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LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

THIS IS A FINAL
APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

Gary D. Muszynski,

*

Case No.: CI13-3552

Plaintiff-Appellant,

*

Honorable Gene A. Zmuda

vs.

*

OPINION AND JUDGMENT ENTRY

Famous Distribution, Inc., et al.,

*

Defendants-Appellees.

*

This case comes before the Court on an administrative appeal filed by Plaintiff-Appellant Gary D. Muszynski ("plaintiff") on July 3, 2013 from a decision of the Ohio Unemployment Compensation Review Commission dated June 5, 2013 which held that plaintiff was discharged for just cause in connection with work and therefore was not entitled to unemployment compensation benefits.

Plaintiff filed his merit brief on October 22, 2013. Defendant-appellee Famous Distribution, Inc. ("Famous") filed its merit brief on October 31, 2013. Defendant-appellee Director, Ohio Department of Job and Family Services ("ODJFS") filed its merit brief on November 6, 2013 incorporating Famous' merit brief in its entirety. Plaintiff filed a reply brief on November 7, 2013. The matter having been fully briefed is now decisional.

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A brief summary of the proceedings in this matter are as follows.

On December 27, 2012, plaintiff submitted his Application for Determination of Benefit Rights to the Director of ODJFS. (Plaintiff's Notice of Appeal, ¶5). On January 17, 2013, the Director of ODJFS allowed plaintiff's initial application for unemployment benefits. (Plaintiff's Notice of Appeal, ¶6). On February 7, 2013, Famous appealed the initial determination of benefits. (Plaintiff's Notice of Appeal, ¶8). On February 27, 2013, the Director of ODJFS reversed the initial determination disallowing plaintiff's application for benefits based upon the finding that plaintiff was discharged from employment for just cause in connection with work. (Plaintiff's Notice of Appeal, ¶9). On March 18, 2013, plaintiff filed an appeal of the Director's Redetermination Decision to the Unemployment Compensation Review Commission ("UCRC"). (Plaintiff's Notice of Appeal, ¶10).

On April 22, 2013, a telephone hearing was held before Hearing Officer Dina Toyzan. (Plaintiff's Notice of Appeal, ¶12). On April 30, 2013, Hearing Officer Dina Toyzan rendered her decision affirming the February 27, 2013 denial of benefits. (Plaintiff's Notice of Appeal, ¶13).

Hearing Officer Dina Toyzan made the following findings of fact in her April 30, 2013 Decision:

"The claimant worked for Famous Distributions, Inc. from November 21, 2011 through December 26, 2012. The claimant was a full-time Warehouse Worker/Driver.

The claimant was terminated for not having a valid Driver's license, and because he had taken unauthorized leave from December 17, 2012 through December 26, 2012. The employer's written company policy indicates that being absent from work without a supervisor's approval may result in immediate termination.

The claimant missed work from December 17, 2012 through December 26, 2012, because he had been arrested for DUI after an accident in Michigan.

The claimant argues that he had permission from Therese Stambaugh

to miss work beginning on or about December 14, 2012. However, Ms. Stambaugh only gave him permission to miss work on November 14, 2012 and on December 17, 2012. There is no documentation in evidence that the claimant had approval to miss work after December 17, 2012.

The claimant had restrictions on his Ohio's Driver's license beginning December 17, 2012. The restrictions included being permitted to drive to work and school.

The Claimant applied for, and received, unemployment compensation benefits in the amount of \$2,800.00 for the weeks ending January 5, 2013 through February 23, 2013." (April 30, 2013 Decision by Hearing Officer Dina Toyzan, pp.3-4).

Hearing Officer Dina Toyzan determined that:

"The claimant was terminated for not having a valid Driver's license and for taking an unauthorized leave from work. Although the claimant was permitted to drive in Ohio because of an allowance for a work restriction, the claimant was still absent from work without permission. The claimant has not provided a valid explanation for missing work. Considering the claimant's behavior resulted in a company policy violation, being absent from work without supervisory approval, his discharge was for misconduct in connection with work. Therefore, it will be found the claimant was discharged with just cause. Additionally, the claimant must pay back benefits in the amount of \$2,800.00 for this disqualifying separation, affecting the weeks ending January 5, 2013 through February 23, 2013." (April 30, 2013 Decision by Hearing Officer Dina Toyzan, p.4).

On May 14, 2013, plaintiff filed a request for review with the UCRC. (Plaintiff's Notice of Appeal, ¶14). On June 5, 2013, the UCRC issued a Decision Disallowing Request for Review, so on July 3, 2013, plaintiff filed a timely appeal with the Lucas County Common Pleas Court. (Plaintiff's Notice of Appeal, ¶15).

This is an unemployment compensation appeal under Ohio Revised Code §4141.282. R.C. §4141.282 sets forth the rights an interested party may have to appeal a final decision of the UCRC to a court of common pleas. Specifically, R.C. §4141.282(H) states that:

"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." *Id.*

The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. *Kilgore v. Bd. of Review* (1965), 2 Ohio App. 2d 69, 71. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Craig v. Bur. of Unemp. Comp.* (1948), 83 Ohio App. 247, 260. The Common Pleas Court in such an appeal is not authorized to make a finding of facts or to substitute its judgment for that of the Board of Review; the parties thereto are not entitled to a trial *de novo*. *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69, paragraph two of the syllabus by the Court. "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 by the Court (Ohio 1978).

To be eligible for unemployment compensation benefits in Ohio, claimants must satisfy the criteria established pursuant to R.C. 4141.29(D)(2)(a), which provides, in pertinent part, that:

"(D) * * * No individual may * * * be paid benefits * * *:

* * *

(2) For the duration of his unemployment if the administrator finds that:

(a) He quit his work without just cause or has been discharged for just cause in connection with his work * * *." R.C. §4141.29(D)(2)(a).

"The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision. *Shannon v. Bur. of Unemp. Comp.* (1951), 155 Ohio St. 53; *Canton Malleable Iron Co. v. Green* (1944), 75 Ohio App. 526; 54 Ohio Jurisprudence 2d (1962), Unemployment Compensation, Section 35." *Irvine v. State, Unemployment Compensation Bd. of Review* (1985), 19 Ohio St.3d 15, 17. "Just cause for dismissal exists when an employee's actions demonstrate an unreasonable disregard for an employer's best interests." *Janovsky v. Ohio Bureau of Empl. Servs.*, 108 Ohio App. 3d 690, 694 (Ohio Ct. App., Montgomery County 1996). Traditionally, 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. *Peyton v. Sun T.V.* (1975), 44 Ohio App. 2d 10, 12. "The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act, essentially, the Act's purpose is 'to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.'" *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223; in accordance with *Nunamaker v. United States Steel Corp.* (1965), 2 Ohio St. 2d 55, 57. "Just cause for discharge may be established by proof that the employee violated a specific company rule or policy." *Jones v. Bd. of Review* (Sept. 28, 1993), 10th Dist. No. 93AP-430, 1993 Ohio App. LEXIS 4788.

The Unemployment Compensation Act "was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Irvine* at 17; citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39. The Ohio Supreme Court in *Tzangas, Plakas & Mannos v.*

Administrator, Ohio Bureau of Employment Servs., 73 Ohio St. 3d 694 (Ohio 1995), found that:

"The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection.

If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination." *Id.* at 697-698.

Plaintiff argues that the Hearing Officer refused, or simply ignored, no less than three separate sources of evidence presented by plaintiff which each separately confirm plaintiff was permitted to be absent from work on December 17, 2012 through December 24, 2012. Specifically, plaintiff asserts that the Hearing Officer ignored his time clock reports which show he was excused from work on December 17, 2012 through December 24, 2012, a written statement from Jason Jankowski, Warehouse Lead for Famous, that confirms that Famous knew of and approved plaintiff's absence, and a written statement of Amanda Peters, Office Administrator for Famous, that made Therese Stambaugh aware of plaintiff's absence. Plaintiff further argues that the Hearing Officer went so far as to make the affirmative statement in the UCRC's April 30, 2013 Decision that "there is no documentation in evidence that the claimant had approval to miss work after December 17, 2012." (Exhibit I attached to Plaintiff's Merit Brief, p.4). Accordingly, plaintiff contends that the UCRC decision was against the manifest weight of the evidence and should be reversed.

