

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

CHAD A. GUNKA,]	CASE NO. 12CV-14275
]	
Appellant,]	JUDGE MCINTOSH
]	
vs.]	
]	
DIRECTOR, OHIO DEPARTMENT OF]	
JOB AND FAMILY SERVICES, et al.,]	
]	
Appellees.]	

**DECISION AND JUDGMENT ENTRY AFFIRMING DECISION OF OHIO
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**

NOTICE OF FINAL APPEALABLE ORDER

MCINTOSH, J.

This case is a Revised Code 4141.282 administrative appeal, by Chad A. Gunka (Appellant), from a “Decision Disallowing Request for Review” that the Ohio Unemployment Compensation Review Commission (Commission) issued on October 16, 2012. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Columbus Easy Move, Inc. is a moving company in Columbus, Ohio. Appellant was employed by the company, as a crew leader and driver, from August 2005 to May 2012. On May 18, 2012, Appellant was fired for having solicited a “side” job from a customer (to be performed by Appellant but not as an employee of Columbus Easy Move). Prior to that incident, Appellant had received disciplinary warnings on five other occasions in 2012, for various violations of his employer’s policies.

On May 21, 2012, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment-compensation benefits, for a benefit year beginning May 20, 2012.

In a Determination issued on June 11, 2012, ODJFS allowed Appellant's application, having determined that he was discharged from his employment without just cause in connection with work. Columbus Easy Move appealed the Determination.

In a Director's Redetermination issued on July 23, 2012, the Director of ODJFS affirmed the initial Determination and allowed Appellant's application for unemployment-compensation benefits. Columbus Easy Move appealed the Director's Redetermination, and the Director transferred jurisdiction of the appeal to the Commission.

On September 7, 2012, a Hearing Officer conducted a hearing on the appeal. Appellant testified at the hearing, as did Brian Meeks, the owner of Columbus Easy Move. Mr. Meeks testified that, on May 18, 2012, he discovered that Appellant had arranged to perform a moving job for Lauren Lindsey, a frequent customer of Columbus Easy Move, but that Appellant had arranged to perform the work "on the side" and not on behalf of the company. *Transcript (T.) 6-8*. When Mr. Meeks confronted Appellant about the situation, Appellant became angry and defensive, and stated to Mr. Meeks that other employees also performed side jobs. *T. 8-9*.

Mr. Meeks testified that, on five prior occasions in 2012, Appellant had received disciplinary warnings for violations of company policy. *T. 9-10*. On January 26, 2012, Appellant received a verbal warning for displaying a poor attitude about not receiving a tip. *T. 11*. On February 8, 2012, Appellant received a verbal warning for being tardy for work. *T. 11-12*. On March 13, 2012, Appellant received verbal warning for being tardy for work. *T. 12*. On March 30, 2012, Appellant received a written warning for having failed to clean up a truck that he had used to perform a move. *T. 10, 12*. On May 2, 2012, Appellant received a verbal warning for displaying a poor attitude about a work assignment. *T. 12*. Mr. Meeks testified that

the incident on May 18, 2012, when he discovered that Appellant was soliciting work on the side, was “the straw that broke the camel’s back.” *T. 9.*

In a Decision issued on September 10, 2012, the Hearing Officer found that Appellant was discharged by Columbus Easy Move for just cause in connection with work. The Hearing Officer reversed the Director’s Redetermination and disallowed Appellant’s application for unemployment-compensation benefits. The Hearing Officer provided the following reasoning for the decision:

The claimant correctly pointed out, during the hearing held in this case, that the employer’s written policy does not state that an employee cannot solicit work on the side from customers of Columbus Easy Move. However, an employer is not required to make its employees aware of every type of activity that is prohibited. There are certain things that an employee should know that he or she cannot do. Soliciting work from a customer of a private business is a type of activity that an employee should know that he or she cannot do even if there is not a written policy that specifically addresses that activity. In this case claimant gave his personal cell phone number to a customer of Columbus Easy Move while claimant was at the customer’s residence performing work for Columbus Easy Move. The claimant gave the number to the customer after the customer said that the customer was happy with claimant’s work. At that point, claimant should have told the customer to contact Columbus Easy Move if she had a need for moving services in the future. In addition to this incident, claimant received a warning that addressed his attitude and a lack of focus. Claimant signed this warning without making any comments about the issues addressed in the warning.

