

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

IRENE BEDIAKO, :
Appellant, : CASE NO. 12CV014498
vs. : JUDGE HOLBROOK
: :
DIRECTOR, OHIO DEPARTMENT OF JOB :
& FAMILY SERVICES, et al., :
Appellees. :

DECISION AND ENTRY

**AFFIRMING THE ORDER OF THE STATE OF OHIO UNEMPLOYMENT
COMPENSATION REVIEW COMMISSION DATED NOVEMBER 7, 2012**

HOLBROOK, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. 4141.282(H) from an October 5, 2012 Decision of the Ohio Unemployment Compensation Review Commission (“Commission”), denying unemployment compensation benefits to Appellant Irene Bediako, a former employee of Appellee Wesley Glen, Inc. (“Employer”), and an November 7, 2012 Decision disallowing Appellant’s Bediako’s Request for Review of the October 5, 2012 Decision.

Statement Of The Case

On June 11, 2012, Appellant Bediako filed a claim for unemployment benefits for a benefit year beginning on June 10, 2012. On December July 20, 2012, Appellee Director of the Ohio Department of Job and Family Services (“Director”) issued an initial determination finding that Appellant (claimant) was discharged without just cause pursuant to R.C. 4141.29(D)(2)(a) due to the fact that her Employer had not provided sufficient specifics with regard to its claim that Appellant Bediako was terminated because she was sleeping while working an evening/night shift

in the Alzheimer's unit of Wesley Glen, Inc. The Director allowed the application with a benefit year beginning June 10, 2012. On August 24, 2012, the Director issued a Redetermination Determination finding that Appellant Bediako was discharged without just cause in connection with work, and that the facts did not support a change in the initial determination.

The Employer appealed from the Redetermination Decision on September 10, 2012, and ODFJS transferred jurisdiction to the Commission pursuant to R.C. 4141.281.

On February 20, 2012, an appeal from the Redetermination was filed by Appellant. On October 4, 2012, Review Commission Hearing Officer Stephanie Mitchell-Hughes conducted an evidentiary hearing via telephone. Appellant appeared and testified on her own behalf. Terry Clayton of Sheakley Uniservice appeared on behalf of the Employer and offered the sworn testimony of Appellant's supervisor, Elizabeth Huffman, as well as the employee who had investigated the claim that Appellant was sleeping on the job, Samantha Banks.

In her October 5, 2012 Decision, the hearing officer made the following factual findings:

"The Claimant worked overnight. On May 25/26, 2012, Melanie Smith, the nurse on duty, discovered claimant asleep in a chair in the den for the Special Care Unit. Claimant was sleeping so soundly that Ms. Smith had to physically awaken her. The Special Care Unit is for individuals with Alzheimer's. At the end of the shift, Ms. Smith prepared and submitted a report notifying the employer that claimant was sleeping while on duty. Claimant was subsequently suspended pending further investigation. When questioned during the investigation, claimant denied sleeping on the job. The employer asked Ms. Smith a second time if she was certain that claimant was actually sleeping. Ms. Smith again told the employer that she was absolutely certain that claimant was asleep when she found her in the den. Claimant was subsequently discharged."

See October 5, 2012 Decision, p. 3-4 of 6. The Hearing Officer also found that the evidence presented at the evidentiary hearing and in the record:

[E]stablishes that claimant was sleeping while on duty. She was not caring for patients and performing her other related job duties. Claimant signed a statement acknowledging receipt of the handbook that contained the policy that prohibits

sleeping on the job. She testified that she understood the policy and the consequences of violating it. Under the evidence presented in the matter, the Hearing Office finds that claimant's actions constitute fault sufficient to justify her discharge. Therefore, Wesley Glen, Inc. discharged claimant for just cause in connection with work.

Id. p. 4 of 6.

In her October 5, 2012 Decision, the Hearing Officer reversed the Director's Redetermination and held that the Employer had discharged Appellant Bediako for just cause in connection with work.