Famous argues that the UCRC's Decision regarding just cause for termination should be affirmed because it was not unlawful, unreasonable, or against the manifest weight of the evidence. Famous contends that plaintiff's time clock report does not show that plaintiff received approval to

be absent from work from December 18, 2012 through December 24, 2012 nor do the written statements of Jason Jankowski and Amanda Peterson. Therefore, this Court should affirm the UCRC's April 30, 2013 Decision.

In dealing with a claim that the judgment is against the manifest weight of the evidence, a reviewing court can reverse only if the verdict is so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice. *Sambunjak v. Board of Review* (1984), 14 Ohio App.3d 432, paragraph 2 of the syllabus by the Court.

During the April 22, 2012 hearing, Hearing Officer Dina Toyzan heard testimony from plaintiff, Kim Popella for Famous, and Therese Stambaugh, plaintiff's direct supervisor.

Ms. Popella testified that plaintiff was employed with Famous from November 21, 2011 to December 26, 2012 and his direct supervisor was Therese Stambaugh. (Transcript of Testimony, p.5). Ms. Popella further testified that plaintiff was terminated due to the fact that he did not have a valid driver's license which is required for his job position as warehouse/driver, and he had an absence from work without appropriate notice or his supervisor's approval.¹ (Transcript of Testimony, p.6).

¹The Court notes that the Code of Conduct/Work Rules for Famous provides, in pertinent part, that "conduct which is unprofessional includes, but is not limited to: failure to obtain or maintain a current license or certificate required by law, or as a condition of employment; and absence from work without appropriate notice or supervisor approval." (Director's File in the Transcript of Proceedings, pp.6-7). The Business Ethics for Famous also provides that "disregarding or failing to comply with this standard of business ethics and the Code of Conduct will lead to disciplinary action, up to and including termination of employment." (Director's File in the Transcript of Proceedings, p.6).

Plaintiff testified that he had restricted driving privileges for work and school and that he met with Therese Stambaugh on September 23, 2012 to discuss his situation and that he had court on December 17, 2012. (Transcript of Testimony, pp.9-10). Plaintiff also testified that at the September 23, 2012 meeting, Ms. Stambaugh told him not to worry as Famous had his back and that Ms. Stambaugh's bosses were informed of the situation and his absence and wished him good luck and she couldn't wait for him to get back to work. (Transcript of Testimony, p.10).

Ms. Stambaugh testified that she did meet with plaintiff on September 23, 2012 and plaintiff informed her that he had been in an accident and was arrested. (Transcript of Testimony, p.15). Ms. Stambaugh further testified that they met again on December 14, 2012 to discuss plaintiff's upcoming absences but plaintiff had no idea how long he would be gone so plaintiff's criminal lawyer was to contact her and inform her of plaintiff's sentence. (Transcript of Testimony, p.15). Ms. Stambaugh testified that plaintiff's lawyer never contacted her. (Transcript of Testimony, p.17). Finally, Ms. Stambaugh testified that she approved plaintiff's absences from work for his court dates on November 14, 2012 and December 17, 2012 but never approved plaintiff to be absent from work between December 17, 2012 to December 26, 2012. (Transcript of Testimony, p.18)

Plaintiff argues that the April 30, 2013 Decision was against the manifest weight of the evidence as the Hearing Officer Dina Toyzan failed to consider or ignored plaintiff's three separate pieces of evidence. The first piece of evidence plaintiff submits is a spreadsheet identifying plaintiff's time clock report from December 3, 2012 to December 25, 2012. (Review Commission File in the Transcript of Proceedings, p.5). The time clock report indicates that plaintiff was either on sick or personal time for the dates between December 17, 2012 through December 25, 2012. (Review Commission File in the Transcript of Proceedings, p.5). However, the time clock report does not state that plaintiff's absences from December 17, 2012 through December 25, 2012 were approved

by his direct supervisor Therese Stambaugh. Neither do the written statements from Jason Jankowski and Amanda Peterson. Mr. Jankowski states in his written statement that he did inform Therese Stambaugh of plaintiff's upcoming absences as Mr. Jankowski and Ms. Stambaugh discussed the absence of plaintiff in order to make necessary arrangements during his absence. (Review Commission File in the Transcript of Proceedings, p.6). Ms. Peterson's written statement provides that a couple weeks before December 17, 2012, Ms. Stambaugh discussed with her how they were going to handle the operations in the warehouse due to plaintiff's upcoming absence. (Review Commission File in the Transcript of Proceedings, p.7). Ms. Peterson's statement also provides that she informed Ms. Stambaugh that plaintiff would be returning on December 24, 2012 and Ms. Stambaugh asked her to tell plaintiff not to return to work until December 26, 2012. (Review Commission File in the Transcript of Proceedings, p.7).

Plaintiff somehow believes that the approval of his absences from work by his direct supervisor is the same as two of plaintiff's co-workers informing Ms. Stambaugh that plaintiff will be absent. Informing Ms. Stambaugh of plaintiff's absences is not the same as Ms. Stambaugh approving plaintiff's absences. Whether Ms. Stambaugh knew that plaintiff would be absent is not the determining issue in this case, but rather, the determining issue is whether plaintiff's absences from work on December 17, 2012 through December 26, 2012 were approved by plaintiff's direct supervisor Therese Stambaugh. There is clear evidence in this case from the testimony of Ms. Stambaugh that she did not approve plaintiff's absences from December 17, 2012 through December 26, 2012. Plaintiff also argues that by Hearing Officer Dina Toyzan stating in the April 30, 2013 Decision that there is no documentation in evidence that the claimant had approval to miss work after December 17, 2012 evidences that the Hearing Officer ignored or failed to consider plaintiff's three separate pieces of evidence. To the contrary, Hearing Officer Dina Toyzan's statement merely

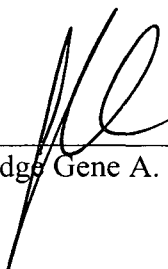
evidences the fact that other than the testimony of Ms. Stambaugh, there is no evidence that claimant had approval to miss work as the three separate pieces of evidence submitted by plaintiff only indicate that Ms. Stambaugh was informed of plaintiff's future absences.

Consequently, after carefully reviewing the evidence submitted by the parties in this case, including, but not limited to, the Transcript of Testimony of the April 22, 2013 hearing before Hearing Officer Dina Toyzan, written statements from Jason Jankowski and Amanda Peterson, plaintiff's time clock report, briefs and arguments of counsel, Ohio Revised Code Section 4141.29(D)(2)(a), and all relevant case law, the Court finds that the decision by Hearing Officer Dina Toyzan was not so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice. *Sambunjak*, supra. Therefore, the Court finds that UCRC's April 30, 2013 Decision was not unlawful, unreasonable, or against the manifest weight of the evidence. R.C. §4141.282(H). Thus, UCRC's April 30, 2013 Decision to deny plaintiff's application for unemployment benefits is AFFIRMED.

The ruling herein is a full and complete adjudication of all issues incipient in plaintiff's notice of appeal as they relate to Famous and a complete adjudication of all genuine issues, merits and matters in controversy between the parties. It appears there is no just cause for further delay, and that, pursuant to Civ. R. 54, Final Judgment should be entered for defendants Famous Distribution, Inc. and Director, Ohio Department of Job and Family Services.

2/13/14

Date



Judge Gene A. Zmuda