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LINDA H. FRARY
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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

ROBIN D. GRANGER

Appellant/Plaintiff,

v.

COMMUNITY ACTION FOR
CAPABLE YOUTH, et al.,

Appellees/Defendants.

Case No. 2012-CV- 1404 H

**DECISION ON
ADMINISTRATIVE APPEAL**

*Journalized on the court's
docket on 6-19-13*

J. Suarez
Deputy Clerk

This employment termination case is before the court of common pleas upon the administrative appeal of Appellant/Plaintiff Robin Granger, filed November 16, 2012. The court has reviewed the August 21, 2012 decision of the Unemployment Compensation Review Commission upon the certified record and transcript provided by the commission, and pursuant to O.R.C. § 4141.282(H). All parties have submitted extensive briefs upon the issues to be considered in this administrative appeal. This court has reviewed the pleadings, the briefs submitted, the transcript of the hearing testimony, submitted by the Unemployment Compensation Review Commission pursuant to O.R.C. § 4141.282(F)(1), and the administrative record filed in this case.

FACTUAL AND PROCEDURAL HISTORY

Appellant/Plaintiff Robin D. Granger (hereinafter "Granger") applied for unemployment compensation benefits after she was terminated from her employment with Community Action for Capable Youth (hereinafter "CACY") in April 2012. On May 7, 2012 the Ohio Department of Job and Family Services Office of Unemployment Compensation issued a Determination of Unemployment Compensation Benefits that denied benefits, finding that Granger was discharged with just cause. Granger appealed, and on June 7, 2012 a Director's Redetermination was issued, affirming the just cause finding and initial determination denying benefits.

Notice that the appeal was transferred to the Unemployment Compensation Review Commission was mailed out on June 28, 2012. The appeal was heard by Hearing Officer Tonya Brady on July 19, 2012 and August 10, 2012. The August 21, 2012 Decision affirmed the June 7, 2012 Director's Redetermination, and held that Granger was discharged by Community Action for Capable Youth (hereinafter "CACY"), for just cause in connection with work.

The following Findings of Fact appear in the Decision:

Claimant was hired on January 01, 2001. Her last day of work was April 13, 2012. She worked as a Prevention Educator.

In June 2009, the employer became accredited through the Ohio Department of Alcohol and Drug Addiction Services (ODADAS). Having the accreditation required additional professional licensing requirements for current and future employees. This licensure was mandatory in order for the employer to receive state contracts.

Claimant was advised that she would have to obtain the proper licensure as early as June 2008, when the employer initiated pursuing their accreditation.

OAC 3793:5-05 required individuals providing prevention education

services such as the claimant to obtain a professional license after becoming an application (sic). Claimant registered for the exam. Claimant took first the exam in January 2012 and failed. She was required to re-test by April 01, 2012.

In letter (sic) dated January 30, 2012, claimant was advised by Tracee Anderson, the Executive Director, that if she did not successfully pass the exam in March 2012, she would be terminated. For her exam taken in March 2012, claimant did not obtain a passing score.

A Decision Disallowing Request for Review was mailed to all interested parties on October 18, 2012. This appeal was timely filed on November 16, 2012 and is brought before the common pleas court to review the Decision of the Unemployment Compensation Review Commission.

LEGAL DISCUSSION

In an administrative appeal of a decision of the Unemployment Compensation Review Commission, the common pleas court shall hear the appeal on the certified record provided by the commission.¹ In such an administrative appeal, the burden of persuasion remains at all times upon the discharged employee to demonstrate that she was discharged without just cause.² Upon appeal of a commission's decision, the reviewing court must affirm the commission's decision unless the decision is unlawful, unreasonable or against the manifest weight of the evidence.³ Under this standard of review, a reviewing court must affirm the commission's finding if some competent, credible evidence in the record supports it.⁴ A reviewing court is not permitted to make

¹ O.R.C. § 4141.282(H).

² *Silkert v. Ohio Dep't of Job & Family Servs.*, 184 Ohio App. 3d 78, 80-81 (2nd Dist. 2009).

³ See R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 696, 1995 Ohio 206, 653 N.E.2d 1207.

⁴ *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 Ohio B. 12, 482 N.E.2d 587.

factual findings or determine witness credibility.⁵ The fact that reasonable minds might come to different conclusions is not a basis for reversing the commission's decision.⁶ On close questions, " 'where the [commission] might reasonably decide either way, the courts have no authority to upset the [commission's] decision.' "⁷

Under R.C. 4141.29(D)(2)(a), an employee who is discharged from employment for just cause is ineligible to receive unemployment benefits. The Supreme Court of Ohio has defined just cause as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."⁸ A just cause determination must be consistent with the purpose of the Unemployment Compensation Act, which is to provide financial assistance to individuals who become and remain involuntarily unemployed due to adverse business and industrial conditions.⁹ The act protects those employees who have no control over the situation that leads to their separation from employment.¹⁰ Consistent with the purpose of the act, the *Tzangas* court held that a discharge may be considered to be for just cause where the employee's conduct demonstrates some degree of fault.¹¹

In the instant case, the employee Robin Granger had some control over the circumstances that led to her discharge. From the time that CACY decided to become accredited through the Ohio Department of Alcohol and Drug Addiction Services

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, quoting *Charles Livingston & Sons, Inc. v. Constance* (1961), 115 Ohio App. 437, 438, 185 N.E.2d 655.

⁸ *Tzangas* at 697, quoting *Irvine* at ¶ 17.

⁹ *Tzangas*, 73 Ohio St. 3d 694, at 697 (1995).

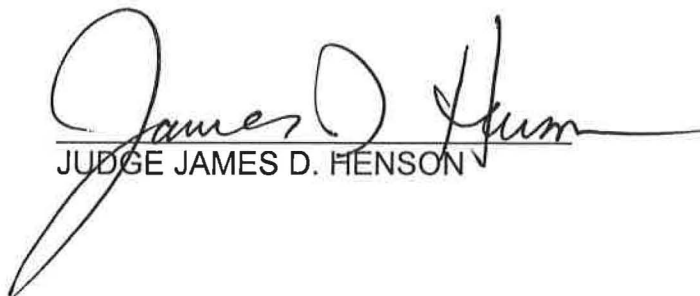
¹⁰ *Id.*

¹¹ *Id.* at 698.

(ODADAS), they notified their employees of the need to become licensed. ODADAS regulations require that counselors such as Granger be either licensed or registered applicants for licensure in order for their employers to bill for their services on state contracts. Granger became a registered applicant for the licensing test twice, but allowed her status as a registered applicant to lapse in August 2011.

Notwithstanding her failure to pass the qualifying examination, had she maintained her status as a registered applicant, CACY would have been able to bill for her services; under those circumstances, her discharge would have been without just cause. However, her failure to maintain either status that would allow CACY to bill for her services is, to an ordinarily intelligent person, a justifiable reason for discharging her from employment. The court finds that the decision of the Unemployment Compensation Review Commission is neither unlawful, unreasonable nor against the manifest weight of the evidence.

IT IS THEREFORE ORDERED that the August 21, 2012 Decision of the Unemployment Compensation Review Commission is hereby affirmed. Costs of this appeal are taxed to Appellant/Plaintiff.


JUDGE JAMES D. HENSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment Entry was served according to local rules and sent by regular U.S. Mail this _____ day of June 2013 to the following:

John A. Sivinski
Jeffrey J, Heck
~~Yvonne Tertel~~
Alan Schewpe

Deputy Clerk