

**THIS IS A FINAL  
APPEALABLE ORDER**

FILED  
LUCAS COUNTY

2013 JUN 11 P 2:00

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK  
LUCAS COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

<b>Kerrie A. Edmondson,</b>	*	Case No. CI 12-5795
Plaintiff/Appellant,	*	Honorable Dean Mandros
vs.	*	<b>OPINION AND JUDGMENT ENTRY</b>
<b>Otterbein Monclova, LLC, et al.,</b>	*	
Defendants/Appellees.	*	

Unemployment Compensation Review Commission's finding that claimant was discharged for just cause is affirmed where claimant used profane and threatening language while arguing loudly with a coworker within the earshot of those she was there to serve, the elders.

**I. PROCEDURAL BACKGROUND**

On March 31, 2012, Plaintiff/Appellant Kerrie A. Edmondson was discharged from her employment as an elder assistant at Otterbein Monclova, LLC ("Otterbein"). Ms. Edmondson thereafter filed an application for unemployment compensation benefits. The Director issued a determination finding that Ms. Edmondson was discharged without just cause and, accordingly, entitled to benefits. On June 12, 2012, the Director issued a redetermination affirming the earlier determination.

On July 3, 2012, Otterbein appealed the redetermination, and jurisdiction was transferred to the Unemployment Compensation Review Commission. A telephone hearing was held on July 25,

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2012. Ms. Edmondson did not appear. Tyler Hawk, assistant administrator at Otterbein, and Teresa Wheeler, licensed practical nurse at Otterbein, testified on behalf of Otterbein.

Reversing the redetermination, the Hearing Officer found that "[o]n or about March 20, 2012, the claimant and a coworker argued loudly with profanity within earshot of those they are there to serve, the elders. The claimant threatened the coworker to the effect of 'bitch, I will fuck you up' and similar epithets." The Hearing Officer concluded that the altercation with the coworker was egregious enough to warrant her discharge, considering Ms. Edmondson's past write up for performance; therefore, Ms. Edmondson was discharged for just cause in connection with work and is not entitled to unemployment compensation benefits.

The Review Commission allowed Ms. Edmondson's request for further review, and on September 13, 2012, unanimously affirmed the Hearing Officer's decision. This cause is now before the Court upon Ms. Edmondson's administrative appeal of the decision denying her benefits.

## II. STANDARD OF REVIEW AND APPLICABLE LAW

The role of the court of common pleas upon appeal from the Review Commission is limited to determining whether the Commission's decision is supported by evidence in the record. R.C. 4141.282(H). Determination of purely factual questions is primarily within the province of the Review Commission; therefore, the Court has a limited power of review and is not permitted to make factual findings or to determine the credibility of witnesses. *Irvine v. Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). The fact that reasonable minds might reach a different conclusion is not a basis for the reversal of the Commission's decision. *Id.* at 18.

Ohio's Unemployment Compensation Act prohibits the payment of benefits if an employee

has been discharged for just cause in connection with his or her work. R.C. 4141.29(D)(2)(a). "Just cause" is defined as "conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." (Citation omitted.) *Carter v. University of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10, 2008 Ohio App. LEXIS 1683. In determining whether an employee has been discharged for "just cause" for unemployment compensation purposes, the critical issue is not whether the employee has technically violated some company rule, but whether the employee by his or her actions demonstrated unreasonable disregard for the employer's best interests. *Kiikka v. Administrator, Ohio Bureau of Employment Services*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist. 1985).

### III. ANALYSIS

According to the March 20, 2012, statement of Oberlein Guide Kristen Shoot, she was made aware of the altercation between Ms. Edmondson and the coworker. They were arguing loudly in the pantry area and using profanity. This was overheard by one of the elders that live in the house and witnessed by Nurse Wheeler.

