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LUCAS COUNTY
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COMMON PLEAS COURT
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Larry Dillard, * Case No. CI 13-4011
Plaintiff/Appellant, * Honorable Dean Mandros
vs. * **OPINION AND JUDGMENT ENTRY**
Toledo Area Sanitary District, et al., *
Defendants/Appellees. *

Plaintiff/Appellant Larry Dillard was hired by Defendant/Appellee Toledo Area Sanitary District on February 2, 1990, and at all relevant times was a Supervisor. (Transcript of June 19, 2013 hearing, hereinafter "Trans.", at 8, 14-16, 28, 35-36) On November 16, 2012, Mr. Dillard willingly participated in a verbal confrontation at work with a subordinate employee, Darnea Merrell. (Trans. at 9-10, 13, 24, 36) During the altercation, both employees used profanity and made threats. Mr. Dillard was disciplined for a similar incident in 2010 and admitted that he was aware that such conduct violated company rules and could result in termination. (Trans. at 8, 9, 14, 28) As a result of the November 16, 2012 verbal altercation, Mr. Dillard was discharged on December 5, 2012, but Mr. Merrell was only "written up." (Trans. at 8, 12, 23-24, 28)

Mr. Dillard filed an Application for Determination of Benefit Rights on December 10, 2012. The Director of Ohio Department of Job and Family Services denied Mr. Dillard's Application on December 27, 2012, finding that Mr. Dillard was terminated for just cause.

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Following an appeal by Mr. Dillard, the Director on January 15, 2013, issued a Redetermination affirming the initial decision. Mr. Dillard again appealed, and jurisdiction was transferred to the Unemployment Compensation Review Commission. A hearing was held, and in the Decision issued March 15, 2013, the Hearing Officer reversed the Redetermination, concluding that Mr. Dillard was terminated without just cause. Defendant/Appellee Toledo Area Sanitary District filed a Request for Review, a second hearing was held on June 19, 2013, and the Hearing Officer issued a Decision on July 10, 2013, reversing the March 15, 2013 Decision and finding that Mr. Dillard was terminated for just cause. The Hearing Officer reasoned:

The facts establish claimant was discharged for just cause in connection with work. He violated reasonable rules of the employer. The claimant was a supervisor and is held to a higher standard than an hourly employee.

The testimony has established that the claimant was a willing participant in an argument. He escalated the argument. He used profanity and made threats. This is misconduct. Said misconduct is sufficient to create just cause in connection with work for his discharge. Claimant was discharged or [sic] just cause in connection with work. *
* *

Mr. Dillard thereafter filed the instant appeal of the Review Commission's decision.

Under R.C. 4141.282, a court of common pleas, in reviewing a decision of the Review Commission, may reverse, vacate, or modify a Review Commission decision only if such decision is determined to be unlawful, unreasonable, or against the manifest weight of the evidence. "A decision supported by some competent, credible evidence going to all the essential elements of the dispute will not be reversed as being against the manifest weight of the evidence." *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 463 N.E.2d 1280, paragraph two of the syllabus (10th Dist. 1983). Determination of purely factual questions is primarily within the province of the Review Commission; therefore, the court has a limited power of review and is not permitted to make factual findings or to determine the credibility of

witnesses. *Irvine v. Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). The fact that reasonable minds might reach a different conclusion is not a basis for the reversal of the Commission's decision. *Id.* at 18.

It is undisputed that both Mr. Dillard and Mr. Merrell participated in a heated argument at work, using profanity and making threats in violation of work rules. Such misconduct constitutes just cause for termination. *See, e.g., Opara v. Carnegie Textile Co.*, 26 Ohio App.3d 103, 498 N.E.2d 485 (8th Dist. 1985); *Thomas v. Board of Review*, 5th Dist. No. CA 1951, 1981 Ohio App LEXIS 12319 (July 29, 1981); *Brown v. Sysco Food Serv. of Cincinnati, LLC*, 4th Dist. No. 09CA3275, 2009-Ohio-5536, 2009 Ohio App. LEXIS 4657; *Warren County v. Sexton*, 12th Dist, No. CA2006-10-124, 2007-Ohio-7081, 2007 Ohio App. LEXIS 6150.

Furthermore, it is irrelevant that Mr. Dillard was discharged but Mr. Merrell was not. *See, Brooks v. Ohio State Dept. of Job and Family Serv.*, 10th Dist. No. 08AP-414, 2009-Ohio-817, 2009 Ohio App. LEXIS 670. Mr. Merrell was a subordinate while Mr. Dillard was a Supervisor and should be held to a higher standard. In addition, Mr. Dillard escalated the confrontation, and only Mr. Dillard had been disciplined before.

After reviewing the record, arguments of counsel, and applicable law, the Court finds that the Decision of the Review Commission is lawful, reasonable, and consistent with the weight of the evidence and, therefore, is affirmed.

JUDGMENT ENTRY

It is **ORDERED** that the decision of the Unemployment Compensation Review Commission is **AFFIRMED**. This is a final, appealable Order.

Date: 1-27-14


Dean Mandros, Judge