On October 19, 2012, Appellant Bediako filed a Request for Review of the Hearing Officer's Decision. Thereafter, the Commission denied Appellant's request and issued a Decision concluding that upon a review of the entire record, Appellant's Request for Review should be disallowed. *See* November 7, 2012 Decision.

Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this Court must affirm the commission's decision unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. *See* R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). Under this strict standard, the Court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission's province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696. Nor may the Court rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review*, 2 Ohio App.2d 69 (1965). The parties are not entitled to a trial *de novo*. *Id.*

Instead, it is the duty of this Court to determine whether the decision is supported by the evidence in the record. *Tzangas* at 696; *Irvine* at 18. “If some competent, credible evidence supports the commission’s decision, then the court must affirm the decision.” *Moore v. Ohio Unemp. Comp. Rev. Comm.*, 2012-Ohio-1424, ¶ 20. A court cannot reverse the commission’s decision merely because reasonable minds might reach different conclusions based on the evidence in the record. *Id*; *Tzangas* at 697; *Irvine* at 18. Moreover, when evaluating whether the decision is supported by the evidence, “[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the commission].” *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988).

In the facts before the Court, the record supports the finding that Appellant Bediako was sleeping while on duty with her Employer and she was denied benefits on the grounds that she was discharged for just cause in connection with work.

Law and Analysis

R.C. 4141.281(C)(5) provides:

The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. **The commission may allow or disallow the request for review.** The disallowance of a request for review constitutes a final decision by the commission. (Emphasis added).

Although R.C. 4141.281(C)(5) mandates that the Commission shall consider a request for review, it clearly states that it is within the Commission’s discretion to allow or disallow the request for review. Upon a review of the record, it is clear that the Commission complied with R.C. 4141.281(C)(5). In its April 25, 2012 Decision, the Commission states, in pertinent part:

“ . . . The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281(C)(3), Revised Code of Ohio, from the Hearing Officer’s decision.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.

* * * *

The Request for Review is hereby disallowed.”

See November 7, 2012 Decision p. 4 of 5.

Accordingly, the Commission was well within its discretion to disallow further review of the Appellant’s case.

It must also be noted that while Appellant Bediako argued throughout the administrative appeal process, including at the October 4, 2012 evidentiary hearing, that her Employer failed to present any videotape, recordings or pictures of her sleeping at work, Appellant is mistaken in her belief that it was the Employer’s obligation to produce such evidence to further bolster and “prove” the sworn testimony of its witnesses and other evidence. Rather, under Ohio law, Appellant Bediako has the burden of proving that she is entitled to employment compensation benefits. See *Vickers v. Ohio State Bur. of Emp. Serv.* (Apr. 22, 1999), 10th Dist. No. 98AP-656, 1999 Ohio App. LEXIS 1794. The record demonstrates that the Appellant chose to represent herself throughout the appeal process, including at the hearing stage of this administrative proceeding. Ohio law is clear that *pro se* litigants are to be held to the same standard as an attorney. With respect to procedural rules, *pro se* litigants are held to the same standards as a practicing attorney. *Copeland v. Rosario* (Jan. 28, 1998), 9th Dist. No. 18452 at 6, 1998 Ohio App. LEXIS 260 at *7. They are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore*, 111 Ohio App.3d 357, 363 (1996); *Harris v. Hous. Appeals Bd.*, 9th Dist. No. 20499, 2003-Ohio-724, p. 11. The *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules. *Kessler v. Kessler*, 2010-Ohio-2369, ¶ 8 (10th Dist.); *Meyers v. First Natl. Bank*, 3

Ohio App.3d 209, 210 (1st Dist.1981); *Erie Ins. Co. v. Bell*, 2002-Ohio-6139 (4th Dist.). If the court (or administrative agency) treats a *pro se* litigant differently, the court or agency begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. *Justice v. Lutheran Social Services*, Franklin Cty. No. 92AP-1153, unreported, 1993 Ohio App. LEXIS 2029 at *6 (10th Dist.). As a result, this Court overrules Appellant Bediako's arguments.

Instead, the Court focuses on the key issue of whether there is some competent, credible evidence that supports the Commission's Decision that Appellant Bediako was discharged for just cause in connection with work.

R.C. 4141.29(D)(2)(a) provides in pertinent part that no individual may serve a waiting person or be paid benefits if the Director finds "[t]he individual . . . has been discharged for just cause in connection with the individual's work." "Just cause" has been defined as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine*, 19 Ohio St.3d at 17, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12 (1975). Each case must be considered on upon its particular merits. *Id.*

Under Ohio law, an employee is considered to have been discharged for just cause when "the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests." *Kiikka v. Ohio Bur. of Empl. Servs.*, 21 Ohio App.3d 168, 169 (1985). The employee's conduct need not rise to the level of misconduct, but there must be a showing of some fault by the employee. *Sellers v. Bd. of Review*, 1 Ohio App.3d 161 (1981).

In this case, Appellant Bediako's denial that she was sleeping at work is unsupported and was not found to be credible by the Hearing Officer. While Appellant Bediako may believe that her denial that she was sleeping is more convincing or credible than the other evidence in the

record, this Court cannot reweigh the evidence. The Commission resolved the factual disputes regarding whether Appellant Bediako was sleeping on duty, whether she was not caring for patients and whether or not she was performing her other related job duties; this Court cannot change that determination. *See Moore* at ¶ 24; *Kilgore v. Bd. of Rev., Bur. of Unemp. Comp.*, 2 Ohio App.2d 69, 72, 206 N.E.2d 423(5th Dist.1965) (a reviewing court may neither substitute its judgment for that of the commission on questions of fact nor reassess the credibility of witnesses).

Instead, the Court finds that record contains competent, credible evidence supporting the Commission's finding that Appellant Bediako was sleeping while on duty. It also supports the finding that she was not caring for patients and performing her other related job duties. Appellant Bediako signed a statement acknowledging receipt of the employee handbook that contained the policy that prohibits sleeping on the job. She testified that she understood the policy and the consequences of violating it. The nurse on duty, who was not an employee of the Employer, provided a written statement to the Employer that she had to physically shake Ms. Bediako when she found her sleeping on the job. The Commission Hearing Officer found this testimony and evidence to be credible. Thus, the Commission properly held that Appellant Bediako's actions constituted sufficient fault to justify her discharge.

Appellant Bediako's actions separate her from the protections afforded by the Unemployment Compensation Act. *Tzangas*, supra. This Court finds that the Commission's Decision that Appellant Bediako was discharged by her Employer with just cause in connection with work is supported by reliable, credible evidence. Accordingly, this Court concludes that the October 5, 2012 and November 7, 2012 Decisions of the Commission are lawful, reasonable and are not against the manifest weight of the evidence.

DECISION

Accordingly, this Court hereby **AFFIRMS** the October 5, 2012 and November 7, 2012 Decisions of the Unemployment Compensation Review Commission.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

Copies To:

Irene Bediako
3220 Greenbrook Ct.
Columbus, OH 43224-6801
Pro Se Appellant

David Lefton, Esq.
Senior Assistant Attorney General
Health and Human Services Section
30 E. Broad Street, 26th Floor
Columbus, Ohio 43215-3428
Counsel for Appellee
Director, Ohio Department of Job and Family Services
Wesley Glen, Inc.
5155 N. High Street
Columbus, OH 43214-1525
Appellee

Unemployment Compensation Review Commission
4300 East 5th Avenue, Suite 4318
Columbus, Ohio 43219
Appellee

Franklin County Court of Common Pleas

Date: 08-15-2013
Case Title: IRENE A BEDIAKO -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE ET AL
Case Number: 12CV014498
Type: ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Michael J. Holbrook". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS" at the top, "FRANKLIN COUNTY, OHIO" around the middle, and "BY GOD ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Michael J. Holbrook

Court Disposition

Case Number: 12CV014498

Case Style: IRENE A BEDIAKO -VS- OHIO STATE DEPARTMENT
JOB FAMILY SERVICE ET AL

Final Appealable Order: Yes