Ms. Wheeler confirmed this in her July 19, 2012 statement: "Kerry and Jennifer were in the back room of the kitchen argueing [sic] over why the house had been left without any supervision and who was at fault, both employees using profanity and \* \* \* making theats [sic] to one another yelling loud enough that the resident [sic] were able to hear what was going on." When asked at the hearing by the Hearing Officer exactly what words Ms. Edmondson used, Ms. Wheeler responded: "the claimant was using words such as um bitch, I'm gonna fuck you up, things of that nature." (Trans. pg. 19)

Mr. Hawk testified that Ms. Edmondson had previously been written up for an unacceptable

job performance which involved "being frustrated with elders during care, antagonizing elders."  
(Trans. pg.13)

Oberlein's policies and procedures prohibit "[p]hysical or verbal assault or acts of violence or abuse, inappropriate language, menacing, intimidation, or threat upon any person."

Numerous courts have found that yelling, profanity, and/or threats are an unreasonable disregard for the employer's best interest and thus constitute just cause for discharge. *See, e.g., Warren County Auditor v. Sexton*, 12th Dist. No. CA2006-10-124, 2007-Ohio-7081, 2007 Ohio App. LEXIS 6150 (public profanity-laced outburst justifies discharge); *Hord v. Director, Ohio Department of Job & Family Services*, 7th Dist. No. 05 JE 48, 2006-Ohio-4382, 2006 Ohio App. LEXIS 4315 (rants and raves coupled with foul and abusive language constitute just cause); *Banks v. Natural Essentials, Inc.*, 8th Dist. No. 95780, 2011-Ohio-3063, 2011 Ohio App. LEXIS 2599 (co-worker frightened by claimant's yelling and profanity); *Schivelbein v. Riverside Mercy Hospital*, 6th Dist. No. L-11-1208, 2012-Ohio-3991, 2012 Ohio App. LEXIS 3511 (denial of benefits upheld where claimant used inappropriate, disrespectful, and threatening language); *Maldonado v. Director, Ohio Department of Job & Family Services*, 7th Dist. No. 10 MA 190, 2012-Ohio-4555, 2012 Ohio App. LEXIS 4007 (employer had just cause to terminate claimant for making threats and using lewd or indecent language); and *Cottrell v. Director, Ohio Department of Job & Family Services*, 10th Dist. No. 05AP-798, 2006-Ohio-793, 2006 Ohio App. LEXIS 713 (claimant who threatened to harm co-worker ineligible for unemployment compensation benefits).


Accordingly, the Court finds that the Review Commission's decision is supported by competent, credible evidence, was not against the manifest weight of the evidence, and was reasonable and in accordance with the law.

Ms. Edmondson's argument that she did not receive a fair hearing because the hearing officer allowed into the record the statements from Theresa Wheeler and Jennifer Bensch which were not filed until the day of the hearing is without merit. First, the hearing notice provides only that documents not timely submitted "may" result in their not being considered. Second, the statements were cumulative, added nothing to the record, and thus did not prejudice Ms. Edmondson. *See, Giles v. F & P America Manufacturing, Inc.*, 2nd Dist. No. 2004-CA-36, 2005-Ohio-4833, 2005 Ohio App. LEXIS 4372. Ms. Wheeler's statement merely confirmed the March 20, 2012, statement of Ms. Shoot that Ms. Edmondson and her co-worker were arguing loudly and using profanity. Ms. Shoot's statement had been filed with the Ohio Department of Job and Family Services on May 22, 2012, and Ms. Edmondson had a copy since she requested a copy of the file on July 13, 2012. In addition, Ms. Wheeler testified at the hearing regarding the exact profanity and threatening language used by Ms. Edmondson. The statement of Ms. Bensch was irrelevant as it addressed only post-incident matters. Third, Ms. Edmondson received the documents the morning of the hearing but failed to attend the hearing, object to the documents, request that the hearing be postponed, or explain why she did not attend the hearing and request that the hearing officer's decision be vacated.

**JUDGMENT ENTRY**

It is **ORDERED** that the decision of the Unemployment Compensation Review Commission is **AFFIRMED**.

Date: 6-11-13

  
Dean Mandros, Judge

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