

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO



Michael L. Rose,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 Director, Ohio Department of)
 Job & Family Services,)
)
 Defendant/Appellee.)

Case No. 2013CV01427
Judge Kristin G. Farmer
JUDGMENT ENTRY

This matter came before the Court upon appeal by the plaintiff/appellant, Michael L. Rose (hereinafter "Rose") of a decision rendered by the defendant/appellee, Director, Ohio Department of Job & Family Services (hereinafter "ODJFS") on April 22, 2013, determining that he had been terminated from his employment with The M. Conley Co. (hereinafter "M. Conley") for just cause in connection with work. Rose, M. Conley, and ODJFS have submitted briefs on the issues presented by the instant appeal.

Unemployment compensation appeals are error proceedings, not proceedings *de novo*. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 13-14. Under R.C. 4141.28(O)(1), a reviewing court may reverse a decision of the Review Commission only if it determines that the administrative determination is "unlawful, unreasonable or against the manifest weight of the evidence." *MacMillian v. Unemployment Compensation Board of Review* (1983), 10 Ohio App.3d 290, at syllabus. A reviewing court is not permitted to weigh the evidence and substitute its judgment for that of the hearing officer, as the determination of purely factual questions and issues of credibility are primarily within the province of the hearing officer. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41. The duty of the reviewing court with regard to the weight of the evidence, therefore, is to

determine whether the decision is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services* (1995), 73 Ohio St.3d 694, 1995-Ohio-206.

R.C. 4141.29 (D)(2)(a) provides, in part, as follows:

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 with the individual's work.

"Just cause" for the purposes of the above statute has been defined as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10.

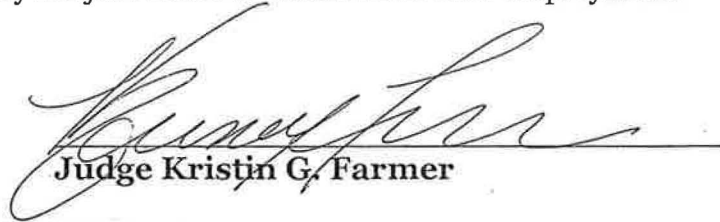
Upon review of the transcript submitted, the Court finds that there is sufficient evidence contained therein to support the findings of the Hearing Officer. Specifically, the Court finds that Rose failed to comply with the Last Chance Agreement offered by M. Conley and that he sent a series of text messages to the Board Chairman, Craig Conley, which, upon review of the transcript, the Court finds adequate evidence to support the Hearing Officer's conclusion that same were "inappropriate and insubordinate."

Although Rose asserted that he did comply with the Last Chance Agreement by obtaining driving privileges and attending AA for 90 days in a row, he did not provide any documentation to support same. It was within the province of the Hearing Officer, as the trier of fact, to accept or reject such contentions. The Hearing Officer rejected such arguments and this Court will not substitute its own judgment on such factual matters.

Accordingly, upon review of the transcript, the Court finds that the Hearing Officer's decision was lawfully made, was reasonable, and was supported by sufficient and credible evidence.

For the reasons set forth herein, as well as those set forth in the briefs submitted by ODJFS and M. Conley, the Court, hereby, **AFFIRMS** the Review Commission's decision that Rose was terminated by M. Conley for just cause in connection with employment.

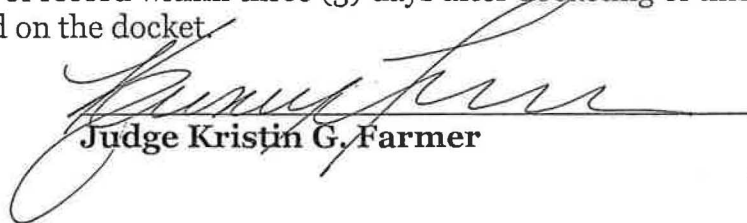
IT IS SO ORDERED.



Judge Kristin G. Farmer

**NOTICE TO THE CLERK:
FINAL APPEALABLE ORDER
Case No. 2013CV01777**

IT IS HEREBY ORDERED that notice and a copy of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



Judge Kristin G. Farmer