IN THE COURT OF COMMON PLEAS, SENECA COUNTY, OHIO

PAUL J. DUNDORE — **Case No. 12-CV-0304**

PLAINTIFF-APPELLANT, — **Civil**

Vs. — **JUDGE MICHAEL P. KELBLEY**

DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.
DEFENDANTS-APPELLEES.

JOURNAL ENTRY AND DECISION

This matter came before the Court on the 28TH day of May 2013 for purposes of argument. Present were the following individuals: Paul Dundore, with his Counsel James W. Fruth; Attorney Eric A. Baum, Counsel representing Defendant-Appellee, Director, Ohio Department of Job and Family Services, and Attorney Brent T. Howard, Counsel representing the City of Tiffin.

This is an administrative appeal from the Ohio Unemployment Compensation Review Commission under R.C. 4141.282. The Review Commission found that the appellant, Paul J. Dundore, was terminated with just cause from his position with appellee City of Tiffin and, accordingly, ineligible for unemployment benefits.

For the reasons set forth below, the Review Commission Decision is upheld.

I. STATEMENT OF THE CASE

Appellant's request for unemployment benefits has been denied throughout the administrative process. That process included two levels of review at the Director's level, two administrative hearings, and the full Review Commission's unanimous decision to disallow appellant's final administrative request for final administrative review.

II. FACTS

Appellant worked for the City of Tiffin as a sidewalk special-project administrator. His relevant job duties consisted of enforcing city zoning- and nuisance-code violations ranging from overgrown grass, peeling paint, improperly parked cars, improperly maintained sidewalks, and, as a few witnesses pointed out, dog-defecation issues.

There were issues regarding his conduct with the public. He was repeatedly warned, both verbally and in writing, about his behavior. He was also warned about his failure to process complaints in a timely and accurate manner. He was suspended because of his unprofessional behavior. An hour after being suspended, he drove to the home of one of the residents who complained about him, went to her door during the supper hour, and spoke with her continually until her husband came to the door, and ordered him to "get the hell off" the front porch."

There were a number of witnesses at the hearing.

Debra Reamer, the Tiffin City Administrator, *see* May 9, 2012, hearing transcript (TR I) at 5, was the first day of hearing's sole witness. Ms. Reamer

testified that appellant worked for the City as its sidewalk special-projects administrator from February 2008 through February 8, 2012. TR I at 5-6. In that capacity, she explained, appellant's job duties included supervising tree removals and, relevant here, handling complaints about and issuing citations to property owners whose properties violate City ordinances. TR I at 6. The job description also lists a set of minimum qualifications for the job, relevant here being the ability "to communicate orally and in writing" and "to establish working relationships with employees, supervisors, and to [sic] the public."

Appellant was discharged, according to Ms. Reamer, for two chief reasons. First, she cited his lack of professionalism with the public: "It was his behavior towards others, repeated complaints I had received in regards to his treatment of who, who he come in contact with in regards to the city." TR I at 6, 7. Second, appellant had trouble completing tasks: "[T]he follow through process with his work had to keep going after him as far as follow-up and setting a time for completion." TR I at 6.

Regarding the first criticism, Ms. Reamer explained that complaints about appellant's interactions with the public started in 2011. TR I at 7. Each time, she counseled appellant, verbally warning him that, as far as the public is concerned, he is the face of the City of Tiffin and that his approach needs to reflect that:

> When I started speaking with him, I told him how to approach people. You go up to them politely, you work for the city of Tiffin. Even if maybe they are wrong, you still have to treat them with the utmost respect and dignity that they deserve. The customer is always right no matter what. And you are working for the city, you have a key position, you are the PR person for the city of Tiffin, so

> you can't approach them very disrespectfully and very arrogant that you are the boss and this is the way it is. They don't know and they are not going to know all of our city ordinances. TR I at 25.

Despite these admonitions, the complaints continued culminating in appellant's first write up on September 19, 2011. TR I at 7. There, Ms. Reamer noted that she had received several complaints about his "treatment of individuals when they are approached in regards to city business or maybe a violation of city policies." Specifically, appellant was criticized for his "very demeaning tone and manner." He was verbally counseled by Ms. Reamer because of his "rudeness," his "arrogance," his "[g]etting upset when they [property owners] try to discuss something or ask you a question," and his "[m]aking others feel like what they say does not matter it is just your way." TR I at 9.

The write up also addressed appellant's pattern of not following up on complaints:

> I need you to document when you go some where [sic] during the day and I need follow-up as to how it is being taken care of and a date of follow thru in writing.
>
> There have been many times when individuals have called to make a complaint and we look bad when we are not following up in a timely manner. This reflects on the city in a very negative way and makes it looks like we are not doing our job.

Ms. Reamer then recounted these particular complaints, first noting that, in summer 2011, she spoke to a citizen whom appellant approached about planting grass beside her property. TR I at 7-8. Appellant exaggerated to the

resident about the number of complaints he had received about her property, and he was judgmental, argumentative, and even "despicable" with her:

> [Appellant] argued with her about having numbers on her house. She told him that she did have numbers on her house, and he said she didn't. She then said he came back and said that she did. She said he was very argumentative. She said, um, he also told her that many neighbors had complained [about her property] when I know for a fact that just one individual had complained. And he told her that the property was disgraceful and must be fixed immediately. She said that he was, um, very out of line, completely rude, and he was completely unprofessional and despicable." TR I at 8.

The second complaint came in August 2011. TR I at 8. This time, Ms. Reamer personally witnessed appellant's unprofessionalism, and, when she followed up on the complaint, the resident was so irate that she [the resident] asked that appellant be fired. *See* TR I at 8-9 (emphasis added):

> [S]he was concerned about trees being removed from her property. He [appellant] spoke to her. * * * She had called me, and I have a note of that, and complained about him to me. So, I suggested that him and I [sic] go together and talk to her and we did. And when he was speaking to her, ***I was very concerned with the way he was talking to her and the treatment, and I kind of looked at him and said, you need to stop***. After that, then, she called in a follow-up message after that * * * and said that she just thought his treatment was horrible and she asked that, um, I fire him actually. And she called the mayor and said the same thing. * * * I told the mayor that we need to go talk to her, and we did. We did go to her house ourselves, one-on-one, and she still * * * could not believe that anybody could talk to anybody like this and how very unprofessional he was working for the city. She couldn't believe anybody could talk or be like this.

Apart from the written document, Ms. Reamer verbally told appellant that his approach "is very disrespectful" and that "he cannot talk to people like this." TR I at 9. She then repeated to appellant the words that the citizens used in their complaints. It was always the "same thing." TR I at 9. "Very

unprofessional in his approach, rudeness, demeaning, arrogance, getting very upset. When they try to discuss something with him, no matter what * * *, [h]e would always say it was just his way." TR I at 9. "When I talked to him about things, he told me that's just the way he is and that's the way he does things." TR I at 9.

Ms. Reamer also warned appellant about "[h]is incompleteness." TR I at 9. Specifically, Ms. Reamer "received repeated complaints where people would call me and wanted to know what was going to be done they never heard back from Mr. Dundore." TR I at 9. Ms. Reamer, however, made it clear that she wanted him first to try visiting the residents personally because residents prefer one-on-one visits and because the problems get addressed that way more quickly; using the mail, in contrast, "may take a week or longer." TR I at 10.

The appellant was written up again on November 2, 2011. This four-page list refers to a lack of follow-through and unprofessionalism. She catalogued many examples of the former: a complaint about a violation of ordinance no. 11 64, a complaint about 116 Coe Street, a complaint about 272 Coe Street, a complaint about a property on Spayth Street, and his having "done nothing with the sewer department." *See also* TR I at 10-11, 17, 18, 20. When she discussed this continuing problem with appellant (see TR 12: she always asked him for his side of the story), Ms. Reamer told him "we've gotta stop." TR I at 10. "I said, I still have these concerns. I said, I told you about it before. Um, there is no follow through still." TR I at 10.

The write up also listed four new complaints about appellant's problems dealing with the public. Chief among these was that "[Municipal] Court staff found it necessary to intervene with you and a member of the public" in a dispute occurring on the second floor. She also repeated that appellant needs to try to approach property owners in person rather than just "put[ting] a note on the door." Simply placing a note on the door, the write up explained, "is a big waste of time" because it requires a court appearance, whereas violations can often be more efficiently handled with a personal encounter. *See also* TR 30. Finally, Ms. Reamer reiterated to appellant in person that "I need to see improvement" and that any more infractions will result in further discipline "up to and including termination." TR I at 11. This warning, along with express notice that these problems have been longstanding ones, was memorialized in the write up:

> This information listed above goes back to my original September 19, 2011 concerns where I discussed your treatment of people in the public perception and negativity of a City representative.
>
> What I have written above are very deep concerns for the city and your department. You have previously been spoken to and I have not seen notable improvements. It is imperative that you do follow-thru. This serves as a written warning with more infractions leading up to and including termination of employment.

Ms. Reamer received "more repeated complaints" about appellant. TR I at 11. So on February 6, 2012 she met with him yet again, wrote him up yet again, and, this time, suspended him. TR I at 11-12. Ms. Christi Glick complained that appellant was "very rude" and "very disrespectful" and that he threatened that she would not "get a permit" to allow her to build a driveway.

TR I at 12, 13. The problem was that, as Ms. Reamer explained, appellant plays no part in that process: "he doesn't even issue permits." TR I at 12. Ms. Glick felt threatened and she complained to her city councilperson. TR I at 12.

Ms. Reamer testified that he still had problems following through with citations. TR I at 13. Specifically, on a particular Monday, some citations were still languishing, and Ms. Reamer told him to take care of them. TR I at 13. But [h]e still hadn't done them by Thursday." TR I at 13. "So," as Ms. Reamer concluded, "here we go again [,] no follow up on three situations." TR I at 13. *See also* TR I at 19-20.

When Ms. Reamer talked to appellant -- she again was certain to "ask him his side of the story," TR I at 12 -- he initially denied talking to Ms. Glick disrespectfully: "He kind of said, well, I didn't, then, he said I did." TR I at 12.

> He told me he send out a letter, which in fact, he did not because it was dated Thursday, and he said, how do know I didn't do the letter. I know because it was sitting on the desk and he asked the secretary to check the letter, and she did. And, on there, as I said, February 1st, this still was not followed up again. TR I at 13.

Finally, Ms. Reamer's write up, again, stressed the importance of acting professionally and, in no uncertain terms, put appellant on notice that the next infraction would be his last:

> I feel at this point in time, I have no choice but to suspend you for Tuesday, February 7th and Wednesday, February 8, 2012. I must stress from the last time we spoke that this kind of behavior on your part cannot continue to stay [sic] employed by the City of Tiffin. I * * * cannot accept the fact that you continue to be rude and disrespectful to individuals [and] do not follow-up [sic] with something when you are asked to do it for the City * * *.
>
> The next occurrence will result in termination. You can do your job and still be respectful, and be courteous to those you deal with.

Ultimately, he was suspended at about 5:15 p.m. on February 6. TR I at 14. At 6:00 p.m., he showed upon at Ms. Glick's house, went to her door, and spoke to her about the complaint that she had filed. TR I at 14-15. He did not drive a city car, did not carry a city identification badge, and for that matter, did not identify himself until 10 minutes into his harangue:

> [He] proceeded to go to her property. She had no idea who he was, because again she had personally never met this man. Went to her property with an unmarked vehicle, going up to her door, pounded on her door while they were having dinner around 6:00 p.m. and he went to start talking about on and on, did you tell on me, you know, what are you doing. Um, went on about his situation. This went on, she told me, for eight to ten minutes and she said, who are you. And that's when he said, well, I'm Paul Dundore. She said he had no city badge on * * *. TR I at 14.

Ms. Reamer gave appellant the opportunity to defend his actions, and, as in the past, he started off by denying them: "First, he told me he didn't go to her house, then he did go to her house." TR I at 15. Then he actually admitted fault: "He said, yeah, I probably shouldn't have done that." TR I at 15. As for why he went to Ms. Glick's house, appellant told Ms. Reamer that "[h]e just felt the need to." TR I at 15.

Ms. Reamer gave appellant chance after chance to improve his job performance, and she was available for assistance, to no avail. *See* TR I at 23:

> [S]tarting in September and I told him, you know, I need to see a change. Through all of these documentations, you will see there is no change, there is no notable improvement. You know, it progressively got worse, and yes I could have done this [fire him] way before, but I was trying to help this person. And, in writing, it will say that. He even admitted and say [sic], yes, I should have, I should have taken your help because I told him I was always there for him.

In the discharge documentation, Ms. Reamer made it clear that this final action was the culmination of many months of poor constituent relations and lack of follow-through on complaints:

> I did point out to Paul that it was not just this incident that caused his termination; I was the accumulation of previous similar offenses that brought him to this point. * * Paul said he does things his way.
>
> Paul was told he was terminated as of February 8, 2012.

Tiffin Municipal Court Judge Mark Repp also testified and addressed incidents pertaining to the appellant. First, he explained that appellant did not adequately prepare his cases for court. In a maintenance-code enforcement case, appellant's paperwork would allege a violation date of, say, September 1, but the accompanying photographs "would be from say September 7th or 14th or even ah at a period of time later than that." TR II at 19. And, Judge Repp testified, "this was an on-going, [sic] issue." TR II at 99.

Second, the Judge personally witnessed appellant's involvement in a commotion with a member of the public down the hall from his chambers. TR II at 20. Appellant and the other individual "were yelling back and forth." TR II at 21. Judge Repp noted that "this is unusual[;] we don't have his happen very often." TR II at 21. Accordingly, "we had to have court staff intervene." TR II at 21. *See also* TR II at 22. Judge Repp personally saw -- and, as he pointed out on cross-examination, heard -- this disturbance. TR II at 26.

Christi Glick then testified about her dealings with appellant. Ms. Glick said that it all began when appellant posted a note on her front door concerning code violation and asked her to contact him. TR II at 27. She then

called appellant and asked him what constituted her front yard. TR II at 27. He responded, "anything I could see off my front porch." TR II at 27. Ms. Glick then facetiously responded that her house "must be a triangle shaped house." TR II at 28. Appellant then threatened that "he would make sure that I would not get a permit to put my driveway in." TR II at 28.

Ms. Glick complained to her city councilperson. TR II at 28. Ms. Reamer then contacted her. TR II at 28. She told Ms. Reamer that appellant was "rude" and "demeaning." TR II at 28.

Ms. Glick then testified about appellant's personal visit to her house. Specifically, he came to her house over the dinner hour, basically repeating his claim that she cannot park her car in her side yard. TR 28, 30. He was not driving a city car, and he was not wearing a city ID badge. TR II at 30. He did not identify himself. TR II at 32. He then point-blank asked if she had complained to Ms. Reamer about him. TR II at 30. This continued until Ms. Glick's husband ultimately interrupted his supper, came to the door, and told appellant to "get the hell off" the front porch. TR II at 32. *See also* TR II at 33.

Appellant was "very rude" to Ms. Glick that evening, she felt threatened, and he never apologized to her. TR II at 30. "Never once." TR II at 32.

Appellant testified next, conceding that he had received numerous warnings while working for the City of Tiffin, TR II at 35; that he was suspended from work, TR II at 37; and that police were called twice while he was performing his duties with the public, TR II at 50.

James Boroff, mayor of Tiffin until January 1, 2012, TR II at 52, was the next witness. Testifying on appellant's behalf, Mayor Boroff acknowledged that during his tenure he had received "a lot of complaints" about appellant but that "in virtually every case" it was a matter of shooting the proverbial messenger, viz., that appellant's job was a thankless one, and "people didn't like the fact that they had to comply" with city ordinances. TR II at 52. *See also* TR II at 60. Nonetheless, he agreed with Ms. Reamer that appellant's chief job duty was to work with constituents to effect compliance: "[P]unishment was not what we were after [;] it was education that we wanted him to educate people who were in violation and get them to comply." TR II at 62.

The ex-Mayor disputed two of the criticisms listed on appellant's November 2, 2011, write up: the remark about appellant's failure to attend a department-head meeting and the comment about attendance issues. TR II at 58.

Finally, Mayor Boroff lauded appellant for his knowledge of boilers and electrical and heating issues, TR II at 65, and described appellant as "dedicated, very honest," TR II at 67.

Wayne Stephens, Ms. Reamer's predecessor and appellant's one-time supervisor, TR II at 72, was the last witness. Mr. Stephens testified that appellant's job was a thankless one because property owners take code-violation allegations personally and sometimes become irate. TR II at 75-76. He also said that he was pleased with appellant's work and that he never wrote him up. TR 77, 79. Finally, he opined that it was permissible for individuals

working appellant's job to work off hours when needed, even for the purposes of issuing apologies, and even doing so in their own cars. TR II at 78.

The hearing officer upheld the Director's redetermination denying benefits. Though appellant was fired for both his unprofessional behavior and his lack of follow-through with work assignments, the hearing officer devoted her discussion almost completely to the unprofessional-behavior claim, finding that it alone amounts to just cause for his discharge.

LAW

THE REVIEW COMMISSION'S DECISION THAT APPELLANT WAS DISCHARGED WITH JUST CAUSE IS NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

A. Standard of review

The Court is required to observe the standard of review set forth in R.C. 4141.282(H) when considering appeals of decisions rendered by the Review Commission. That section states:

> 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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

This strict standard of review was recently reiterated in *Lang v. Ohio Dept. of Job & Family Servs.*, --- Ohio St.3d ---, Slip. Opinion No. 2012-Ohio-5366, at ¶11. Under this deferential benchmark, the Review Commission's decision must be affirmed if some competent, credible evidence in the record supports it. *Cent. Ohio Vocational School Dist. Bd. of Edn. v. Admr., Ohio Bur. of Emp. Servs.*, 21 Ohio St.3d 5, 8 (1986). In other words, a court may reverse a

decision of the Unemployment Compensation Review Commission only if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694 (1995), paragraph one of the syllabus.

Although the Review Commission's decision should not be "rubber-stamped," a reviewing court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Tzangas*, at 697. Accordingly, only a decision that is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice" is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. of Emp. Servs.*, 6th Dist. No. S-88-8 (Aug. 26, 1988), 1988 Ohio App. LEXIS 3461, *4 (citation omitted).

The determination of factual questions is primarily a matter for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). As the trier-of-fact, the Review Commission and its hearing officer are vested with the power to review the evidence and believe or disbelieve the testimony of the witnesses. Accordingly, this Court should defer to the Review Commission's determination of purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 162 (1983). Evaluating the evidence and assessing the credibility of the witnesses are the primary function of the trier of fact and not of a reviewing court. *Yuhasz v. Mrdenovich*, 82 Ohio App.3d 490, 492 (1992).

Appellant was denied benefits on the ground that he was discharged with just under R.C. 4141.29(D) (2) (a). That section provides in pertinent part as follows:

> (1) Notwithstanding division (A) of this section, no 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.

Unemployment insurance is intended for the worker who is temporarily unemployed "through no fault or agreement of his own." *Tzangas*, at 697 (citations omitted). In other words, if the employee is at fault, her termination is with just cause: "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination." *Id.* at 698. When an employee, by her actions, demonstrates an unreasonable disregard for her employer's best interest, there is just cause for her discharge. *LaChapelle v. Dir., Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 166, 2009-Ohio-3399, at ¶18 (citation omitted).

Each case must be considered upon its particular merits. *Tzangas* at 698, citing *Irvine* at 17. As the Cuyahoga County Court of Appeals long ago noted, reviewing courts must review the totality of all the circumstances in deciding whether a discharge was for just cause. *Brownlee v. Bd. of Rev.*, 8th Dist. No. 34070 (June 26, 1975), 1975 Ohio App. LEXIS 6942, at *7 (citations

omitted). *See also Talley v. Coe Mfg. Co.*, 11th Dist. No. 2002-L-015, 2003-Ohio-1332, at ¶39.

The record is replete with evidence showing that appellant was terminated with just cause. The stated reasons for his firing -- unprofessional treatment of citizens and lack of follow-through -- are supported by the evidence in the record.

As the hearing officer essentially determined, appellant's unprofessional behavior alone is just cause for termination. In short, appellant's conduct was chronic, and he was counseled many times and given warning after warning before Ms. Reamer, finally, fired him.

For all of the above, this Court find the decision of the Review Commission is lawful, reasonable and not against the manifest weight of the evidence.

IT IS SO ORDERED.

Michael P. Kelbley

JUDGE MICHAEL P. KELBLEY

To the Clerk: Pursuant to Civil Rule 58(B), you are to serve notice of this judgment and its date of entry upon the journal to all parties not in default for failure to appear within three (3) days of the judgment's entry upon the journal, and note the service in the appearance docket.