

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

FILED

ROBERT SABETTA,

2013 OCT 9 9) PM 12 51 CASE NO. 2012-CV-832

Plaintiff-Appellant,

TAMI PENTEK

CLERK OF COURTS JUDGE ALFRED W. MACKEY

v.

COMMON PLEAS COURT

ASHTABULA CO. JUDGMENT ENTRY

FAMOUS DISTRIBUTION, INC., et al.,

Defendant-Appellees.

This matter came on for consideration of the merits of the above-captioned administrative appeal. The Court considered the Notice of Appeal filed in this Court on September 21, 2012, the record on appeal, and the briefs of the parties.

Upon review of an administrative appeal, the Court must determine whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. R.C. 2506.04. In making such a determination, the Court is to consider the whole record, including any new or additional evidence submitted under R.C. 2506.03.

Robert Sabetta, Appellant herein, appeals the August 2012 decision of the State of Ohio Unemployment Compensation Review Commission ("UCRC") which disallowed his request for review. The decision affirms the denial of unemployment compensation benefits to Appellant on the grounds that he was discharged for just cause.

On November 18, 2011, Appellant was terminated from employment as a salesman by Appellee, Famous Distribution, Inc. ("FDI"). On November 30, 2011, Appellant filed a claim for unemployment benefits with Appellee, the Ohio Department of Job and Family

Services ("ODJFS"). On February 14, 2012, ODJFS allowed Appellant's claim without a hearing.

On March 20, 2012, FDI appealed the allowance of Appellant's claim. On April 10, 2012, ODJFS affirmed the allowance, again without a hearing. On April 13, 2012, FDI appealed the April 10, 2012 ruling, claiming that it did not receive a copy of the original Determination of Benefits within twenty-one (21) days, as contemplated under R.C. 4141.281. On May 3, 2012, ODJFS transferred jurisdiction of Appellant's claim on appeal to the UCRC.

On May 25, 2012, the UCRC held a hearing to determine the whether FDI's March 20 2012 appeal was timely under R.C. 4141.281. The UCRC determined that the appeal was timely because FDI did not receive a copy of the original February 14, 2012 Determination of Benefits during the 21-day appeal period set forth in the statute.

On June 11, 2012 and June 27, 2012, the UCRC conducted hearings to determine whether Appellant was discharged for just cause. On July 26, 2012, the hearing officer issued a decision denying Appellant's claim on the basis that he was discharged for just cause. Appellant then filed a Request for Review of the decision, which the UCRC disallowed on August 23, 2012. Appellant filed the instant appeal, pursuant to R.C. 4141.282, on September 21, 2012.

Appellant argues that FDI's March 20 2012 appeal was untimely, and therefore should not have been entertained. However, as noted above, the UCRC held a hearing to determine the whether the appeal was timely. The UCRC determined that the appeal was timely because FDI did not receive a copy of the original February 14, 2012 Determination

of Benefits during the 21-day appeal period set forth in the statute. Moreover, the UCRC determined that FDI was eligible for an extension of the 21-day appeal period under R.C. 4141.281(D)(9). The Court finds nothing arbitrary, capricious, or unreasonable with regard to these determinations by the UCRC.

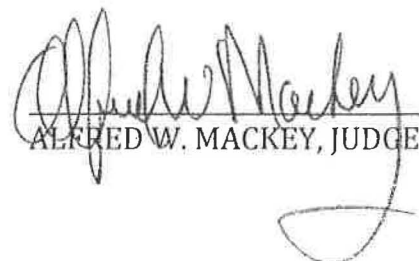
Appellant further maintains that the UCRC's determination that he was terminated for just cause is against the manifest weight of the evidence. The Court finds that FDI presented competent, credible evidence of Appellant's substandard job performance, and agrees with the UCRC's determination that he was fired for just cause. Appellant's job performance in sales ranked last amongst his peers during 2011, the year in which he was terminated. His employer received complaints from its customers regarding Appellant's poor communication, lack of customer service, and frequent mistakes in processing orders. Customers requested FDI to remove Appellant from working on their accounts. Even after FDI implemented performance improvement plans with Appellant, his poor performance continued.

For the foregoing reasons, the Final Decision rendered by the UCRC in this matter is hereby **AFFIRMED**. Costs are hereby assessed to Appellant, Robert Sabetta.

**IT IS SO ORDERED.**

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this judgment and its date of entry upon the journal upon the following: **William P. Bobulsky, Esq.; Mark R. Koberna, Esq.; Jennifer L. Speck, Esq.; and Patrick MacQueeney, Assistant Attorney General.**

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ALFRED W. MACKEY, JUDGE