

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

SUSAN LUTHER	□	CASE NUMBER 13CVF-3279
	∥	
APPELLANT,	□	JUDGE LYNCH
	∥	
vs.	□	MAGISTRATE MCCARTHY
	∥	
DIRECTOR, OHIO DEPARTMENT	□	
OF JOB AND FAMILY	∥	
SERVICES,	□	
	∥	
APPELLEE	□	

DECISION TO AFFIRM
AND
JUDGMENT ENTRY

LYNCH, J.

This is an administrative appeal from an adjudication order issued by the Unemployment Compensation Review Commission on March 7, 2013, effectively denying appellant's request for unemployment compensation. Although first finding that appellant was entitled to unemployment benefits, that decision was reversed in the course of the administrative process below. Included in that process was a hearing commenced on January 10, 2013, and completed on February 4, 2013, before a hearing officer of the Unemployment Compensation Review Commission. Following the presentation of testimony and documentary evidentiary materials, the hearing officer found appellant was discharged for good cause in connection with her work.

A review of the record reveals appellant was employed most recently and for several years as the manager of the prepared foods department of a local grocery store, Giant Eagle. One of appellant's job responsibilities was to monitor and assure the proper maintenance of the storage temperatures of the store's prepared foods, such as

pre-packaged salads, Panini sandwiches, sandwich meats, and the like. In that connection, appellant was required to check the food temperatures during her relevant shift at 4:00 p.m. and 8:00 p.m.

In September 2012, it was discovered that the information relating to the temperatures of the foods was incomplete inasmuch as some of the information required to be recorded was missing from the data sheets. Upon investigation, it appeared to the supervisors at Giant Eagle that appellant had been derelict in her responsibilities with respect to the recordation of the food temperatures. Upon further inquiry, specific focus was placed on the date of August 2, 2012. There, it appeared appellant had properly checked the temperatures of the various foods and recorded them on the data sheet at 4:00 p.m. and 8:00 p.m. as required. Additional investigation, however, demonstrated that appellant had left work that particular day at 3:16 p.m. (and did not return), as evidenced by a security video tape recording, thus making it impossible for her to check the food temperatures at 4:00 p.m. and 8:00 p.m. Appellant was fired for the violation of falsifying company records in contravention of the express company policy.

In reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court may reverse the commission's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. § 4141.282(H). Otherwise, the court must affirm such decision. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, at 696. Reviewing courts should defer to the commission's findings regarding the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to

conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

Although a reviewing court may not make factual findings or determine the credibility of witnesses, it has the duty of determining whether the evidence in the record supports the administrative agency's decision. *Tzangas*, supra at 696. The court may not reverse the decision of the agency, however, simply because it interprets the evidence differently than did the agency. *Angelkovski*, supra at 161. Unlike criminal proceedings, the fact that reasonable minds might reach different conclusions is not a basis for the reversal of the agency's decision. *Tzangas*, supra.

In the instant action, and when considering the issue of whether the discharge of appellant was for just cause, the consideration must focus on the reason the employment relationship was brought to a conclusion. "The term 'just cause' has not been clearly defined in our case law. We are in agreement with one of our appellate courts that 'there is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.'" *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.

In this case, appellant has denied any wrongdoing, although she admitted, at the time of the investigation, to completing the particular time data form and signing it with her initials. She refused to give a written statement and could not provide an explanation how it came to be that she appeared to be in two places at the same time.

At the hearing before the hearing officer, appellant testified that she did not sign the recorded temperatures data form and what writing appears there was not from her hand. She further denied having told the Giant Eagle investigator that the writing on the form was hers.

Thus, the record presents evidence that clearly implicated wrongdoing by appellant, in contrast to appellant's sworn testimony that she did nothing amiss. Although appellant claims on appeal that there "simply was not enough evidence for the hearing officer to conclude (appellant) did anything wrong to justify her termination", it should be kept in mind that administrative proceedings are not criminal trials where the burden of proof is very high. In this case, the hearing officer was the recipient of both direct and circumstantial evidence. He had the obligation to consider all evidence and draw reasonable inferences therefrom. In addition to drawing inferences from the evidence, the hearing officer has the obligation to determine matters such as the creditability of witnesses.

In arriving at an administrative decision on a contested matter the reliability of the evidence must be examined and weighed, as must the credibility of testifying witnesses. *Hansman v. Dir., Ohio Dep't of Job & Family Servs., 2004 Ohio 505, 2004 Ohio App. LEXIS 481(Butler County)*. It is the duty of the hearing officer to consider the credibility or believability of the witnesses who testify and to determine the weight to be given to the evidence that is presented by the parties. It has been noted that persons such as hearing officers, jury members and other finders of fact are best able to gauge the witnesses and perceive their demeanor, gestures and voice inflections, and use these discernments in weighing the credibility of the proffered testimony. See, e.g. *Seasons*

Coal Co. v. Cleveland (1984), 10 Ohio St. 3d 77, 10 Ohio B. 408, 1984 Ohio LEXIS 1068.

It is the case that, "it is solely within the trier of fact's domain to assess witness credibility and the [hearing officer] is free to believe a witness completely, in part, or not at all." *Todd v. Adm'r, Ohio Dep't of Job & Family Servs.*, 2004 Ohio 2185, 2004 Ohio App. LEXIS 1948, (Ohio Ct. App., Scioto County, Apr. 20, 2004) citing *Royster v. Board of Review* (Apr. 13, 1990), Scioto App. No. 89CA1826, 1990 Ohio App. LEXIS 1640. "Credibility determinations and the weight to be given the evidence are properly for the trier of fact . . ." *WFO Corp. v. Ohio Liquor Control Comm'n*, 1996 Ohio App. LEXIS 4788 (Ohio Ct. App., Franklin County, Oct. 31, 1996). Here, the hearing officer took testimony on two separation occasions and heard from several witnesses. He reviewed the relevant evidentiary documents and considered the matters put before him.

Upon review and consideration of the issues raised on appeal, it is found ample evidence exists in the record to support the findings made below. Accordingly, it is additionally found that the adjudication order denying unemployment benefits to appellant is not unlawful, unreasonable, or against the manifest weight of the evidence. It is therefore **affirmed**.

Accordingly, judgment is hereby granted in favor of appellee and against appellant. Costs to be paid by appellant.

Copies via efile:

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Franklin County Court of Common Pleas

Date: 08-02-2013
Case Title: SUSAN LUTHER -VS- OHIO STATE DEPT JOB FAMILY SVCS
DIRECTOR ET AL
Case Number: 13CV003279
Type: DECISION

It Is So Ordered.


The image shows a handwritten signature in black ink that reads "Julie M. Lynch". The signature is written in a cursive style. To the right of the signature is a circular blue ink stamp. The stamp contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" around the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Julie M. Lynch