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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ANGELA D. KNOX
Plaintiff

Case No: CV-12-787228

Judge: JOHN P O'DONNELL



JUST LIKE FAMILIEE II, INC. ETAL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

JOURNAL ENTRY AFFIRMING THE DECISION OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION.
O.S.J.
COURT COST ASSESSED TO THE DEFENDANT(S).

Judge Signature

Date

[Handwritten Signature]
10/16/2013

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CUYAHOGA COUNTY
CLERK OF COURTS
By *[Signature]* Deputy

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



ANGELA D. KNOX)

Plaintiff-Appellee,)

vs.)

JUST LIKE FAMILIEE II, INC., *et al.*)

Defendant-Appellant.)

CASE NO. CV 12 787228

JUDGE JOHN P. O'DONNELL

JOURNAL ENTRY

John P. O'Donnell, J:

This case is an appeal by defendant Just Like Familee II, Inc., from the Ohio unemployment compensation review commission's decision that Angela Knox was terminated from her employment without just cause.

STATEMENT OF FACTS

Angela Knox was employed as a home health aide by Just Like Familee II, Inc., a home healthcare service provider employing nurses and aides to assist patients in their homes. Knox's employment began on July 16, 2008, and ended when she was terminated on February 24, 2012.

In 2007 Knox was convicted of a fifth degree felony theft offense. Knox claims that she disclosed this conviction to JLF when she was hired,¹ a claim that JLF disputes.² JLF did perform a background check on Knox before she was hired and uncovered nothing to disqualify Knox from working at JLF.³

¹ Transcript, page 11.

² Tr., p. 7.

³ Tr., p. 10.

In July 2009, after she had been working for JLF for about a year, Knox got a letter from the United States Department of Health and Human Services informing her that she was “excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs”⁴ for a period of five years due to her felony conviction. She did not tell JLF about the letter.

Throughout the course of Knox’s employment, JLF periodically conducted additional background checks of Knox’s eligibility to work in her hired role.⁵ On February 23, 2012, JLF submitted all of its employees’ names to the Office of the Inspector General’s exclusions website, and found out that Knox was ineligible to work for a provider of Medicare or Medicaid services because of the theft conviction. Knox was terminated on February 24, 2012.

Knox then applied for unemployment compensation benefits. On March 9, 2012, the Ohio Department of Job and Family Services issued an initial determination that Knox was fired with just cause, and was thus ineligible to receive unemployment benefits. Knox appealed that decision, and it was affirmed by the director of the ODJFS. Knox appealed again, and the ODJFS transferred jurisdiction to the unemployment compensation review commission.

Commission hearing officer Leanne Colton then held a hearing. Knox and Juliet Bonner, a human resources representative for JLF, testified.

The hearing officer reversed the ODJFS and found that Knox was discharged without just cause because Knox had disclosed the theft conviction before being hired and “should not be disqualified from unemployment compensation benefits due to the employer’s error in properly assessing” the effect of her conviction on her eligibility to work as a home health aide.

⁴ JLF’s merit brief, exhibit 7.

⁵ Tr., p. 5-6.

The commission then denied JLF's request for a review of the hearing officer's decision and this appeal was filed.

STANDARD OF REVIEW

This appeal is brought pursuant to section 4141.282 of the Ohio Revised Code, which provides, in pertinent part:

If the court finds that the decision of the [review] 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.

The hearing officer determines purely factual questions. See, e.g., *Irvine v. Unemploy. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17 (1985). A reviewing court is not permitted to make factual findings or determine the credibility of witnesses. *Id.* at 18. The court's duty is limited to determining whether the decision of the board is supported by the evidence in the record. *Kilgore v. Bd. of Review*, 2 Ohio App.2d 69, 71 (4th Dist. 1965). A hearing officer's decision cannot be reversed as being against the manifest weight of the evidence if it is supported by some competent, credible evidence going to each element of the controversy. See, e.g., *DiGiannantoni v. Wedgewater Animal Hospital, Inc.*, 109 Ohio App.3d 300, 305 (10th Dist. 1966). Where the hearing officer might reasonably decide either way, the courts have no authority to upset the hearing officer's decision. *Irvine*, supra, at 18.

LAW AND ANALYSIS

JLF argues on appeal that the commission's decision is unreasonable and against the manifest weight of the evidence.

A claimant is not eligible for unemployment benefits if she has been terminated for "just cause" in connection with her work. R.C. § 4141.29(D)(2)(a). The Ohio Supreme Court has defined just cause as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine*, supra, at 17. Because there is "not a slide-rule

definition of just cause,” the existence of just cause must be determined based upon the facts of each case. *Id.* To this end, fault on the part of the employee is an essential factor of a just cause determination. *Theis v. Administrator, Ohio Bureau of Employment Services*, 8th Dist. No. 72391, 1997 WL 565961, 3 (September 11, 1997).

In this case, JLF’s first assertion is that Knox consciously hid her criminal history from JLF. But, after weighing the evidence, the hearing officer made a factual finding that Knox disclosed the felony conviction to JLF when she was interviewed before being hired. While JLF may dispute the correctness of this finding, and the credibility of the testimony upon which it was based, the determination of factual questions is a power reserved for the hearing officer, and my authority to review the hearing officer’s finding of fact is strictly limited. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). I am prohibited from making factual determinations or deciding the credibility of witnesses. *Irvine*, *supra*. I cannot usurp the function of the trier of fact by substituting my judgment for that of the hearing officer. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St. 2d 41 (1982). Because of that, and because the hearing officer’s finding was a rational one based upon the evidence she considered, Knox’s pre-hire disclosure of the conviction is assumed for the purpose of this appeal.

JLF also alleges that Knox’s decision not to disclose the 2009 letter constitutes “just cause” for termination. But the letter is not part of the record evidence, and without it the hearing officer could find that Knox could have reasonably believed that JLF knew about it too and she didn’t have to point it out to them.

JLF next asserts that integrity is an implicit job requirement of Knox’s position, and that by failing to disclose her prior conviction and the contents of the DHHS letter, Knox acted dishonestly and thereby violated the “strict honesty” term of her employment. JLF argues that

such a violation constitutes just cause for the purposes of termination. JLF bases this contention on the holding of *Washington v. BancOhio Nat. Bank*, 21 Ohio App.3d 234, 236 (10th Dist. 1985). In that case, the employee was convicted of a dishonest act during the term of her employment. The court concluded that “[s]trict honesty is an implicit job requirement of appellant’s position which does not have to be in writing or verbalized When appellant was convicted of an act clearly involving dishonesty, and as a consequence was no longer bondable, she violated a term of her employment as contemplated by the unemployment compensation laws and was therefore discharged for just cause in connection with her work.” But Knox was not convicted of a new criminal act that might have reasonably altered her actual qualifications for the job or her employer’s perception of her suitability for the job. Her dishonesty – theft – was honestly disclosed when JLF hired her. JLF cannot change its mind and later use the disclosed conviction as just cause for termination.

Furthermore, Knox’s decision not to share the DHHS letter with JLF does not constitute a dishonest act during the term of employment. There is no evidence – or law – that the letter gave rise to an affirmative duty on Knox to disclose it to JLF. It was reasonable, in light of both the previous disclosure of her conviction and the completion of a background check, for Knox to assume that JLF decided she was qualified in spite of the conviction. Additionally, JLF had access to information systems to complete annual surveys of employee eligibility.⁶ Those same systems should have shown Knox as ineligible. If they didn’t it was not because of anything Knox did.

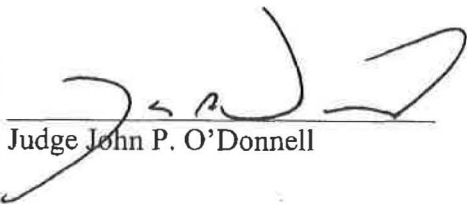
⁶ Tr., p. 5-6.

Finally, JLF claims that Knox's failure to disclose her theft conviction and the contents of the DHHS letter were contrary to the best interests of her employer, and therefore provided just cause for termination. In support, JLF cites *Kiikka v. Admr., Ohio Bur. of Emp. Services*, 21 Ohio App.3d 168, 169 (8th Dist.1985), where the court said "[t]he critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests." But the record evidence is that she did disclose the conviction, so I cannot find that her failure to disclose it was in disregard of JLF's best interests. She also submitted to a background check in service of the best interests of JLF. And although she did not disclose the DHHS letter to JLF, that omission does not constitute "unreasonable disregard" of JLF's best interests because she could fairly believe that the letter was nothing JLF didn't already know.

CONCLUSION

Because the decision of the review commission that Knox was terminated without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence, it is affirmed.

IT IS SO ORDERED:


Judge John P. O'Donnell

Date: 10-16-2013

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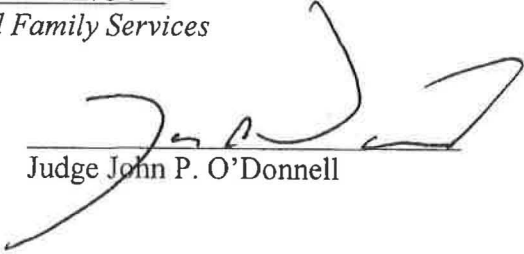
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A copy of this journal entry was sent by email this 16th day of October, 2013, to the following:

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Judge John P. O'Donnell