

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

<b>MARIELA DE LA CALLE,</b>	<b>□</b>	<b>CASE NUMBER 13CVF-4904</b>
	<b>]]</b>	
<b>APPELLANT,</b>	<b>□</b>	<b>JUDGE CAIN</b>
	<b>]]</b>	
<b>vs.</b>	<b>□</b>	<b>MAGISTRATE MCCARTHY</b>
	<b>]]</b>	
<b>MEIJER GROUP, INC. &amp;</b>	<b>□</b>	
<b>OHIO DEPT. OF FAMILY SERVICES</b>	<b>]]</b>	
	<b>□</b>	
<b>APPELLEES</b>	<b>]]</b>	

**DECISION TO AFFIRM AND JUDGMENT ENTRY**

**CAIN, J.**

This is an administrative appeal from the April 26, 2012 decision of the Unemployment Review Commission upholding the administrative finding that appellant was discharged from her employment for just cause in connection with her work and that her claim for unemployment benefits was properly denied. By way of historical background, appellant was an employee in the meat and cheese department at a local grocery store. She was employed by appellee grocery store from February 1996 to December 2012. Following a number of incidents calling into question her fitness to hold employment with appellee Meijer, her employment was terminated.

Appellant applied for unemployment compensation, and that request was initially denied. Thereafter, following an administrative reconsideration, the claim continued to be denied. Subsequently, a hearing was held in order to enable the parties to present additional evidence on the considered issue. The hearing was

conducted on April 15, 2013. To testify at the hearing were representatives of Meijer, appellant and her fact witness.

In a R.C. 4141.282 appeal, the court must affirm the commission unless its decision was unlawful, unreasonable, or against the manifest weight of the evidence. Otherwise, the court must affirm such decision. *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694. The law is well settled that a reviewing court may reverse the Review Commission's determination only if it is unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas*, 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.

R.C. 4141.29(D)(2)(a) provides:

- (D) Notwithstanding division (A) of this section, no 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 administrator finds that:
    - (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work . . .

In this case, appellant was discharged from her employment with appellee Meijer for the stated reason that she was an unsatisfactorily performing employee whose job performance was believed to be unacceptably substandard. In other words, appellees take the position that appellant's employment was terminated due to just cause in connection with her work.

In this appeal appellant implicitly maintains the hearing officer committed error when she concluded that appellant was terminated for just cause. Just cause must be considered on a case by case basis. *Peyton v. Sun T.V.* (1975), 44 Ohio App. 2d 10; *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15. There is no slide rule definition of the term "just cause". Each case must be considered upon its particular merits. *Id.*

The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. That purpose is to aid those employees who are out of work through no fault of their own. *Id.* 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. *Peyton, supra.* Fault on behalf of the employee is an essential component of a just cause termination. *Tzangas, supra.* Just cause for termination is present where there is fault on the part of the employee. *Sellers v. Bd. of Review* (1981), 1 Ohio App. 3d 161.

The claimant has the burden of proving her entitlement to unemployment compensation benefits under Ohio Rev. Code Ann. §4141.29(D)(2)(a). Additionally, R.C. 4141.46 mandates that the Unemployment Compensation Act be liberally construed. Moreover, it has been held the Act is to be liberally construed in favor of the persons benefiting. *Abate v. Wheeling-Pittsburgh Steel Corp.* (1998), 126 Ohio App.3d 742, 748. The purpose of the Act is to provide financial assistance to those without employment through no fault of their own. *Irvine v. State of Ohio Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15.

However, “unsuitability for a position constitutes fault sufficient to support a just cause termination.” *Tzangas*, supra.

The unsuitability for a particular employment position that can equate with legal fault in the context of an unemployment benefits determination was identified by the Ohio Supreme Court as involving situations:

. . . when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change since the date of the original hiring for that particular position. *Tzangas*, supra.

Here, a situation was presented involving appellant who at the relevant times apparently was unable to perform in accordance with established work standards. The evidence demonstrated that appellee Meijer had received numerous complaints from customers who were treated unkindly by appellant. From overt rudeness to, in one circumstance, an absolute refusal to produce the goods (deli cheese) that the customer had ordered, appellant demonstrably did not have the best interest of the employer in mind while she was working. The evidence additionally showed on another occasion appellant refused to wait on a customer because, although still open for business, the deli was going to close in five minutes. Appellant received many warnings and several opportunities to correct her behavior and attitude toward customers.

Over and above numerous poor customer relations practices, appellant was additionally found to have “misused company time.” On this occasion, appellant drove to the Meijer parking lot, parked her vehicle, entered the store, and punched in on the time clock. She then exited the store only to move her car

to a different parking space on company time. It was estimated to be a quarter of an hour of personal business on company time.

As alluded to above, "A mere violation of a company work rule does not always rise to the level of fault required on the part of the employee to justify the denial of unemployment benefits. \*\*\* In determining whether [the] employee has been discharged for 'just cause' for unemployment compensation purposes, *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.*" (Emphasis added.) *Apex Paper Box Co. v. Ohio Bur. of Emp. Services*, 2000 Ohio App. LEXIS 2038, Cuyahoga County. See also, *Fredon Corp. v. Zelenak* (1997), 124 Ohio App.3d 103, 109; *Piazza v. Ohio Bur. of Emp. Services* (1991), 72 Ohio App.3d 353, 357. Here, it quite clear that appellant ignored Meijer's best interest at the mentioned times and acted demonstrably contra the employer's interests in conducting herself the way she did.

Upon a full consideration of the entire record, it appears that at the times in question, appellant was unsuited for her position in terms of a displayed inability to perform as required, and that such a circumstance constitutes fault sufficient to support a just cause termination. Accordingly, the court finds appellee's adjudication order to be lawful, reasonable, and in conformity with the manifest weight of the evidence. It is therefore affirmed.

Judgment is hereby entered in favor of appellees. Costs to be paid by appellant.

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Franklin County Court of Common Pleas

**Date:** 08-07-2013  
**Case Title:** MARIELA DE LA CALLE -VS- MEIJER GROP INC ET AL  
**Case Number:** 13CV004904  
**Type:** DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 13CV004904

Case Style: MARIELA DE LA CALLE -VS- MEIJER GROP INC ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes