

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
SEP 17 2013

LADONNA S. HOWARD,

Appellant,

vs.

AVI FOOD SYSTEMS, INC., et al.,

Appellees.

Case No. A 1209930

Judge Norbert A. Nadel



D103604392

ENTRY ADOPTING THE
MAGISTRATE'S DECISION

The Magistrate's Decision affirming the Decision of the Ohio Unemployment Compensation Review Commission was filed on July 05, 2013. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

COURT OF COMMON PLEAS
ENTERED
[Signature]
JUDGE NORBERT A. NADEL
MAGISTRATE
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO RULE 63 WHICH SHALL BE TOLERATED AS COSTS HEREIN.
SEP 10 2013
HAS SEEN

FOR COURT USE ONLY
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Line #: 10

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: Case No. A 1209930

: Judge Norbert A. Nadel

: Magistrate Michael L. Bachman

: MAGISTRATE'S DECISION



D102687158

RENDERED THIS 3rd DAY OF JULY, 2013

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying the Appellant's claim for unemployment benefits on the basis that she quit without just cause. This appeal, filed pursuant to R.C. 4141.282, was taken under submission upon the conclusion of oral arguments made before the Common Pleas Magistrate.

BACKGROUND

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued an initial Determination allowing the Appellant's application for benefits. AVI Foods Systems, Inc. ("AVI") timely appealed the Determination and ODJFS issued a Redetermination affirming the Determination. The Appellee filed an appeal from the Redetermination and ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The Hearing Officer reversed the Redetermination, and denied the Appellant's claim for unemployment benefits on the basis that the Appellant quit employment without just cause. The Appellant requested further review of her claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision. The case was referred to the Magistrate.

STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the Court shall affirm the Review Commission's decision. *Id.* The reviewing court must follow this same standard in assessing just cause determinations. *Irvine v. Unemp. Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). The determination of factual questions and the evaluation of witnesses' credibility is the responsibility of the Hearing Officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this Court. *Tzangas, Plakas, and Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995).

DISCUSSION

In the Review Commission's Decision mailed October 15, 2012, the Hearing Officer's Findings of Fact are as follows:

The claimant was employed by Avi Food Systems, Inc from October 7, 2010 until May 22, 2012 as dining food service worker. Her immediate supervisor was Tim Helton.

The claimant requested a transfer because of transportation issues. Mr. Helton became the claimant's supervisor. The transfer of the position resulted in a pay cut and an increase in hours. The claimant resigned her employment during the course of a conversation with Ms. Wethington. The day prior to her conversation the claimant walked off the job. Ms. Wethington called the claimant to see why she had walked off the job.

All employees are provided number for human resources. Claimant contacted human resources and made general complaints that Mr. Helton was nasty. An investigation did not reveal any specific instances of inappropriate behavior.

The Appellant did not offer live testimony at the hearing but she contends that she quit for just cause because her decision to quit was justified by her direct supervisor's "nasty" behavior towards her. (Tr. p. 8).¹ However, the Appellant was unable to provide specific examples of her supervisor's inappropriate conduct, and Christina Wethington, resident director for AVI, testified that the results of AVI's investigation did not find validity in the Appellant's contentions. (Tr. pp. 7-8, 11).

ODJFS contends that the Appellant quit without cause under R.C. 4141.29(D)(2)(a). Just cause is defined as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985),

¹ References are made to the transcript of the hearing that occurred on October 12, 2012.

quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). ODJFS contends that the Appellant's behavior was not that of an ordinary intelligent person, especially since the Appellant agreed to the transfer after the AVI informed her of the changes associated with the new position. (Tr. p. 11). ODJFS also contends that the Appellant's dissatisfaction with her duties or wages did not constitute just cause for quitting her employment. *Fabian v. Ohio Bur. of Emp. Serv.*, 7th Dist. No: 87-J-5, 1987 Ohio App. LEXIS 9710, *6 (Nov. 24, 1987). ODJFS further argues that once the Appellant accepted employment on the terms offered, she could not quit simply because she later feels the employment terms were unjust. *Thomas v. Bd. of Rev.*, 11th Dist. No. 88-L-13-210, 1990 Ohio App. LEXIS 3195, *7 (Aug. 3, 1990).

The Hearing Officer concluded that the Appellant quit without cause as AVI's investigation did not find validity in the Appellant's contentions, and the Appellant was unable to provide specific examples of her supervisor's inappropriate conduct. This Court finds that general dissatisfaction with employment is not enough to entitle an employee to unemployment compensation benefits. The Court finds, based on the record, that the Appellant did not have just cause to quit employment. Because the Hearing Officer's judgment is supported by some competent credible evidence in the record, the Court is restrained from making its own factual determination. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978). The Review Commission's decision finding that the Appellant quit employment without just

cause was not unlawful, unreasonable, or against the manifest weight of the evidence.

DECISION

The decision of the Review Commission denying the Appellant unemployment compensation benefits is hereby AFFIRMED.

NOTICE


MAGISTRATE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 7/8

Deputy Clerk: 