Appellant requested that the Commission review the Hearing Officer’s Decision.

On October 17, 2012, the Commission issued a “Decision Disallowing Request for Review,” in which the Commission concluded that Appellant’s request for further review should be disallowed.

On November 15, 2012, Appellant appealed the Commission’s Decision to this Court. Appellant has not filed a brief in accordance with the Clerk’s Original Briefing Schedule.

Revised Code 4141.282(H), which governs this appeal, provides:

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

Ohio's Unemployment Compensation Act is intended to provide financial assistance to an individual who has worked and is able and willing to work, but is temporarily without employment through no fault of his own. *Salzl v. Gibson Greeting Cards, Inc. v. Bur. of Emp. Services*, 61 Ohio St. 2d 35, 39 (1980). A claimant who has been discharged from employment for just cause in connection with work, however, is disqualified from receiving unemployment-compensation benefits. R.C. 4141.29(D)(2)(a). Just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Irvine v. Unempl. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 17 (1985). An employee is discharged for just cause when, by his actions, he demonstrates an unreasonable disregard for his employer's best interests. *Kiikka v. Bur. of Emp. Services*, 21 Ohio App. 3d 168, paragraph two of the syllabus (8th Dist. 1985). The conduct need not rise to the level of misconduct, but there must be a showing of some fault by the employee to deny unemployment-compensation benefits. *Sellers v. Bd. of Review*, 1 Ohio App. 3d 161, paragraph two of the syllabus (10th Dist. 1981). The critical issue is not whether the employee has technically violated some company rule, but whether the employee, by his actions or inactions, has demonstrated an unreasonable disregard for his employer's interests. *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061, ¶ 39.

The role of the Court is to determine whether the evidence presented to the Commission supports its finding that Appellant was discharged for just cause, and whether that finding is

unlawful or unreasonable. *Tzangas, Plakas & Mannos v. Bur. of Emp. Services*, 73 Ohio St. 3d 694, paragraph one of the syllabus (1995). The Commission, acting through its Hearing Officer, is the trier of fact. R.C. 4141.281(C)(2). The Court may not usurp the function of the trier of fact by substituting its judgment for that of the trier of fact. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St. 2d 41, 45 (1982). Where the Commission might reasonably decide either way, the Court has no authority to upset the Commission's decision. *Charles Livingston & Sons, Inc. v. Constance*, 115 Ohio App. 437, 438 (7th Dist. 1961). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, syllabus (1978).

There is evidence in the record, provided by the testimony of Mr. Meeks, that Columbus Easy Move discharged Appellant from his employment because, by his actions, he demonstrated an unreasonable disregard for his employer's best interests. On five occasions during the first half of 2012, Appellant received disciplinary warnings for his failure to clean up a truck, for his repeated tardiness, and for his poor attitude. On May 18, 2012, Appellant was discovered to be soliciting side jobs that should have been directed to his employer. On the issue of employee fault, therefore, the evidence supports the conclusion that Appellant was not acting in his employer's best interests.

Having examined the certified record, the Court concludes that the Commission's October 16, 2012 "Decision Disallowing Request for Review" is not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies to:

CHAD A. GUNKA, Appellant *Pro Se*, 4104 Leap Rd., Hilliard, OH 43026-1148

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Franklin County Court of Common Pleas

Date: 11-26-2013
Case Title: CHAD A GUNKA -VS- OHIO STATE DEPT JOB & FAMILY SERVICES ET AL
Case Number: 12CV014275
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a blue circular court seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the center, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 12CV014275

Case Style: CHAD A GUNKA -VS- OHIO STATE DEPT JOB &
FAMILY SERVICES ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes