's husband was waiting for him across the street from his house. Claimant's disclosure of confidential information could have resulted in a physical altercation between the client and her husband. Her actions violated the client's rights under HIPAA and the employer's policies. A HIPAA violation is very serious and exposes the employer to liability. The client's behavior, while abhorrent, does not justify claimant's decision to release his personal information to her husband. Since the employer's policy on inappropriate client behavior was reviewed during orientation, claimant knew or should have known that there was an established procedure to address the matter.

In order for a discharge to be considered to be with just cause in connection with work a claimant must be sufficiently at fault that an ordinary reasonable person would find the discharge to be justified. Based upon the evidence presented in this matter, the Hearing Officer finds that claimant was sufficiently at fault to justify her discharge. Therefore, claimant was discharged by Interim Home Styles of Greater Cincinnati Inc. for just cause in connection with work.

Based upon this finding, claimant received benefits to which she was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services.

The just cause determination is troubling in at least two respects, beginning with the fact that it was partly motivated by a finding that Krause violated HIPAA. The Court recognizes at the outset that the hearing officer was not bound by traditional or statutory rules of evidence or procedure, and enjoyed broad discretion in accepting and rejecting evidence and in conducting the hearing in general. R.C. 4141.281(C)(2). But while unemployment compensation hearings may be informal, hearing officers have an “affirmative duty to question parties and witnesses to ascertain the relevant facts and to fully and fairly develop the record,” and to examine the evidence and “give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs.” *Id.*

In finding that Krause violated HIPAA, the hearing officer necessarily gave great weight to Durham’s general assertion that a HIPAA violation occurred in this case, as no portion of the legislation is in the record. The hearing officer accepted Durham’s assertion at face value, however, without attempting to develop the record regarding his familiarity

or experience with HIPAA compliance or interpretation, or whether his position in human resources qualified him in any respect to conclude that a HIPAA violation actually occurred in this case. Consequently, Durham's testimony regarding a HIPAA violation was unreliable, and it was unreasonable and against the manifest weight of the evidence for the hearing officer to conclude that Krause was terminated for just cause on the basis of a HIPAA violation.

Second, and more concerning, is that there is no indication that the hearing officer examined and weighed all of the evidence contained in the director's file before issuing a decision. Pursuant to R.C. 4141.28(J), the director's file automatically becomes part of the record on appeal, and is to be considered by the hearing officer in conjunction with evidence produced at the hearing. After considering all of the evidence, the hearing officer is to issue a decision setting forth the facts, citing the applicable law, and providing the reasoning for the decision. R.C. 4141.281(C)(2).

The director's file in this case contains a written statement submitted by Krause in response to Interim's appeal of the initial benefits allowance. The statement indicates that on the day in question, as Krause drove to the grocery store for the client, she reported the harassment to Interim and was assured that she would not have to return to the residence. According to the statement, Interim subsequently informed Krause that it could not contact anyone in the client's apartment building and that she would have to return. The statement indicates that Krause's husband telephoned Interim and the police after Interim chose not to address the harassment, and that a police officer responded to the client's residence to

deliver the groceries and retrieve Krause's belongings. These allegations were not elicited at the telephonic hearing and are not mentioned in the hearing officer's decision.

While the statement was before the hearing officer at the time of the telephonic hearing, there was no attempt to question the parties to determine its accuracy. This is significant because, in the Court's estimation, the statement directly disputes the majority of Durham's testimony. For example, evidence of police presence at the client's residence would tend to dispute that the client was in danger. Likewise, evidence that Interim failed to follow its own policy by refusing to take action to diffuse an episode of sexual harassment would tend to dispute that Krause demonstrated an unreasonable disregard for Interim's interests by allegedly revealing the client's personal information to resolve the situation. Neither of these points were developed at the hearing nor discussed in the decision. The Court recognizes that it is not the obligation of the hearing officer to make a party's case. However, the hearing officer has a duty to fully and fairly develop the record.

That was not done in this case. By failing to flesh out the details of the incident giving rise to Krause's termination, the hearing officer was left with an insufficient record from which to make a competent finding regarding whether Krause was terminated for just cause. The hearing officer chose to weigh the insufficiency against Krause. Therefore, the decision to reverse the benefits allowance was unreasonable. This cause is remanded to the Review Commission for further proceedings. R.C. 4141.282.

SO ORDERED.

This is a final appealable order. There is no just cause for delay. Civ.R. 54(B).

ENTER,

Andrew Nastoff, Judge

cc:

Robert A. Jarvis
1600 Carew Tower, 441 Vine Street
Cincinnati, Ohio 45202

Bruce Abel
970 Laurel Avenue
Cincinnati, Ohio 45246

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio