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TOLEDO, OHIO  
IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

MARGIE MURPHY MILLER  
CLERK OF COURTS  
ALLEN COUNTY, OHIO

**LYUDMYLA A. MORGAN,**

\*

CASE NO.: CV 2013 0349

Appellant

\*

-v-

\*

**DECISION &  
JUDGMENT ENTRY**

**DIRECTOR, ODJS, et al.,**

\*

Appellee[s]

\*

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This is an appeal by Lyudmyla Morgan (claimant/employee) from a decision of the Unemployment Compensation Review Commission dated and mailed on April 17, 2013 in which the Commission disallowed Morgan's request for review of an earlier decision of the Commission, which was mailed on March 12, 2013 and in which the Commission decided that Morgan was not entitled to unemployment benefits because she "was discharged for just cause in connection with work" by her employer Wendell F. Zumkehr, for negligence. Wendell Zumkehr employed claimant to care for his wife. The hearing officer reasoned that:

**"[...] claimant found two Exelon patches on Mrs. Zumkehr and failed to call 911 or the doctor's office or notify the oncoming caregiver. Claimant's actions constitute[d] gross negligence that could have resulted in harm or even death to Mrs. Zumkehr."**

The Commission refused to review this decision and Morgan appealed. The Court has considered the written briefs of the claimant, filed on August 16, 2013, the Director of the Ohio Department of Job and Family Services, filed on October 7, 2013 and Wendell

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Zumkehr, filed on October 8, 2013. Morgan contended in her brief that her termination was unjustifiable, that she fulfilled her necessary responsibilities by removing the two patches and replacing them with one patch.

This matter is governed by R.C. 4141.282(H). That section provides that the court of common pleas shall reverse the commission's decision only if it finds "that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." All reviewing courts, including the common pleas, have the same review power and cannot make factual findings or determine witness credibility. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694 (1995). None of the reviewing courts can reverse a commission decision as being against the manifest weight of the evidence when there is some evidence in the record to support the commission's decision. *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15 at 18 (1985). When the commission could have reasonably decided a just-cause issue either way, the courts have no authority to overrule that decision. *Id.*

Historically, "just cause" means that which, to an ordinarily intelligent person, is a justifiable reason for doing an act. *Id.* at 17. Yet there is no bright-line definition or test for "just cause." *Id.* In considering the definition of "just cause," this Court is instructed to look to the two main purposes of the Unemployment Compensation Act. *Id.* The Act is intended to, first, assist unfortunate individuals who become involuntarily unemployed by adverse business and industrial conditions. *Id.* Second, it is to assist an individual who has worked, is able to work, and is willing to work, but is temporarily without employment through no fault of his own. *Id.* Thus, it has been said that the Act does not protect employees from themselves. *Tzangas*, 73 Ohio St.3d at 697. A decision on purely

factual questions is primarily the province of the commission. *Irvine*, at 17. The determination of just cause depends on the particular facts and circumstances of each case. *Id.*

It must be mentioned that the claimant has the burden of proving her entitlement to unemployment compensation benefits and to prove that she was discharged by her employer without just cause. R.C. 4141.29(D)(2)(a); *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006 -Ohio- 2313; *Irvine*, supra. Morgan must be able to demonstrate a showing of entitlement to unemployment compensation by showing that she was free from fault in bringing about his termination. *Case Western Reserve University v. Ohio Bureau of Employment Services*, 8th Dist. App. No. 79189, 2002 -Ohio- 40. On close questions, when the board might reasonably decide either way, this Court has no authority to upset the agency's decision. *Irvine*, supra. The determination of whether just cause exists necessarily depends upon the unique factual consideration of the particular case. This Court is limited to determining whether some competent, credible evidence contained in the record supports the referee's decision. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 161 (1983). This Court "cannot usurp the function of the trier of fact by substituting its judgment for the hearing officer. The decision of purely factual questions is primarily within the province of the referee and the board of review." See *Clark v. Buckeye Rubber Products, Inc.* (Nov. 14, 1990), Allen App. No. 1-89-76, unreported.

At the telephonic hearing it was demonstrated that Morgan did not respond properly to the overdose situation when the two patches were found on Mrs. Zumkehr. Morgan did not call anybody when she found the two patches (Hearing Transcript p. 18).

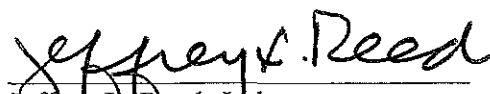
Morgan put another single patch on because she claimed she "didn't have any instructions and I had instructions verbal instructions actually that ah we have to remove patches ah previous patch and put another one on" (Transcript p. 20).

After carefully reviewing the evidence before the hearing officer, the Court finds the hearing officer's determination that Morgan was discharged with just cause is supported by evidence in the record. The determination is not unlawful, unreasonable, or against the manifest weight of the evidence. Only a decision that is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice" is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. of Emp. Servs.* (Aug. 26, 1988), 6th Dist. No. S-88-8. If some competent, credible evidence going to all the essential elements of the case supports the commission's decision, the decision must stand, (*Phillips*, at \*1. Accord *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus. The court cannot reverse it as being against the manifest weight of the evidence. *Angelkovski*, supra; *Shaffer v. Ohio Unemp. Rev. Comm.*, 11th Dist. No. 2003-A-0126, 2004-Ohio-6956, at ¶ 19. Accord *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

Therefore, it is ORDERED, ADJUDGED and DECREED that the claimant's appeal is not well taken and the decision of the Review Commission is affirmed. The claimant/appellant shall pay the costs. Judgment for costs.

It is so ORDERED.

October 9, 2013

  
Jeffrey D. Reed, Judge

The Clerk of this Court shall forward a true and correct copy of this judgment entry by certified mail to each attorney of record and shall not be recognized by court. The cost of mailing shall be assessed to the party who caused the appeal.