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CINDY A. HOFNER

**IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO**

Judith K. Maurer,

Plaintiff-Appellant,

v.

Unemployment Compensation
Review Commission, *et al.*,

Defendants-Appellees.

Case No. 2012CV0687

Judge Robert C. Pollex

JUDGMENT ENTRY

This matter is before the Court on appeal from a decision of the Ohio Unemployment Compensation Review Commission ("Commission") denying Judith Maurer ("Maurer") unemployment benefits after her termination from Kingston Residence of Perrysburg, LLC ("Kingston").

Maurer was employed by Kingston, an assisted living facility, as a charge nurse. She was discharged by Kingston for the following reasons: failing to project positive attitude towards new residents, families, and staff; using malicious gossip about supervisors and fostering negative environment regarding admissions; failing to complete overdue in-services; and act or omission with potential harm by leaving medication on dining room table, and not giving medication timely. Following termination of employment, Maurer applied for unemployment compensation which was denied upon a finding that she was discharged with just cause pursuant to R.C. 4141.29(D)(2)(a). On redetermination, that decision was affirmed and appealed to the

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Commission. After conducting hearings, the Hearing Commissioner affirmed the redetermination finding that Maurer was discharged with just cause. The Hearing Commissioner found that Maurer failed to timely complete in-services, failed to follow procedure on medication distributions, and exhibited unprofessional conduct. On further administrative appeal, the Commission affirmed the Hearing Officer's finding.

Maurer filed this appeal in this Common Pleas Court asserting one assignment of error—that the Commission's decision was unreasonable and/or against the manifest weight of the evidence in that Kingston did not have just cause to terminate Maurer. Maurer contends that Kingston's reasons for termination are not supported by the evidentiary record.

“By statute, the trial court must affirm the UCRC's decision regarding just-cause termination unless it finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). * * *. Judgments that are supported by some competent evidence will not be reversed by a reviewing court as being against the manifest weight of the evidence. *McCarthy v. Connectronics Corp.*, 2009-Ohio-3392, 183 Ohio App. 3d 248, 251, 916 N.E.2d 871, 874 (2009), citing, *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 279, 8 O.O.3d 261, 376 N.E.2d 578. “[A] reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if some competent, credible evidence in the record supports it. * * * In other words, a reviewing court may not reverse the commission's decision simply because reasonable minds might reach different conclusions.” * * * *Williams v. Ohio Dep't of Job & Family Servs.*, 2011-Ohio-2897, 129 Ohio St. 3d 332, 335, 951 N.E.2d 1031, 1035-36 (2011) (internal citations omitted).

Based on this standard and the entire record, including the transcript of administrative proceedings, the Court finds that the decision of the Commission is lawful, reasonable, and therefore should be affirmed.

R.C. 4141.29 sets forth the eligibility and qualifications for unemployment benefits:

“(D) * * * [N]o 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 * * *.”

Just cause is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Williams v. Ohio Dep't of Job & Family Servs.*, 2011-Ohio-2897, 129 Ohio St. 3d 332, 335, 951 N.E.2d 1031, 1036 (2011) (internal citations omitted). Fault on an employee's part is an essential component of a just-cause termination. *Williams v. Ohio Dep't of Job & Family Servs.*, 2011-Ohio-2897, ¶24, 129 Ohio St. 3d 332, 336, 951 N.E.2d 1031, 1036 (2011).

The record of this case shows that there is competent, credible evidence that Maurer failed to timely complete in-services, failed to follow procedure on medication distributions, and exhibited unprofessional conduct. While there may be conflicting testimony, the Court must affirm the Commission's decision because there is some evidence in the record to support the Commission's decision. Resolution of factual questions is not within this Court's scope of review in this appeal.

The record reflects that ten months prior to Maurer's termination, she had been issued a written warning notification for substantially the same reasons as those cited in her termination notification. Her supervisor testified that Maurer's work, although previously satisfactory, started to deteriorate. Maurer received verbal counseling because her attention to detail and customer service were worsening.

At the hearing before the Commission, Valerie Hinz, the Human Resources Manager at Kingston, testified that Maurer was among the worst of Kingston's employees in complying with in-service training classes. Hinz testified and submitted evidence showing that Maurer failed to complete four required in-service trainings in November and December, prior to termination.

Maurer argues that Kingston violated its own progressive discipline policy by its failure to give her a second written notice or a suspension with regard to her failure to complete in-services. The policy handbook, however, provides that the order of the disciplinary progression may be altered depending upon a number of factors including, but not limited to, the seriousness of the transgression, the employee's past employment record, and the presence of extenuating circumstances that would make a reasonable person take a more lenient or less lenient approach. In other words, Kingston was not required to strictly comply with the four-step order of progressive discipline.

Karen Burnard, Kingston's executive director, and Amanda Becerra's testimonies support the Commission's finding that Maurer failed to follow procedure on medications distribution. They testified that Maurer routinely left medications on tables in common areas. A "Progressive Discipline Notification" form shows that she was previously given a written warning notification for improperly handling of medication cart, that it was often left unlocked in

the dining room. There was also testimony that Maurer failed to give time-sensitive medication to a resident of Kingston.

With respect to the finding of unprofessionalism, the Court also finds competent evidence that Maurer conducted herself unprofessionally in the presence of employees and visitors. She handled a new admission in a chaotic manner. In front of the new resident, she blamed the managers, the hospital, and created a negative atmosphere. She screamed at her supervisor over the telephone. She made disrespectful comments and spread malicious gossip about her supervisor. Maurer concedes that she may have presented a negative image in violation of company policy, but she did so in order to solve a problem at Kingston. In this regard, the Hearing Officer specifically found that “[w]hile [Maurer] may be entitled to her thoughts, [she] communicated these opinions to her supervisor inappropriately and disrespectfully.” The Court agrees.

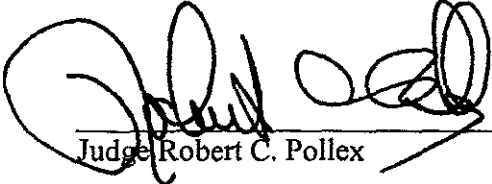
The primary asset of a service provider like Kingston is its reputation as a positive and safe environment. And even if the Court were to disagree, the Court has no authority to substitute its judgment for that of the Commission. Maurer’s conduct demonstrated an unreasonable disregard for Kingston’s best interest. The record clearly contains evidence that Maurer was at fault and Kingston was justified in terminating Maurer’s employment.

ORDER

Based upon a review of the transcript, the arguments of counsel, and the applicable law, the Court finds that there is competent and credible evidence supporting the Hearing Officer's determination that Appellant was discharged from employment for just cause in connection with work and that the Determination made by the Commission is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Hearing Officer's decision disallowing Appellant's application for unemployment compensation benefits is hereby affirmed and Appellant's appeal is denied.

Plaintiff-Appellant is ordered to pay the costs of these proceedings for which sum judgment is rendered in favor of Wood County on behalf of Defendants-Appellees and for which execution is awarded.

IT IS SO ORDERED.



Judge Robert C. Pollex

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