

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

STAN L. STINE,

Case No: 13CVF-06-6840

Appellant,

JUDGE SHEWARD

-vs-

CENTRAL OHIO GAMING
VENTURES, LLC., ET AL.,

Appellees.

DECISION AND ENTRY
AFFIRMING THE DECISION DISALLOWING REQUEST
FOR REVIEW AS MAILED ON MAY 22, 2013

SHEWARD, JUDGE

The above-styled case is before the Court on an appeal of the May 22, 2013 Decision Disallowing Request for Review issued by the Unemployment Compensation Review Commission (hereinafter referred to as Commission) that denied Stan L. Stine's (hereinafter referred to as Appellant) administrative appeal. In this appeal, the Appellant named the Ohio Department of Job and Family Services (hereinafter referred to as the Appellee) and his former employer Central Ohio Gaming Ventures, LLC. (hereinafter referred to as Employer). Appellant filed his Brief on August 29, 2013. The Appellee filed its Brief on September 10, 2013. The Appellant filed his Reply on September 16, 2013. The Employer has not otherwise moved or pled.

After a review of the pleadings, briefings and the certified record, this Court holds that the Commission's Decision Disallowing Request for Review of May 22, 2013 is

AFFIRMED.

I. STATEMENT OF THE CASE

This appeal arises as a result of the Commission's Decision that denied

unemployment compensation benefits to the Appellant.

II. STATEMENT OF THE FACTS

Appellant was employed at a casino in Columbus Ohio as a card dealer. He was hired on September 17, 2012 (Hr. Tr. p. 5) After his orientation period, the Appellant was given a plastic tumbler with a lid and straw. The item had the name and logo of the casino. By January 8, 2013 the tumbler was no longer in good working order. The Appellant removed two of the Employer's tumblers from his Employer's training room. (Hr. Tr. pp. 8 – 13)

When Appellant's actions were discovered his Employer summarily suspended him. A form was filled out on January 8, 2013. The form was marked as Exhibit A and it can be found at page 193 of the scanned certified record filed with this Court. The document is titled "Team Member Coaching Notice". It has a section sub-titled "Corrective Action Taken". The choices are: Documented Verbal Coaching, 1st Written Warning, Final Written Warning, Suspension Pending Investigation, and Separation. The document shows that an "X" was placed in the box next to Suspension Pending Investigation.

On the same form, there is another section sub-titled "What Occurred". The following is contained on that part of the form:

Stan is being suspended pending [sic] for taking New Hire Celebration cups from the HR training room without authorization. Stan should call Shannon Wells at ***-***-**** or his Table Games Leadership if he has anything to add to the investigation prior to the final outcome. (* in place of actual number to protect privacy.)

The Appellant was given the form. Appellant signed the form and he was sent home. Two days later, Appellant was terminated.

During the administrative hearing, the Hearing Officer heard testimony from

Shannon Wells. Ms. Wells testified that security footage that she reviewed showed the Appellant removing the tumblers from the training room. Ms. Wells also testified that the Appellant admitted to having taken the cups. (Hr. Tr. p. 13, lines 12 -14)

Ms. Wells also testified that the Appellant was terminated for “theft, unauthorized removal, um, of company property”. (Hr. Tr. p. 13, lines 17 -18) When asked about progressive discipline, Ms. Wells stated “We would have [used progressive discipline] but our policy states that any unauthorized [use of] property, um, would be considered theft and grounds for immediate separation.” (Hr. Tr. p. 13, lines 20 -25) Ms. Wells established that the Appellant was given access to the electronic rules and was or should have been aware of the content. (Hr. Tr. p. 14, lines 24 - 26) Two days after the Appellant was sent home for the investigation, the Appellant was terminated. (Hr. Tr. p. 19, lines 2 – 6)

During the hearing Appellant’s counsel tried to trivialize the theft by minimizing the value of the two tumblers stolen by his client. Building on that argument, Appellant’s counsel felt that a lesser discipline should have been used given the small value of the items stolen. However the Appellant never contested taking the tumblers without the permission of the Employer. (Hr. Tr. pages 34 and 35)

The Hearing Officer mailed his decision on April 30, 2013. The Hearing Officer held that the Employer did have a policy and that the following language from that policy was applicable to the actions of the Appellant:

13. Theft (unauthorized removal) or misappropriation (unauthorized storage, transfer, or utilizations) of the property of guests, Team Members or Hollywood Casino Columbus. All found items must be turned into Security immediately upon discovery. Any unauthorized property found in a Team Member’s possession will be considered theft and grounds for immediate separation.

As noted, the policy has no language concerning the value of the property stolen. The

Hearing Officer provided the following reasoning for his Decision:

The evidence shows that the claimant intended to steal property belonging to the employer. He placed the employer's property in his personal garment bag.

Theft is a serious offense. In this case, claimant's conduct is more egregious because he was specifically told that he could not have any additional tumblers.

Claimant clearly acted in disregard of the employer's interests. An employer cannot be expected to tolerate this type of conduct by an employee. Claimant was discharged for just cause in connection with work.

The Hearing Officer, therefore, found that the Appellant's termination was for cause.

Appellant timely appealed that matter to the Commission. On May 22, 2013 the appeal was denied when the Commission issued its Decision Disallowing Request for Review.

Appellant timely appealed that Decision to this Court. The Court has conducted a review of the pleadings, briefs and the certified record. This appeal is ready for a determination.

III. STANDARD OF REVIEW

R.C. §4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. Please note the following:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission. R.C. §4141.282(H)

The Ohio Supreme Court stated that "[t]he board's role as fact finder is intact; a reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses.

Brown-Brockmeyer Co. v. Roach (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission's decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.*(1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer's and the Commission's determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162.

This case also deals with the concept of a 'just cause' termination. Please note the following statutory language:

D) Notwithstanding division (A) of this section, no 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,

Just cause has been explained as follows:

"Just cause" is not defined by statute. The Supreme Court of Ohio has indicated that there is no "slide rule definition of just cause," but that the phrase could be considered "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." See *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, citing *Peyton v. Sun T.V. and Appliances* (1975), 44 Ohio App.2d 10, 12.

From within this framework, this Court will render its decision.

IV. ANALYSIS:

There is not a real controversy concerning the facts of this case. Appellant removed

two tumblers from his Employer's possession without the permission to do so. That much is a given. The controversy, if any, is the Appellant's legal argument stemming from his belief that the language at the bottom of the Team Member Coaching Notice form somehow changed his Employer's right to terminate the Appellant for theft.

Appellant has asserted that the following language that was typed onto the form created a new mandatory progressive disciplinary system wherein, the Employer had a duty not to terminate the Appellant for the theft of the two tumblers. The language reads as follows:

You are given this notice in order to correct any further disciplinary action. If you fail to correct your actions as addressed above, or engage in any further violation of company policies, you will be subject to further disciplinary action, up to including separation. By signing this form, you are acknowledging that you and your leadership had this discussion and were given the opportunity to respond.

It is the Appellant's contention that the above noted language mandated that, prior to the Employer terminating the Appellant, the Appellant had to violate another rule. The argument has no merit.

The form is clearly a 'one size fits all' document. There is no rational argument to be made that the form created a new mandatory progressive discipline process as the Appellant has now advanced. The cases cited by the Appellant have no precedential value.

Appellant asserted that *Groves v. Director, Ohio Dept. of Job & Family Servs.*, 2009-Ohio-2085 (11th Dist.) controlled. However *Groves* has little if any value. In *Groves* the courts ultimately decided that the acknowledge actions of Groves did trigger the progressive discipline. Groves' actions fell within one of the defined areas of conduct that did not allow the employer to just terminate Groves.

In this case the Appellant's action was a theft, pure and simple. Theft was well

defined within the Employer's policy. Theft, under the Employer's policy allowed for termination without progressive discipline.

Appellant also asserted an argument that because a tumbler had been given to him in the past, he had a right to take a new one. Appellant's counsel argued that because the tumbler's value was so low, it was a *de minimis* act of the Appellant to steal it. An interesting argument. The argument might have some value had the determinative issue been the severity of the act; i.e., misdemeanor or felony, but the act remains a theft offense. The Appellant – an employee of a casino – stole from the casino. Clearly, that cannot be tolerated and the Employer's policy stated just that.

The Hearing Officer's Decision and the Commission's Decision are supported by the evidence. The Commission's Decision of May 22, 2013 is lawful, reasonable, and not against the manifest weight of the evidence, therefore it must be **AFFIRMED**.

V. DECISION:

The Commission's Decision Disallowing Request for Review of May 22, 2013 is

AFFIRMED.

THIS IS A FINAL APPEALABLE ORDER

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Franklin County Court of Common Pleas

Date: 09-26-2013
Case Title: STAN L STINE -VS- CENTRAL OHIO GAMING VENTURES LLC
ET AL
Case Number: 13CV006840
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, "Richard S. Sheward", is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom.

Judge Richard S. Sheward

Court Disposition

Case Number: 13CV006840

Case Style: STAN L STINE -VS- CENTRAL OHIO GAMING
VENTURES LLC ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes