

IN THE COMMON PLEAS COURT, VINTON COUNTY, OHIO

VINTON COUNTY
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Samantha A. Mahon

Appellant

Case No. 11CV0082

vs.

The Kroger Company, Inc., et al.

Appellees

ENTRY

This is an appeal of the decisions of the Unemployment Compensation Review Commission mailed October 12, 2011 and November 30, 2011, finding that Appellant quit without just cause in connection with work. The Hearing Officer made the following findings of fact after a telephone hearing conducted on October 11, 2011:

Claimant was employed by The Kroger Company, Inc. from August 26, 2010, until late March of 2011, as a Floral Clerk. The employer has a policy that an employee can be discharged from employment for violating the employer's purchase policy. The claimant was aware of the employer's policy.

In the middle of March, 2011, the claimant went to her employer and expressed concern that she was only receiving twelve hours a week. The claimant wanted sixteen hours a week. Her employer said that he would try to give her additional hours if he could.

On or about March 18, 2011, the claimant was suspended from work because she was accused of exiting the store with a cart full of groceries that she had not paid for on March 15, 2011. The employer suspended the claimant from work while the situation was investigated. The claimant filed a grievance to the suspension.

The claimant was not informed by the employer that she was going to be discharged or that she was discharged from employment. The claimant quit her position with the Kroger Company, Inc. because of her work hours and because she was concerned about her reputation because of the accusation that she stole groceries. The claimant's grievance to the suspension ended when she quit employment (pages 3 and 4).

On direct examination by the hearing officer during the telephone hearing on October 11, 2011, Anthony Alvarez, District Loss Prevention Investigator for The Kroger Company, testified as follows:

Q: Can you tell me the reason for Ms. Mahon's separation from The Kroger Company?

A: Yes, on um-on March 15, 2011, Ms. Mahon exited the store with a cart full of groceries that were never paid for. And upon and then at which time Manager Tony Newman called me and her next day of working, which would have been March 18, 2011, I went down there and reviewed video of all the registers, ran all the transactions, and nothing in the cart had been rang up. So I sat Ms. Mahon down and spoke with her and basically, she said she had paid for them but there was no way she could have paid for them by reviewing video and transactions on my behalf. So she was suspended pending advisability of discharge at that point in time (transcript pages 6 and 7).

On direct examination by the hearing officer during the telephone hearing on October 11, 2011, Samantha A. Mahon testified as follows:

Q: And what was the reason, or what was the reason you were given for being discharged?

A: Um, actually I resigned. I wasn't discharged from Kroger. I'm not real sure, how that got put into play; I resigned on my own free will. On or about the first of or it was towards the end of March I am not sure of the exact day. It even states in Mr. Newman's letter that he submitted to you guy's that I resigned (transcript pages 10 and 11).

Later in the hearing Ms. Mahon testified as follows:

Q: So then, why did you quit?

A: I quit for two reasons: Two main reasons: the first is because I was accused of theft, and everybody knew at my work place. My reputation was ruined, and I could not imagine going back to work after that. And also, because my hours I was already threatening to quit before this happened. A week before this happened. Because my hours kept getting cut, it was bad enough whenever, I can only have 16 hours and then it was getting cut to 12. I couldn't afford the gas money to go to work everyday (transcript page 16).

Later in the hearing Mr. Alvarez summarized Kroger's position as follows:

Mr. Alvarez: All right, basically, just that um Ms. Mahon violated the Kroger employee purchase policy and was basically going to be terminated if she did not resign. I mean its um she signed off on the policy stating that she understood it and that is the policy for all Kroger employees and that is basically what occurred (transcript page 20).

The basic facts are not in dispute, as set forth in the pertinent portions of the testimony above. On March 18, 2011 the Appellant was suspended from work because she was accused of exiting the store with a cart full of groceries that she had not paid for on March 15, 2011. She filed a grievance to the suspension. She was not aware that she was going to be discharged. Prior to the grievance being resolved she resigned because of her work hours

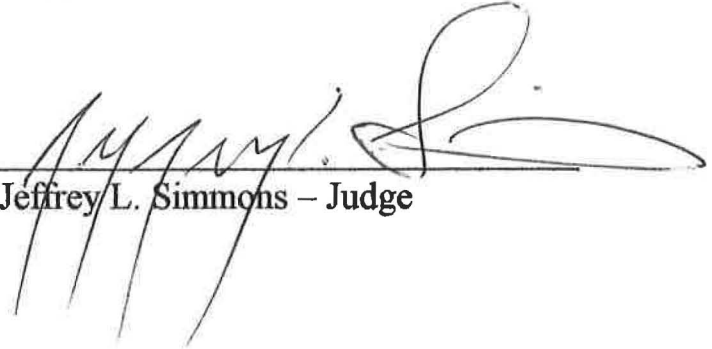
and her concern for her reputation because of the allegation she left the store without paying for groceries. As a result of her resignation, the grievance was never resolved.

Upon review of the record, the Court finds there is substantial evidence to support the Hearing Officer's Findings of Facts. The Court further finds that Appellant resigned her position while she was under suspension and her grievance was pending. She had not been informed that she was going to be discharged. By resigning she caused the investigation and the grievance procedure to be cut short. Her work hours and her concern for her reputation did not constitute just cause for her to resign prior to the grievance being finalized.

It is therefore Ordered, Adjudged and Decreed:

1. The decisions of the Unemployment Compensation Review Commission mailed October 12, 2011 and November 30, 2011 are hereby Affirmed.

This is a Final and Appealable Order.



Jeffrey L. Simmons – Judge

Distribution:

1. Samantha A. Mahon
2. Alan P. Schwepe – Assistant Attorney General
3. Jeff VanWay – Attorney for The Kroger Co.