

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

THE UNIVERSITY OF DAYTON,	:	CASE NO. 2013 CV 04058
	:	
Appellant,	:	JUDGE MICHAEL L. TUCKER
v.	:	
	:	
DIRECTOR, JOB AND FAMILY SERVICES,	:	DECISION, ORDER AND ENTRY
et al.,	:	AFFIRMING THE DECISION OF THE
	:	UNEMPLOYMENT COMPENSATION
Appellees.	:	REVIEW COMMISSION

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This matter comes before the court on the notice of administrative appeal filed by Appellant, the University of Dayton (the “University”), on July 9, 2013. On August 13th, the court entered a briefing schedule requiring that the University’s brief be submitted on or before September 13, 2013; that Appellee, the Ohio Department of Job and Family Services (“Appellee,” unless otherwise indicated), submit its brief in response on or before October 15, 2013; and that the University submit its brief in reply, if any, on or before October 29, 2013.

On September 11, 2013 the University filed its brief, and Appellee filed its response on October 3, 2013. The University filed a reply on October 17, 2013.

Teresa A. Goldsmith (“Ms. Goldsmith,” unless otherwise indicated), the other appellee in this case, has not submitted a brief for her part. As the applicable deadlines have passed, the court may now enter its decision.

**FACTS**

The University employed Ms. Goldsmith as an administrative assistant in its Department of

Campus Recreation from July 14, 1986 until January 22, 2013, at which time it terminated Ms. Goldsmith's employment for alleged acts of theft and insubordination. (R. of Proceedings Before Ohio Unemployment Comp. Review Comm'n 331-332, Aug. 5, 2013.)<sup>1</sup> Specifically, the University alleges that Ms. Goldsmith violated applicable policies and procedures when she issued one or more memberships to the University's recreation center at no charge. *Id.*; *see* Appellant's Br. 3-5.

Ms. Goldsmith applied soon thereafter for unemployment compensation benefits. (*See* Appellee's Br. 3.) On March 5, 2013, the Director of the Ohio Department of Job and Family Services issued a redetermination denying Ms. Goldsmith's application based on the finding that Ms. Goldsmith had been discharged for just cause. *Id.*

Ms. Goldsmith then appealed to the Ohio Unemployment Compensation Review Commission (the "Commission"). *Id.* The Commission reversed the redetermination, whereupon the University requested that the full Commission review the reversal. *Id.* On June 19, 2013, the Commission disallowed the University's request, and the instant appeal timely ensued. *Id.*

### **STANDARD OF REVIEW**

According to R.C. 4141.282(A)-(B), "within thirty days after written notice of [a] final decision of the [Commission] [has been] sent to all interested parties, [any interested party] may appeal the decision \* \* \* to the court of common pleas" for "the county where the appellant, if an employee, is a resident or was last employed," or, if the appellant is an employer, where the appellant "is a resident or has a principal place of business." The common pleas court, under R.C. 4141.282(H), "shall hear the appeal on the certified record provided by the [C]ommission." If the court "finds that the decision of the [C]ommission was unlawful, unreasonable, or against the

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<sup>1</sup> Citations to the record rely on the pagination generated when using Adobe software to view the PDF copy of the transcript of the record that the Ohio Unemployment Compensation Review Commission filed in this court on August 5, 2013. The transcript itself is not otherwise paginated, except to the extent that documents included in the transcript were themselves paginated.

manifest weight of the evidence,” then “it shall reverse, vacate, or modify the decision, or remand the matter.” *Id.* Otherwise, the court “shall affirm” the Commission’s decision. *Id.*

In hearing such an appeal, a common pleas court may not “make factual findings or \* \* \* determine the credibility of witnesses,” but it has “the duty to determine whether the [Commission’s] decision [was] supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Adm’r, Ohio Bureau of Employment Servs.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207 (citation omitted). The court should not, however, “substitute its judgment for that of the [C]ommission.” *Atkins v. Dir., Ohio Dep’t of Job & Family Servs.*, 10th Dist. Franklin No. 08AP-182, 2008-Ohio-4109, ¶ 13 (citation omitted).

### **LAW AND ANALYSIS**

Under R.C. 4141.29(D)(2)(a), “no individual may \* \* \* be paid benefits \* \* \* [f]or the duration of the individual’s unemployment if the director [of the Ohio Department of Job and Family Services] finds” that the “individual \* \* \* [was] discharged for just cause in connection with the individual’s work.” The term “just cause” means, “in the statutory sense,” that “which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Peyton v. Sun T.V. & Appliances*, 44 Ohio App. 2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975); *see also The Shepherd Color Co. v. Dir., Ohio Dep’t of Job & Family Servs.*, 12th Dist. Butler No. CA2012-11-244, 2013-Ohio-2393, ¶ 16. Here, the Commission found that the University had no just cause for terminating Ms. Goldsmith’s employment, and it reversed the redetermination issued by the director of the Ohio Department of Job and Family Services on March 5, 2013. This court finds that the Commission did not rule unlawfully, unreasonably or against the manifest weight of the evidence when it reversed the redetermination; therefore, this court affirms the Commission’s ruling.

On appeal, the University argues that it did have just cause to dismiss Ms. Goldsmith because she “defrauded [it] and engaged in conduct that was tantamount to theft.” (Appellant’s Br.

3.) The University claims that a number of purportedly “clear and unrefuted facts” substantiate its accusations against Ms. Goldsmith, to wit:

1. Its current “policies pertaining to campus recreation memberships were communicated to Ms. Goldsmith in the [s]ummer of 2012”;
2. The “policies that were communicated to Ms. Goldsmith” included new “procedures and protocol \* \* \* to be followed when authorizing campus recreation memberships,” as well as new definitions restricting “the individuals who were eligible for campus recreation memberships”;
3. In January, 2013, “the Director of Campus Recreation—Melissa Longino” instructed “Ms. Goldsmith that no employees were authorized to provide free memberships to any [other] employee[s] or alumni”;
4. Ms. Goldsmith “violated the [University’s] policies by providing free memberships and/or services, including one free membership on January 9, 2013.”

*See id.* at 4-5. The new policies, including the revised eligibility definitions, were implemented on August 16, 2012. (*See R.* at 291.)

As the University tallies it, the value of the memberships and services at issue amounts to “\$5,075.00,” with the alleged acts of theft taking place between September, 2012 and January 9, 2013. *See id.* at 15, 160, 291. In its brief, the University argues accordingly that it had the right to terminate Ms. Goldsmith pursuant to R.C. 4141.29(D)(2)(a) and (e), the latter of which states that “no individual may \* \* \* be paid benefits \* \* \* [f]or the duration of the individual’s unemployment if the director [of the Ohio Department of Job and Family Services] finds” that the “individual became unemployed because of dishonesty in connection with the individual’s most recent or any base period work.” (Appellant’s Br. 7-8.) The term “dishonesty” is defined by the statute as “the commission of substantive theft, fraud, or deceitful acts.” R.C. 4141.29(D)(2)(e).

Yet, though the University characterizes its summary of the facts as “clear and unrefuted,” the University’s version of events varies in key respects from the Commission’s findings of fact. As the Commission found, Ms. Goldsmith’s former supervisor, Mr. Mayo, “authorized [her] to give

certain individuals recreational memberships at no cost, including Beth and Daniel Keyes,” the latter of whom was the recipient of the membership issued on January 9, 2013. (*See* R. at 331; *see also* R. at 176-177, 186-189, 211, 296-297, 331.) Mr. Mayo “retired in 2009,” and Ms. Goldsmith’s new supervisor, Ms. Longino, was appointed in September, 2012. *Id.* at 331; *see also id.* at 290.

The Commission found further that when the University “changed [the Campus Recreation Department’s] computer software” on August 16, 2012, the University’s “IT department transferred \* \* \* existing memberships” from the old system to the new system. *Id.* at 332; *see also id.* at 152, 167, 188, 192, 372. This transfer “was not \* \* \* smooth,” and it caused “many computer software issues”; for example, the new system “oftentimes would freeze.” *Id.* at 332. As a result of the problems with the new software, the Commission noted that Ms. Goldsmith “would not log out of her computer for fear that the system would freeze,” and that Ms. Longino “was aware that [Ms. Goldsmith] routinely did not log out.” *Id.*; *see also id.* at 183, 190-191. The Commission also found, significantly, that “[Ms. Longino] and other staff used [Ms. Goldsmith’s] computer and opened no cost memberships under [Ms. Goldsmith’s] employee log in [sic] identification.” *Id.* at 332.

On or about January 4, 2013, Ms. Longino discovered, based on data from the Campus Recreation Department’s new computer system, that Ms. Goldsmith had apparently “gifted” 11 free memberships. *Id.* Most “of the no cost memberships given by [Ms. Goldsmith],” however, “were [issued] prior to 2012,” or in other words, before the Campus Recreation Department’s new policies took effect. *Id.*; *see also id.* at 188. Ms. Goldsmith issued a free membership to her step-son “in July,” 2012, but that “was prior to the [effective date of] the revised definition of ‘family’” for purposes of membership eligibility. *Id.* at 332. Furthermore, the Commission found that many of the memberships in question “were dormant” inasmuch as “they had not been activated or used prior to [Ms. Goldsmith’s] separation” from the University. *Id.*; *see also id.* at 175-177. The

Commission thus determined it had received “no evidence that [Ms. Goldsmith] engaged in theft or self dealing [sic].” *Id.* at 333.

Upon its review of the Commission’s decision, the court finds that the Commission had credible evidence sufficient to support its ruling. The record suggests, for example, that the memberships allegedly issued by Ms. Goldsmith in September, 2012 were merely transfers of then-existing memberships from the Campus Recreation Department’s old computer system to its new computer system. (R. at 176-177, 192.) Moreover, Ms. Goldsmith’s former supervisor, Mr. Mayo, had authorized at least some of the free memberships, and although certain relevant policies were later revised, the revisions seem to have included no instructions about the continuation of memberships already issued at the time of the revision. *See id.* at 188-189, 211, 214-216.

These facts are sufficient to support the Commission’s conclusion that Ms. Goldsmith did not engage in any theft or self-dealing. On an appeal such as the instant matter, the court may not make its own factual findings or retroactively determine the credibility of witnesses, nor should it “substitute its judgment for that of the” Commission. *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 696; *Atkins*, 2008-Ohio-4109, ¶ 13. The court consequently affirms the Commission’s decision.

### **CONCLUSION**

Having reviewed the Commission’s decision, the Court finds that it was not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Court affirms the decision of the Commission and denies the University’s appeal.

**SO ORDERED**

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**s/MICHAEL L. TUCKER, JUDGE**

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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Decision  
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FAMILY SERVICES

So Ordered

*Michael L. Tucker*