

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

LAKISHA CISSE,	:	
	:	Case No. 13-CV-01-1039
Appellant,	:	
	:	(JUDGE FRYE)
vs.	:	
	:	
AMERICAN FAMILY MUTUAL	:	
INSURANCE COMPANY, <i>et al.</i> ,	:	
	:	
Appellees.	:	

FINAL JUDGMENT
**AFFIRMING OHIO UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION (CASE H2012026657)**

I. Introduction and Factual Background.

This is an administrative appeal from a decision of the Unemployment Review Commission in its case number H2012026657. The practical effect of that decision was to order Appellant Lakisha Cisse (“Cisse”) to repay benefits she had been receiving after an initial determination that she was eligible to participate in the unemployment compensation fund. The decision also left in place the Hearing Officer’s determination that Appellant Cisse had been terminated from her employment with defendant American Family Insurance (“American Family”) for just cause.

Ms. Cisse has argued throughout that a single “fact” dictates reversal of the decision of the Unemployment Review Commission (“Commission”). Because it does not, and Ms. Cisse was fired for just cause, this court affirms the decision denying her request to participate in the unemployment compensation fund and ordering repayment of funds previously paid to her.

The “fact” upon which appellant so strongly relies is that American Family Insurance did not state a reason for terminating her employment in a standard-form post-termination letter. The letter explained various end of employment issues. (E.g. final paycheck, cobra, pension matters, and other related matters) The letter has little

probative value and does not alter the essential facts in this case as found by the Commission.

II. The Letter.

American Family sent the letter in question to Ms. Cisse after she was earlier confronted at work with concern about her underlying dishonest conduct. The letter merely confirmed that American Family had terminated her employment.

Employment termination occurred in a face-to-face meeting between American Family employees and Ms. Cisse. The testimony before the Hearing Office in this case reveals that at that meeting, confronted by American Family concerning her actions while employed, she did not deny that she sent the Franklin County Department of Job and Family Services (“the Agency”) false information concerning her rate of pay on American Family letterhead. Moreover, she appeared to understand that sending false information and doing so on company letterhead without authorization to communicate on behalf of her employer violated company policy.

The testimony was that appellant participated in falsifying as many as three letters and three pay stubs or pay slips showing that her rate of pay was different that it actually was. (Tr. pp. 11-12.) A form was signed for Cisse by another employee who falsified that she was a manager and confirmed that Cisse’s pay rate was lower than it actually was. (Tr. p. 14.) Ms. Cisse possessed no authority to sign letters on behalf of the company. Her devious use of company letterhead (to induce belief and reliance that American Family was providing the information and that it was accurate) advanced no legitimate business interest of American Family. To the contrary, Ms. Cisse’s misconduct advanced no legitimate business interest at all — her actions appear calculated solely to benefit her in not paying market price for services based on her actual income.

Ms. Cisse’s demeanor and lack of candor during the hearing before the Hearing Officer also raise the inference that Ms. Cisse knew the reason for her termination and the wrongfulness of her misconduct all along. She refused to answer even the most simple question without attempting to divert the discussion to this one “fact.” In lieu of providing a responsive answer to the various questions posed by the Hearing Office and

opposing counsel she dissembled. For but one example among many, when asked whether she had ever informed the Franklin County Agency of her rate of pay at American Family, Ms. Cisse evasively responded, “Wait; I just want to confirm the reason for this hearing is to inquire this specific company policy in which that I am alleging that I violated that I was being alleged that I violated.” [sic] (Transcript p. 21, l. 19 – 22).

The Hearing Officer’s questions were consistently met with nonresponsive answers. Not surprisingly, in the end the Hearing Officer relied on the testimony presented by the employer to establish the facts found in her decision. Those findings are not challenged in this appeal by citation to other probative evidence in the record.

Accordingly, this Court finds the facts set forth in the Hearing Officer’s decision are supported by reliable, probative, and substantial evidence in the record, and was not unlawful or unreasonable. The court has conducted an independent review of the record and finds the relevant facts as found by the Hearing Officer in her decision are also not against the manifest weight of the evidence.

III. Standard of Review and Applicable Law.

In *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, the Court set forth the law that applies to unemployment compensation cases:

R.C. 4141.29 sets forth the eligibility and qualifications for unemployment benefits:

(D) * * * [N]o 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 director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual’s work * * *.

* * *

R.C. 4141.46 provides that R.C. 4141.01 through 4141.46 is to be liberally construed. The Unemployment Compensation Review Commission’s determination of whether a claimant was discharged with just cause is appealable to the court of common pleas: “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.” R.C. 4141.282(H). This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 OBR 12, 482 N.E.2d 587. Thus, a reviewing court may not make factual findings or determine a witness’s credibility and must affirm the commission’s finding if some competent, credible evidence in the record supports it. *Id.* In other words, a reviewing court may not reverse the commission’s decision simply because “reasonable minds might reach different conclusions.” *Id.*

B. Just Cause

Although it is not defined by statute, we have stated that “just cause” is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.’ ” *Irvine*, 19 Ohio St.3d at 17, 19 OBR 12, 482 N.E.2d 587, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 335 N.E.2d 751. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings* (1991), 58 Ohio St.3d 206, 207, 569 N.E.2d 489. “[W]hat constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act’s purpose is ‘to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 199 N.E.2d 3.

However, we have cautioned, “The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. 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. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697-698, 653 N.E.2d 1207.

Fault on an employee’s part is an essential component of a just cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer’s instructions. *Id.* at 698. The Court continued, “the purpose of the Unemployment Compensation Act. The act 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, Inc.* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 399 N.E.2d 76.”

IV. Conclusions.

The Hearing Officer found that Cisse caused false information to be submitted to a governmental agency as part of her application to that agency to receive reduced-cost child care. The false information was sent on American Family letterhead or pay stubs. Ms. Cisse was not authorized to use American Family documents in that manner.

Based on those facts, the Hearing Officer found that Cisse was discharged by American Family for just cause. The Court agrees. The fault for Cisse’s discharge was entirely of her own making. No economic forces beyond her control existed which caused her to be unemployed without fault. Her repeated acts demonstrated a complete disregard for her employer’s interest in maintaining American Family’s reputation for keeping reliable records and supplying honest information to governmental agencies. The use of American Family’s letterhead to supply false information raised the appearance of possible wrongdoing on American Family’s part and caused American Family time and effort to ferret out the truth. American Family has better uses for its resources and need not tolerate such employee misconduct. The fact that American Family tried to make the termination of employment as simple as possible, and sent a form letter after the fact about some of the details does not detract from the legitimacy of their termination decision.

Finally, the court notes that on Cisse’s application for benefits she falsely represented that she was no longer employed by American Family due to a “Mutual Agreement”. From the evidence developed in this record, it is clear that Cisse knew when she said that it was false, and she was terminated by her employer for wrongdoing not due to some “mutual agreement.” Thus, she must repay money she wrongfully received because the fault is entirely her own. Had she been more forthcoming in her initial application to the Commission, she might have avoided this unhappy circumstance.

The Order of the Ohio Unemployment Compensation Review Commission is **AFFIRMED** in all aspects: Ms. Cisse may not participate in the unemployment compensation fund and must repay all monies paid her in relation to this claim.

Costs taxed against Appellant.

IT IS SO ORDERED.

***** THIS IS A FINAL APPEALABLE ORDER. *****

Franklin County Court of Common Pleas

Date: 08-19-2013
Case Title: LAKISHA CISSE -VS- AMERICAN FAMILY MUTUAL
INSURANCE COMPANY ET AL
Case Number: 13CV001039
Type: JUDGMENT ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard A. Frye". The signature is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" in the middle, and "ALL THINGS ARE" at the bottom.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 13CV001039

Case Style: LAKISHA CISSE -VS- AMERICAN FAMILY MUTUAL
INSURANCE COMPANY ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes