

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

2014 FEB 26 PM 12 00

JEANNE M. STEPHEN
CLERK OF COURTS

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

IRVIN W. HUTH,	:	
	:	Case Number: 2013 AA 05 0396
Appellant,	:	
	:	Judge Elizabeth Lehigh Thomakos
vs.	:	
	:	
DIRECTOR, OHIO DEPARTMENT	:	<u>JUDGMENT ENTRY</u>
OF JOB AND FAMILY SERVICES,	:	
et al.,	:	
	:	
Appellees.	:	

This matter came before the Court for an Administrative Appeal, based upon the **Notice of Appeal of Appellant - Irvin W. Huth** filed on May 15, 2013.

The Court has reviewed the following filed briefs, motions, and responsive arguments:

- | | |
|---------------------------|--|
| August 27, 2013 | Brief of Irvin W. Huth |
| September 24, 2013 | Brief of Appellee Director, ODJFS |
| September 25, 2013 | Notice Adopting the Brief of Appellee, Director, ODJFS filed by Appellee Lawrence Township, Tuscarawas County |

October 22, 2013	Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS
October 25, 2013	Appellee Lawrence Township's Response to Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS
October 28, 2013	Appellant's Reply to Lawrence Township's Response to Motion to Strike Notice Adopting the Brief of Appellee, Director, ODHFS
October 28, 2013	Reply Brief of Irvin W. Huth

MOTION TO STRIKE

Appellant argues that Appellee, Lawrence Township, waived its right to assert the matters set forth in the Brief of ODJFS when Lawrence Township failed to assert the matters at the administrative hearing. Lawrence Township argues that Lawrence Township testified to the issues at the administrative hearing and raised no new issues in the **Notice Adopting the Brief of Appellee, ODJFS**.

Having considered Appellant's Motion filed October 22, 2013, this Court **FINDS** that **Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS** is not well-taken and should be **denied**.

STATEMENT OF THE CASE

This matter is an appeal from the State of Ohio Unemployment Compensation Review Commission's ("Commission") Decision dated April 24, 2013, which disallowed

Appellant's request for review by the Commission.

Appellant resigned from his position with Lawrence Township on December 31, 2012. Appellant filed an application for benefits with the Office of Unemployment Compensation. On January 25, 2013, the Office of Unemployment Compensation issued an initial Determination of Unemployment Compensation Benefits disallowing Appellant's application for unemployment compensation benefits.

Appellant filed an appeal. On February 19, 2013, the Office of Unemployment Compensation Benefits issued a Director's Redetermination affirming the initial determinations and denying unemployment compensation benefits.

Appellant appealed from the Director's Redetermination, and the Director transferred the appeal to the Commission. A hearing on Appellant's appeal was held before Hearing Officer Kristina Mitchell on March 13, 2013, by telephone. On March 20, 2013, the Commission issued a Decision affirming the Director's Redetermination and disallowing Appellant's Application for Determination of Benefit Rights because he quit without just cause.

Appellant filed a Request for Review of the Hearing Officer's Decision with the Commission. On April 24, 2013, the Commission issued a Decision disallowing Appellant's request for review.

It is from the Decision of the Commission that Appellant filed an **Administrative Appeal** with this Court on May 15, 2013. The Court has reviewed the **Transcript of the**

Record of the Proceedings from the Commission, which was filed with the Court on **June 27, 2013** and amended on **July 11, 2013**.

ARGUMENTS

Appellant argues that the Commission's Decision is unlawful, unreasonable and against the manifest weight of the evidence. Appellant argues that both a change in Appellant's work status from full-time to part-time and the elimination of medical insurance benefits created an extreme hardship, which justified Appellant's resignation. Appellant argues that circumstances beyond Appellant's control caused Appellant to resign through no fault of his own after discussions with Employer regarding alternative employment options failed. Appellant argues that the Review Commission's Decision failed to follow the law regarding just cause.

Appellee, ODJFS, argues that Appellant did not act as a reasonable, ordinary person when Appellant resigned from his position prior to obtaining a formal response from Employer regarding alternative employment options. ODJFS argues that Appellant could have retained his position until obtaining new employment. ODJFS also argues that the Commission's finding that Appellant resigned from his position without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence because competent, credible evidence establishes that Appellant resigned from his employment without just cause.

STANDARD OF REVIEW

R.C. 4141.282(H), which addresses appeals from a final decision of the Commission to a court of common pleas, provides 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.”

R.C. 4141.46 provides that “[s]ections 4141.01 to 4141.46, inclusive, of the Revised Code shall be liberally construed.”

R.C. 4141.29(D)(2)(a) provides that generally no individual may serve a waiting period or be paid benefits for the duration of his or her unemployment if the director finds that the individual quit work without just cause.

Just cause “is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995), quoting *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985).

“The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case.” *Irvine*, at 17-18, citing *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947); *Sutfin v. Carlsbad Marketing & Communications, Inc.*, 2nd Dist. Montgomery No. 24555, 2011-Ohio- 5988, ¶15.

The Fifth District Court of Appeals has found that a substantial reduction in wages can be a just cause for leaving employment if a reasonably intelligent person would do so

under all of the same circumstances. *Doney v. Ohio Bureau of Employment Services*, 5th Dist. Tuscarawas No. CA-1540, 1981 WL 6580 (Dec. 10, 1981).

A just cause analysis is not limited to consideration of the reduction in wages and hours of Claimant. See *Shaffer-Goggin v. State Unemployment Compensation Review Commission*, 5th Dist. Richland No. 03CA2, 2003-Ohio-6907, ¶21. There are many other facts to consider that reduce the relative importance of the temporary reduction in hours. *Irvine* at 17; See *Shaffer-Goggin*. (Court considers other factors including employee's fault in presence of substantial reduction in work hours.)

The Second District Court of Appeals stated that just cause to quit does not exist when a claimant could have accepted work and filed for partial unemployment benefits. *Sutfin*, at ¶17. The court further concluded that just cause to quit did not exist even if claimant suffered a thirty per cent loss in wages, a result still in excess of the partial benefits available. *Sutfin*, at FN 4. See also *Redmond v. Board of Review*, 2nd Dist. Clark App. No. 999, 1976 WL190478 (Jan. 8, 1976) (“(W)here the statute recognizes partial unemployment and subsidizes the difference between earnings and benefits...it is not appropriate for the court to establish different standards under the guise of what is or is not just cause.”)

Essentially, an employee must notify the employer of the problem and request it be resolved. An employee must give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice

ordinarily will be deemed to quit without just cause, and therefore, will not be entitled to unemployment benefits. *DiGiannntoni v. Wedgewater Animal Hospital, Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist.1996).

The determination of a purely factual question is primarily within the province of the board, and a court of law may reverse such decisions on appeal only if they are unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine*, at 17-18, citing *Brown-Brockmeyer Co.*, at 518. Upon an appeal based on factual grounds, the court of common pleas' role is limited to determining whether the board's decision is supported by the evidence in the record. *Morris v. Ohio Bureau of Employment Services*, 90 Ohio App.3d 295, 298, 629 N.E.2d 35. (10th Dist. 1993); *Irvine*, at 18.

A reviewing court, including the court of common pleas, may not make factual findings or determine the credibility of witnesses. *Hasch v. Vale*, 5th Dist. Stark No. 2001CA00361, 2002-Ohio-3092.

A direction to liberally construe R.C. 4141.29 in favor of certain parties will not authorize a court to read into the statute something which cannot be reasonably implied from the language of the statute. *Thomas v. Stringer*, 11th Dist. Lake No. CA 5-127, 1975 WL 180937, p. 2 (May 27, 1975), citing *Szekely v. Young* 174 Ohio St. 213, 218, N.E.2d 424 (1963). "A reviewing court can not usurp the function of the triers of fact by substituting its judgment for theirs." *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468

(1982).

“The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision.” *Irvine*, at 18. If the Commission could reasonably decide either way, the courts do not have authority to upset the board’s decision. *Irvine*, at 18; *Doering v. Holmes County Dept. of Job & Family Services*, 5th Dist. Holmes No. 2008 CA 015, 2009-Ohio-5719, ¶59.

However, a court should reverse an agency’s ruling that reaches an unreasonable conclusion from essentially undisputed evidence at the administrative hearing. *Opara v. Carnegie Textile Co.*, 26 Ohio App.3d 103, 105-106, 498 N.E.2d 485 (8th Dist. 1985), citing *Griffith v. Administrator*, 8th Dist. Cuyahoga No. 48301, 1987 WL 6397 (Dec. 27, 1984). On appeal, it is appellant’s obligation to point to evidence in the record that supports his allegations. *Lynch v. Youngstown*, 115 Ohio App.3d 485, 491, 685 N.E.2d 813 (1996).

DECISION

Based upon independent analysis and review of the file, the Court **FINDS** that the Commission’s Decision is supported by evidence in the record.

The Court **FINDS** that the Commission’s Decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

The Court **FINDS** therefore, that the Commission’s Decision should be **Affirmed**.

It is further **ORDERED** that the **Decision of the Commission** dated **April 24, 2013** is

Affirmed.

It is further ordered that Appellant's **Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS** is denied.

It is further **ORDERED** that the costs of this Appeal shall be assessed to Appellant.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: February 25, 2014

cc: Susan Sheffield, Assistant Attorney General
Dennis D. Traver, Esq.
Michela Huth, Esq.
Court Administrator
Clerk of Courts