

FILED

IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY  
FAIRFIELD COUNTY, OHIO

2013 SEP 10 PM 2: 34

DEBORAH SMALLEY  
CLERK OF COURTS  
FAIRFIELD CO. OHIO

MAURICE JONES,	:	
	:	
Appellant,	:	Case No. 13CV44
	:	
v.	:	Judge Berens
	:	
DIRECTOR, OHIO DEPARTMENT	:	ENTRY AFFIRMING COMMISSION'S
OF JOB & FAMILY SERVICES,	:	DETERMINATION
	:	
Appellees.	:	

This matter is before the Court on Appellant Maurice Jones's appeal from the November 28, 2012 and December 13, 2012 decisions of the Ohio Unemployment Review Commission ("Commission") disallowing Appellant's application for unemployment benefits. Appellant timely filed his appeal with this Court on January 14, 2013. On February 28, 2013, the Commission filed the record of the administrative proceedings in this Court. Appellant and Appellee Director of the Ohio Department of Job and Family Services ("ODJFS") filed merit briefs in this matter on May 9, 2013 and May 24, 2013 respectively. No reply brief was filed. The Court finds all issues have been fully briefed and are ripe for review.

**Standard of Review**

The standard of review in this appeal is set forth in R.C. 4141.282(H):

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.

In its reviewing capacity the Court is limited to findings of unlawfulness, unreasonableness, or decisions against the manifest weight of the evidence. *Id.* Therefore, the Court is not permitted to make findings of fact or evaluate the credibility of witnesses; it may decide only whether the administrative decision is supported by evidence. *Tzangas, Plakas & Mannos v. Admr., Ohio*

*Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). Accordingly, a decision of the Commission will not be overturned if it is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978). Otherwise stated, the fact that reasonable minds could come to different conclusions in reconciling and weighing the evidence is an insufficient basis for reversal. *Tzangas*, at 697.

### **Factual Background**

The Court is not permitted to interpret the factual background of the case *de novo*, but must instead defer to the Commission's findings and evaluation of the credibility of witnesses. *See Tzangas*, at 696. The Court therefore bases its factual background on the Hearing Officer's "Findings of Fact" as set forth in the November 28, 2012 Unemployment Compensation Review Commission Decision.

Appellant worked for the Pickerington Local Board of Education ("School Board") as a Special Education Classroom Assistant at Tussing Elementary School from December 15, 2008 to August 6, 2012. During his work tenure at Tussing Elementary, and prior to the incident that ultimately led to Appellant's resignation, Appellant had received a written reprimand for displaying unprofessional behavior and verbally accosting another teacher when students were present. After this incident, the School Board notified Appellant that continued behavior of that nature would "not be in his professional best interests."

In a letter dated May 16, 2012, Fairfield County Job and Family Services notified the School Board that Appellant had possibly committed physical abuse of a child during Tussing Elementary's Day Care Program. The allegation detailed that on May 15, 2012, Appellant had grabbed a child by her wrist and pulled her into a standing position. Because of the alleged actions of Appellant, the child was taken to Nationwide Children's Hospital and diagnosed with

a sprained wrist. The letter further advised the School Board that it would likely conduct an investigation on behalf of the Fairfield County Child Protective Services and refer the matter to the Columbus Police Department.

After receiving the letter, the School Board placed Appellant on paid administrative leave pending the outcome of the aforementioned investigations. In a second letter dated June 29, 2012, Fairfield County Job and Family Services informed the School Board that the allegation against Appellant had been “substantiated” by Child Protective Services, and that Appellant would be facing charges of child endangerment. The School Board reported the allegation to the Ohio Department of Education, as required by state law, and decided that it was no longer willing to employ Appellant. After reaching this decision, the School Board’s Human Resources Director Debra Porter-Sawyer met with Appellant and offered to allow him to resign in lieu of termination. At said meeting, the Ms. Porter-Sawyer informed Appellant that his discharge was inevitable. Appellant accordingly chose to resign.

### **Procedural Background**

On August 5, 2012, Appellant filed an application for unemployment benefits with the Ohio Department of Job and Family Services (“ODJFS”). On August 29, 2012, Appellant’s request for benefits were disallowed, as the agency found “that the claimant quit without just cause.” Appellant asked for a redetermination of ODFS’s decision to disallow Appellant’s application. The disallowance was reaffirmed on September 19, 2012. Appellant again appealed the decision, at which time ODFS transferred jurisdiction to the Review Commission.

On November 6, 2012 and November 27, 2012, Hearing Officer Stephanie Mitchell-Hughes conducted telephone hearings on behalf of the Review Commission. Appellant and Pickerington Schools Human Resources Director Debra Porter-Sawyer testified during the

hearings. On November 28, 2012, the Review Commission notified the parties of its decision to affirm ODFS's disallowance. Like the initial determination, Hearing Officer Mitchell-Hughes found that Appellant quit his job without just cause. Appellant again appealed the disallowance. Without holding an oral hearing, the Review Commission declined the request for review on December 13, 2012, thereby affirming the November 28, 2012 decision of Hearing Officer Mitchell-Hughes.

On January 14, 2013, Appellant filed a notice of appeal of the Review Commission's final disallowance with this Court.

### **Law and Analysis**

A claimant is not eligible for unemployment benefits if "the individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.]" R.C. 4141.29(D)(2)(a). Pertinent to the case *sub judice*, "an employee who resigns in anticipation of being discharged must be judged by the same criteria as if the discharge had actually taken place." *Parks v. Health One*, 10th Dist. No. 88AP-982, 1989 WL 88887 (Aug. 8, 1989); *Watters v. City of Upper Arlington*, 10th Dist. No. 81AP-778, 1982 WL 4039 (Mar. 16, 1982) ("[Q]uitting work to avoid being discharged for just cause constitutes quitting work without just cause since an employee cannot avoid the inevitable consequences of his own wrongdoing by resigning."). Thus, even though Appellant resigned, the question before the Court is whether the School Board would have had just cause to discharge Appellant had he actually been terminated. *Stallings v. VanGuard Joint Vocational Sch. & Adm'r*, 6th Dist. Not. WD-94-114, 1995 WL 428462 (July 21, 1995).

Generally, just cause is anything that an ordinarily intelligent person would consider "a justifiable reason for doing . . . a particular act." *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio

St.3d 15, 17, 482 N.E.2d 587 (1985). However, there is no strict, dispositive definition of just cause; rather, “each case must be considered upon its particular merits.” *Peyton v. Sun T.V. & Appliances*, 44 Ohio App. 2d 10, 12, 335 N.E.2d 751 (1975).

From Appellant’s brief, it is unclear on which basis Appellant makes his appeal. Generally, Appellant argues that the Commission’s disallowance decision was made in error because (1) the criminal charges stemming from the incident were subsequently dismissed and (2) Child Protective Services have changed their “substantiated” determination to one of “unsubstantiated.” Appellant therefore argues that since he has “been exonerated” of the allegations he should be entitled to “all the benefits” for which he had originally applied. *See* Brief of Appellant at 7.

Appellee ODJFS contends that the Commission’s decision was not unreasonable, unlawful, or against the manifest weight of the evidence. Specifically, ODJFS argues that the fact that criminal charges were ultimately dismissed is irrelevant, as Appellant was discharged prior to the official filings of any charges. ODJFS contends that the “substantiated” claim paired with the prior incident involving Appellant’s “other bullying and threatening actions” led to the Board’s decision to encourage Appellant to resign. ODJFS further argues that the issue before the Court boils down to a dispute over the credibility of testimony presented to the Hearing Officer and corresponding findings of fact—matters upon which the Court is not permitted to base a reversal.

As correctly noted by Appellee ODJFS, in this appeal the Court’s review is limited to whether the Commission’s decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). Because of this highly deferential standard, the Court cannot reverse the Review Commission’s determination merely because it interprets conflicting

evidence differently. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947) (“The courts reverse such decisions only when found to be contrary to law or against the manifest weight of the evidence. This court does not consider the question of the weight of the evidence.”). Inversely stated, the Court must affirm the Commission’s decision if it was supported by “some competent, credible evidence.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978) (“Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.”)

At the November 6, 2012 hearing date, Debra Porter-Sawyer testified on behalf of the School Board. She testified that the School Board had received letters from Fairfield County Job and Family Services and Child Protective Services regarding the “substantiated” allegations of physical abuse by Appellant. The School Board was also informed that the Columbus Police Department and the county prosecutor’s office were investigating the situation for the possible filing of criminal charges in the future. Faced with these allegations and criminal investigations, and in light of Appellant’s previous confrontation with another teacher and written reprimand, the School Board decided to encourage Appellant to resign, or in the alternative, terminate his employment. Appellant also testified, arguing that both the January allegation as well as the child abuse allegation were not true. Appellant argued that it was unfair for the School Board to force him to resign based on the child abuse allegation before it was proven.

Bound by the above-referenced standards, the Court finds that it must affirm the Commission’s determination, as the Commission’s decision was not against the manifest weight of the evidence. The determination of the Hearing Officer, who was in the best position to judge the credibility of the witnesses and weigh conflicting testimony, was supported by competent

credible evidence. The Court notes that Appellant's brief centers on the fact that his criminal charges have since been dismissed and the Child Protective Services complaint has been "unsubstantiated." However, the Court finds Appellant's arguments unpersuasive for three reasons. First, the burden of proof in a criminal case differs drastically from the burden of proof required for a just cause termination. Second, Appellant was not fired because he was convicted of a crime; the School Board planned to terminate him because of his alleged conduct in physically harming a student, i.e. "conduct unbecoming to the teaching profession." Third, Appellant failed to submit any evidence supporting his arguments such as documentation from Child Protective Services showing a change in status or from the county prosecutor evincing the dismissal of charges. Therefore Appellant's arguments are not well-taken.

### **Conclusion**

For the foregoing reasons, the Court finds the Commission's determination was supported by some competent and credible evidence, i.e. the testimony of Debra Porter-Sawyer, the January 24, 2012 letter of reprimand, an excerpt from the Pickerington Local School District Staff Conduct Handbook, the May 16, 2012 and June 29, 2012 letters from Fairfield County Job and Family Services, and the School District Educator Misconduct Reporting Form. As the Court does not find the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence, the Court is required to affirm the Commission's decision.

The decision of the Commission is hereby affirmed. This Entry constitutes a final, appealable order and the Court finds there is no just reason for delay.

IT IS SO ORDERED.

  
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Judge Richard E. Berens

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