IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

DONALD BEAUMONT, Plaintiff-Appellant, vs. KVAERNER NORTH AMERICAN CONSTRUCTION, INC., and DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, Defendants-Appellees.	)	CASE NO. 2012 CV 01599 JUDGE ANDREW D. LOGAN JUDGMENT ENTRY

This matter is before the Court on an administrative appeal by Plaintiff-Appellant Donald A. Beaumont ("Appellant") from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") denying unemployment compensation benefits to Appellant, a former employee of Defendant-Appellee Kvaerner North American Construction, Inc. ("Appellee Kvaerner").

The record reflects that Appellant's application for benefits was initially allowed by the Director of the Ohio Department of Job and Family Services ("Appellee Director") upon finding that Appellant had been discharged without just cause. Appellee Kvaerner appealed the decision to the Review Commission and a telephonic evidentiary hearing was held on May 17, 2012. A Review Commission Hearing Officer reversed the decision to allow benefits, finding Appellant had been discharged with just cause, and the Review Commission disallowed Appellant's request for further review. Appellant then appealed to this Court seeking reversal of the denial of unemployment compensation benefits.

The pertinent facts are as follows. Appellant worked as a carpenter for Appellee

Kvaerner from November 21, 2011 until January 26, 2012, when he was discharged for "job abandonment". On December 30, 2011, Appellant was injured on the job. The notes of Appellant's treating physician disclose the following sequence of events:

- after an appointment on January 5, 2012, the doctor set Appellant's initial return to work date as January 23, 2012, and directed Appellant to return for a "recheck" in 7 to 10 days;
- after an appointment on January 17, 2012, the doctor extended Appellant's return to work date to January 30, 2012, and directed Appellant to return in 10 days for a recheck;
- after an appointment on January 27, 2012, the doctor extended Appellant's return to work date to February 6, 2012, and Appellant was directed to return on an as-needed ("prn") basis.

While the notes indicate that the physician set three different return-to-work dates, the materials from the physician include "Certificate[s] To Return To Work/School" for only two of these dates: January 23, 2012 and February 6, 2012.

Appellee Kvaerner's Senior Labor Relations Representative Sarah Scherer testified at the evidentiary hearing that prior to discharging Appellant, the only documentation it had received from Appellant's physician was a "medical slip" listing a return to work date of January 23, 2012. She indicated, however, that Appellant's foreman had told her that Appellant had called him and stated that he was not going to be seen by the doctor again until January 30, 2012. She stated that she then checked the state workers' compensation website to see if any documents were posted that extended claimant's leave beyond January 23, 2012, and found none. On January 26, 2013, after Appellant had not returned to work, she called the physician's office and

spoke to a receptionist. The receptionist told Scherer that Appellant had been seen on January 17, but then, contrary to the physician's notes, said Appellant had been fully released to return to work on January 23, 2012. As a result of the conversation with the receptionist, Scherer testified that the decision was made to discharge Appellant for job abandonment.

Scherer testified that no attempt was made to contact Appellant before the decision to discharge him was made. In fact, Appellant was not informed that he had been discharged until he called Scherer on February 3, 2012 to inform her he would be returning to work on February 5, 2012. When asked why no effort was made to call Appellant, Scherer initially testified that Appellant would have been told by a safety supervisor in charge of his workers' compensation case that he was responsible for providing updates if anything changed. Appellant, however, testified that when he spoke to the safety supervisor on the day he was injured, he was not informed either verbally or in writing that "I had to keep them on . . . a play-by-play." Additionally, he testified that he expected that the doctor's office, which had faxed his initial return to work date to his employer, would also send any changes in his return to work dates to the employer. Further, Appellant testified that he had, in fact, informed his foreman that he had seen his physician on January 17, 2012, that he was still under a doctor's care, and that he had a follow-up appointment on January 27, 2012.[1]

While Scherer initially pointed to her conversation with the receptionist as the basis for her conclusion that Appellant had abandoned his job, she also she acknowledged that there was "some confusion on the dates from the receptionist," and stated that "we were sketchy about his return-to-work dates, and we would have put him back to work if we knew that he was not still

[1] Scherer testified that the foreman said Appellant told him the follow-up appointment was scheduled for January 30, 2012. Nevertheless, it appears undisputed that Appellant did, in fact, inform the foreman prior to his discharge that he would remained under a doctor's care until at least January 27, 2012.

injured." She explained, however, that this never occurred because Appellant subsequently filed a grievance, and then, during the grievance process, submitted additional medical documentation, ultimately filing a claim for total disability.

In her decision reversing the Director's decision to allow benefits, the Hearing Officer stated:

> The evidence presented in this matter establishes that claimant failed to return to work at the end of his medical leave. Claimant also failed to submit any documentation extending his injury leave beyond January 23, 2012. When claimant was placed on injury leave, the employer told him that it was his responsibility to provide any updates or changes to his release to return to work date. According to Ohio unemployment compensation law an employee who fails to return to work at the end of a medical leave can be discharged for just cause in connection with work. Under the evidence presented in this matter, claimant's failure to return to work at the end of his injury leave constitutes fault sufficient to justify his discharge. Therefore, Kvaerner North American Construction, Inc. discharged claimant for just cause in connection with work.

Based upon the foregoing, the Hearing Officer reversed the Director's allowance of benefits, and the Review Commission denied Appellant's request for further review.

A reviewing court may reverse a "just cause" determination by the Unemployment Compensation Review Commission "only if it is unlawful, unreasonable or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995), paragraph one of the syllabus; R.C. §4141.282(H). "Just cause" under R.C. §4141.29(D)(2) "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. State Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985); see also *Talley v. Coe Mfg. Co.*, 11th Dist. No.2002–L–015, 2003–Ohio–1395, ¶ 26. Just cause, in the context of unemployment benefits, is inherently predicated upon employee fault. *Id.*; Ashtabula v. Rivas (March 5, 2012), 11th Dist. App. No. 2011–A–0020, at ¶19. Thus, "the proper test as to 'just cause' for discharge

is whether the discharge was due to culpability of the employee rather than circumstances beyond the control of the employee." *Loy v. Unemp. Comp. Bd. of Rev.*, 30 Ohio App.3d 204, 206, 507 N.E.2d 421, 423 (1st Dist.1986), quoting, *In re Claim of Krug* (Aug. 23, 1977), 10th Dist. No. 77AP-266. Further, "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 interest." *Talley, supra*, at ¶41, quoting *Apex Paper Box Co. v. Ohio Bur. of Emp. Services* (May 11, 2000), 8th Dist. No. 77423. Finally, it well-established that "[t]he protections of an employee under R.C. §4141.29 are to be liberally construed." *Lorain Cty. Aud. v. Ohio Unemp. Comp. Rev. Comm.*, 113 Ohio St.3d 124, 2007-Ohio-1247, 863 N.E.2d 133, at ¶31.

Applying the foregoing, the Court finds that the decision here must be reversed. In her ruling, the Hearing Officer first stated that Appellant "failed to return to work at the end of his medical leave." This is simply incorrect. The physician's notes, which the record indicates were before the Hearing Officer, establish that when Appellant saw his doctor on January 17, 2012, his return to work date, i.e., the end date of his medical leave, was extended to January 30, 2012. This fact is not changed by the *physician's* failure to update this information on the workers' compensation website or to provide an updated return to work date certificate to the employer. Similarly, the receptionist's obvious error in telling Scherer that Appellant's return to work date was still January 23, 2012 does not change the fact that Appellant's physician had actually extended Appellant's return to work date to January 30, 2012. Moreover, the actions of the physician and the receptionist were beyond Appellant's control. Appellant's conduct, on the other hand, was clearly consistent with his having been informed that his return to work date had been extended past January 23, 2012, a fact he communicated to his foreman. In light of these

circumstances, the Court can find no basis for a conclusion that Appellant was culpable or at fault in not returning to work on January 23, 2012.

In addition, while the Hearing Officer noted that Appellant "failed to submit any documentation extending his injury leave beyond January 23, 2012," there is simply no evidence supporting a conclusion that Appellant was required to do so. First, there is no evidence that Appellee Kvaerner had any policy or rule in place requiring employees on medical leave to provide documentation regarding an extension of a medical leave. In their briefs, Appellees cite a written policy of Appellee Kvaerner which required employees to submit a "request for time off" form for "any vacations, pre-approved early leaves, or any time requested off in the future." This policy, however, includes no requirement for any type of medical documentation and, by its own terms, appears wholly inapplicable to situations involving medical leaves. Further, Scherer made no mention of this policy in her testimony, and the Hearing Officer made no reference to the policy in her ruling. Rather, as the Hearing Officer herself stated in her Findings of Fact, Appellant was simply told that "it [was] his responsibility to provide any updates or changes to his release to return to work date." Appellant did this when he contacted the foreman. Thus, Appellant violated no company rule, nor is there evidence that he in any way demonstrated unreasonable disregard for Appellee Kvaerner's best interest.

Appellee Director cites *McCoy v. Admr., Bur. of Emp. Services*, 4th Dist. No. 00CA12, 2000-Ohio-1959, and *Anderson v. Bd. of Rev., O.B.E.S.* (Sept. 28, 1989), 8th Dist. No. 55931, for the proposition that a claimant who does not return to work at the end of a medical leave is discharged with "just cause." Both cases are clearly distinguishable from the situation in the case at bar.

In *McCoy*, an employee had used all of her available vacation, sick, and Family Medical

Leave Act time to assist her ailing parents. Her request for further leave was denied, but she simply did not return to work, even after she was contacted by her employer and told that she needed to do so. Here, Appellant was told by his physician that his return to work date had been extended, and then relayed this information to his foreman. Unlike the employee in *McCoy*, Appellant did nothing which would demonstrate an unreasonable disregard for his employer's best interest; rather, his discharge was the result of incorrect information being given to Appellee Kvaerner by the physician's receptionist.

In *Anderson*, an employee began a sick leave of absence, gave his employer notice of his anticipated return-to-work date, but then simply did not return to work or otherwise contact the employer until a week after the return-to-work date, offering no explanation for his inaction. In rejecting the employee's challenge to the finding that he had been discharged with just cause, the Court stated: "[W]hen an employer expects an employee to return to work on a certain date, it is unacceptable and unreasonable for the employee not to appear without notifying the employer, absent catastrophic circumstances." *Anderson, supra*. Here, it is undisputed that Appellant did notify his employer that his return-to-work date had been extended, telling the foreman that he would not be seen by his doctor again until January 27 (or January 30, according to Scherer's account). The fact that Appellee Kvaerner chose to rely on the incorrect information provided by the receptionist does not demonstrate that Appellant was at fault or culpable, or that he in any way disregarded his employer's best interests. In fact, to find that it did would be contrary to the established principle that the protections of employees under R.C. §4141.29 are to be liberally construed.

For the reasons thus stated, the Court therefore concludes that the finding that Appellant was discharged with just cause was against the manifest weight of the evidence. It is therefore

ORDERED, ADJUDGED, and DECREED that the decision of the Review Commission denying unemployment compensation benefits to Appellant is hereby REVERSED, and the Court hereby finds that Appellant is entitled to unemployment compensation benefits. Costs to Appellee Kvaerner.

IT IS SO ORDERED.

June 26, 2013
DATE

ANDREW D. LOGAN, Judge
Court of Common Pleas
Trumbull County, Ohio

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTHWITH BY ORDINARY MAIL.

ANDREW D. LOGAN, JUDGE