

FILED IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

2013 JUL 23 A 9:28

RAYMOND HENRICKSEN)	CASE NO. 12CV003045
MAUREEN G. KELLY)	
LAKE CO. CLERK OF COURT)	JUDGMENT ENTRY
Appellant,)	
vs)	
)	
PREMIER DRY CLEANING, et al.)	
)	
Appellees.)	

This date, to wit: July 22, 2013, the within cause came on for consideration upon the following:

1. Brief of Appellant, filed April 15, 2013;
2. Brief of Appellee, Director, Ohio Department of Job and Family Services, filed April 19, 2013;

This action involves Appellant Raymond Henricksen's ("Appellant") Appeal, pursuant to R.C. 4141.282, of the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission"), disallowing Appellant's request for review of the Hearing Officer's decision that Appellant was discharged for just cause.

Appellant was employed by Premier Dry Cleaning ("Premier") as a delivery driver from November 22, 2011 through June 7, 2012. Appellant was discharged for violation of company policy after Premier determined that Appellant had failed to immediately report an accident with the company van. Following his termination, Appellant filed an application for unemployment compensation benefits with the Ohio Department of Job and Family Services ("ODJFS"), who issued a finding that he was discharged from his employment for just cause. Appellant timely appealed the initial determination and on August 1, 2012, the Director, ODJFS, issued a redetermination affirming the denial of benefits.

Appellant then appealed the redetermination and ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission. A hearing was held on September 11, 2012 and October 1, 2012 before a Hearing Officer, who affirmed the Director's

redetermination and concluded that Appellant was discharged for just cause. The Review Commission then disallowed Appellant's Request for Review and Appellant timely filed the instant appeal.

In his Brief, Appellant argues that the Review Commission's decision is unlawful and should be reversed. Appellant objects to the Hearing Officer's reasoning that Appellant's credibility was diminished because of contradictions between Appellant's sworn statements and his answers to the fact-finding questions. Appellant argues that there is no contradiction and if there was, the Hearing Officer could have questioned Appellant about it, but did not. Moreover, the answers to the fact-finding questions were not Appellant's words, but instead a summary of a conversation written by a representative of ODJFS.

In its Brief, ODJFS asserts that the decision of the Hearing Officer, concluding that Appellant was discharged for just cause, is not unlawful, unreasonable, or against the manifest weight of the evidence under R.C. 4141.282(H). ODJFS argues that competent, credible evidence in the record demonstrates that Appellant was discharged with just cause. Accordingly, ODJFS requests that the decision of the Review Commission be affirmed.

Upon review, the Court finds Appellant's appeal not well taken. R.C. 4141.282(H) governs the scope of review of unemployment compensation appeals and provides in pertinent part:

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

The Eleventh District Court of Appeals has stated that unemployment compensation appeals provide "the least opportunity for a reviewing court to weigh and assess evidence and credibility of witnesses of any R.C. Chapter 119 administrative proceeding." *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103, 108, 705 N.E.2d 703 (11th Dist. 1997). The fact that reasonable minds might reach different conclusions is not a basis for reversal of the board's decision. *Id.*, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). "Where the board might reasonably decide

either way, the courts have no authority to upset the board's decision." (Citations omitted.) *Ashtabula v. Rivas*, 11th Dist. No. 2011-A-0020, 2012-Ohio-865, ¶ 16.

The statutory interpretation of just cause "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Review Board*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), citing *Payton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975). Just cause determinations in the unemployment compensation context must be consistent with the legislative purpose underlying the Unemployment Compensation Act. "The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980). "When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament." *Rivas* at ¶ 20.

Timothy Blankenship, President of Premier Dry Cleaning, Inc., testified that there were two incidents in which Appellant had an accident with the company van and failed to report it to him immediately. Appellant testified that he did report the first incident and that he was unaware he had hit a mailbox in the second incident. He stated that he thought he had hit a pothole and therefore there was nothing to report to Mr. Blankenship.

The Review Commission found that credible, reliable and probative evidence demonstrated that Appellant failed to report the second accident immediately to the company president. The Review Commission therefore concluded that Appellant was discharged for just cause in connection with work.

After due consideration of the record in this case, the Court finds that the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence. "Concerning the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence, the reviewing court should defer to the Board of Review's findings." *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103, 109, 705 N.E.2d 703 (11th Dist. 1997). At the hearing, Appellant testified that, with regard to the second accident, he was not aware he had hit a mailbox and thought he had hit a pothole causing minor damage to the rear passenger side mirror of the van. The

Hearing Officer found Appellant lacked credibility because his testimony at the hearing was inconsistent with his answers to the fact-finding questions, where he denied hitting the mailbox, but said that he "brushed up against the steel plate which was attached to the steel post." Appellant argues that at the time he answered the fact-finding questions, he was aware that he had, in fact, hit the mailbox. Appellant contends that he was asked to explain what had actually occurred, not what he thought had occurred at the time.

Regardless of the discrepancy, the Court finds that Appellant's credibility was diminished. A woman who was driving behind Appellant witnessed the accident and called Mr. Blankenship to notify him of it. Further, a man who was mowing the lawn across the street heard the accident occur and subsequently cleaned up the broken glass on the ground. Accordingly, the Court finds that the Review Commission's decision is supported by evidence in the record, and the decision ought to be affirmed pursuant to R.C. 4141.282(H).

WHEREFORE, it is the order of this Court that the decision of the Unemployment Compensation Review Commission finding that Appellant Raymond Henricksen was discharged by Appellee Premier Dry Cleaning, Inc. for just cause is hereby affirmed. Appellant shall pay court costs.

It is the further order of this Court that the initial transcript filed in this action shall be stricken from the record as an amended transcript was subsequently filed. The Clerk of Courts is directed to strike from the record the Certified Transcript filed January 30, 2013.

IT IS SO ORDERED.


JOSEPH GIBSON, JUDGE

Copies to:
Michael A. Creveling, Esq.
Laurence R. Snyder, Asst. Atty. Gen.
Premier Dry Cleaning, Inc.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R.58 (B)