

**COMMON PLEAS COURT  
WASHINGTON COUNTY, OHIO**

FILED  
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2014 FEB 28 AM 9:49  
WASHINGTON CO. OHIO

Hucks Pallets :  
Plaintiff, : Case No. 13 AA 117  
v : Judge Ed Lane  
Ohio Dept. of Job and Family Services, et al. :  
Defendants. : JOURNAL ENTRY

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The above styled action is before the Court on the appeal of Huck's Pallets, LLC from a decision of the Unemployment Compensation Review Commission of March 7, 2013 disallowing appellant's request for a review. This decision in effect, affirms the decision of the Unemployment Compensation Review Commission's hearing officer that found the Appellee herein, Teddy L. Church, was discharged by Appellant without just cause in connection with work and therefore entitled to receive unemployment benefits.

The law governing this court is set forth in R.C. 4141.282(H) which 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.

See also Williams v. State of Ohio Unemployment Compensation Review Commission, 2011-Ohio-2458 (C.A. Trumbull Cty.)(appellate court may reverse the Unemployment Compensation Board of Review's "just cause" determination only if it is unlawful, unreasonable or against the

manifest weight of the evidence), citations omitted. A reviewing court cannot make factual findings or determine the credibility of the witnesses; it can only determine whether the decision of the commission is supported by the evidence in the record. Id.

The purpose of unemployment compensation 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.” Continental Airlines, Inc. v. Dir. Ohio Department of Job and Family Services (2007), 173 Ohio App.3d 311, 316 (emphasis added). The Unemployment Compensation Act is “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.**” Id. (emphasis added). “The purpose of unemployment compensation is not to protect employees from their own poor decisions, but to protect them from forces over which they had no control.” Tzangas, Plakas & Mannos v. Admr. Ohio Bur. of Emp. Servs. (1995), 73 Ohio St.3d 694, 697.

To be eligible for unemployment compensation benefits, a claimant must meet the statutory requirements set forth in Ohio Rev. Code § 4141.29. Pursuant to §4141.29(D)(2)(a), an individual is not eligible for unemployment compensation benefits if the individual has been “discharged for just cause in connection with the individual’s work.” “To find just cause for discharging an employee, pursuant to R.C. 4141.29, some fault on the part of the employee, which leads to his termination, must be found.” Sellers v. Bd. of Review (1981), 1 Ohio App.3d 161, Syllabus, ¶ 2. The burden of proof is upon the employee to establish that he is entitled to unemployment compensation because he was discharged without just cause.” Williams v. State

of Ohio Unemployment Compensation Review Commission, 2011-Ohio-2458 at ¶ 32.

For purposes of Ohio unemployment compensation determinations, case law has consistently defined “just cause” as “that to which, to an ordinarily intelligent person, has a justifiable reason for doing or not doing a particular act.” City of Dublin v. Clark, 2005-Ohio-5926 at ¶ 23, citing Irvin v. Unemp. Comp. Bd. of Review (1985), 19 Ohio St.3d 15, 17. The determination of whether just cause exists for an employee’s dismissal under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal. Doering v. Holmes Count Dept. of Job & Family Services, 2009-Ohio-5719 at ¶ 65, citation omitted.

The proper role of the appellate court in reviewing the decision of the court below is to determine whether the evidence presented to the Commission supported its finding that the claimant was discharged for just cause and such finding was not unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995). The Commission is the trier of facts, as shown by the evidence presented at the unemployment compensation hearings.

Courts are not permitted to weigh evidence or assess credibility of witnesses. R.C. 4141.281(C)(2). A court does not have the authority to substitute its judgment for that of the Review Commission. *Simon v. Lake Geauga Printing Co*, 69 Ohio St.2d 41, 430 N.E.2d 468 (1982). “A reviewing court cannot usurp the function of the trier of fact by substituting its judgment for theirs.” *Id.* at 45, 471. “Where the [Commission] might reasonably decide either way, the courts have no authority to upset the [Review Commission’s] decision.” *Charles Livingston & Sons, Inc. v.*

*Constance*, 115 Ohio App. 437, 185 N.E.2d 655 (1961). Instead, the courts must only determine if the evidence in the record supports the Commission's decision. *Tzangas, supra*.

In the present case, Claimant was granted unemployment compensation benefits on the ground that he had been discharged without just cause in connection with his work, as provided under R.C. 4141.29(D)(2)(a). That section provides, in pertinent part, as follows:

[N]o individual may serve a waiting period or be paid benefits \*\*\*:

(1) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work \*\*\*.

"Just cause" has been defined by the courts as that kind of conduct which an ordinarily intelligent person would regard as a justifiable reason for discharging an employee. *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985).

Ohio law holds that an employee is considered to have been discharged for just cause when the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests. *Kiikka v. Ohio Bur. of Emp. Services*, 21 Ohio App.3d 168, 486 N.E.2d 1233 (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, 44 N.E.2d 550 (1981).

Unsuitability for a position constitutes fault sufficient to support a just cause termination. In *Tzangas*, the Supreme Court of Ohio set forth a four-part test for determining whether an employee's unsuitability to perform the required work constitutes fault. An employer may properly find an employee unsuitable and therefore at fault when: (1) the employee does not perform the required work; (2) the employer made its expectations known at the time of hiring; (3) the

expectations were reasonable; and (4) the requirements of the job did not change since the date of the original hiring for that position. *Tzangas* at 698, 653 N.E.2d 1207.

Therefore, a factor that is crucial to a just cause determination is whether the employee is at fault in creating the situation leading to the termination of employment. The Court must defer to the Commission's factual findings on the fault issue. *Payton v. Sun T.V.*, 44 Ohio App.2d 10, 335 N.E.2d 751 (1975).

Appellant asserts that appellee did not follow the blue prints on record for the pallets he was assembling on the date in question in this case. There is clearly ample evidence in this case to support the decision of the Unemployment Compensation Review Commission.

The Appellee, Teddy L. Church, was fired because of 2 prior incidents and for building the wrong size pallets on April 20, 2012. The first incident was on November 12, 2010 when he was late for work. This was because this car broke down on the way to work. The second incident was in February 22, 2011 when he refused to work overtime. He had to pick his daughter up on Ohio State Highway 555 where the school bus left her off. Usually his wife picked her up but on this date Appellee's wife had to go to the hospital. The last date, April 20, 2012, there is ample evidence in the record that demonstrates that the Appellee was building the pallets exactly the way Appellant's foreman and Appellee's supervisor told him to build the pallets.

At the unemployment hearing Claimant testified as follows regarding the events that led to the warnings and his discharge:

Q. Okay. And um did you work as a pallet assembler your whole time there.

A. Yes.

Q. And was Mr. Caldwell always your supervisor.

A. Yes.

Q. So um, let's talk about the ah prior warnings that Mr. Huck brought up and then we'll ah talk about this final incident. Um, he said you received a warning for a late call off on November 12, of 2010, ah do you recall receiving that warning.

A. Yes I do.

Q. Okay what happened in that on that time do you remember?

A. Yes, yes ah my car was broke down and I had no phone and I called in at 10'o'clock in the morning. Well got wrote up over it but you know he's went through a lot of employees who did miss days without calling off and such. But you know I worked there quite a long time and did not miss work it was just a have to case I accepted it and moved on.

Q. Okay now um he mentioned another warning from February of 2011, about overtime do you remember what happened in that case.

A. Yes I do.

Q. What happened?

A. Um, well at the time we was working a lot of hours and it was pretty much mandatory when he needs pallets put out you know you have to be there to get them out and I can understand that. But this particular incident I did have my eight hours in that day where we live at our school don't have bussing we have to take our daughter down the road at a certain time and then go down at 3 o'clock to pick her up. Well it was 3 o'clock that's normally when we get off working overtime we work till 5 o'clock. I had to leave I had to pick up my daughter my wife couldn't do it and she couldn't stand next to that road you know. So I had to leave and go pick my daughter up if I understood the number right I still gotten over 40 hours in that week.

Q. So you took the warning cause you needed to go get your daughter.

A. Yeah, I had no choice yes I had to go get my daughter yeah she had been, dropped off school bus alongside the road.

Q. Now what happened um this final incident with the, ah the pallets.

A. Now that incident there I usually run a machine building them by myself the machines all set up you just put wood in it and push a button. This here I was working on a two man table manually with another person and Justin brought us the wood over and quite often it wouldn't be the right wood it's recycled wood where we just get what we get. And so he told me to space them wider because the wood was so much thicker and so much stronger he said just go ahead and space it wider. But we already made a truckload like 150 of them that day and there was only like maybe 10 of them that was bad. And so he wrote me up for that also. But the three write ups shute that was in like in a two year period just for you know odds and ends and stuff so he discharged me and I didn't have no replies at the time because I know it wouldn't of done any good.

Q. Did you tell um Mr. Huck hey you know Mr. Caldwell told me to do it that way.

A. He knows this yes.

Q. Now you said he knows it did you tell him that or how did he know that.

A. Ah, because he knows what kind of wood goes out of there.

Q. Um when you um signed your write up, why didn't you write something about the wood being wrong on the on the write up.

A. Well when I was getting fired terminated we was all sitting in the same room Justin was right beside me and I asked him about Darrell and he wouldn't say a word about it. So I knowed he wasn't gonna watch my back in that regard so you know I'm sure it wouldn't have done a bit of good. (Tr. 17-20)

...

#### CROSS EXAMINATION OF MR. CHURCH BY MR. HUCK

Mr. Huck: Okay firs of all um Teddy there were several days that you worked till 5 o'clock is that correct.

Mr. Church: Oh, yes.

Q: And on those days you always had somebody to pick up your daughter or.

A. Right.

Q. You made arrangements to to have her taken care of is that correct.

A. Yes.

Q. Okay and you knew you you know when were busy.

A. My wife went to the hospital that day. (Tr. Pg. 20, Lines 16-26

...

Q. So so, you knew that the board spacing was too wide on these particular pallets.

A. We use a blueprint every time we build something yes, I knew.

Q. Right but you knew the board spacing wasn't supposed to be over an inch am I am I correct on that.

A. Yes.

Q. Okay.

A. And Justin knowed this also but Justin told us to build it that way. I can't tell him no he was my foreman. (Tr. Pg. 23 Lines 18-26)

Appellant argues that the Claimant was discharged for just cause, because he was unsuitable for the given position. The Commission disagreed. The Commission recognized the flaws in the decision to terminate the Claimant as a result of progressive discipline, because there is absolutely no demonstrated relationship between the prior warnings and the actual job or Claimant's job performance. Claimant was never cited for poor performance. The company's Chief Executive Officer, Darrell Huck, confirmed this fact (Tr. 7).

In applying the four-part test set forth in *Tzangas*, there is no evidence that Claimant failed to perform the required work. Neither of the prior warnings was related to work performance. Further, on April 20, 2012, he followed the instructions of his supervisor in assembling the pallets.



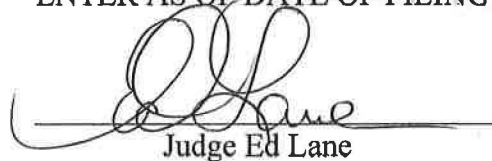
The quality of the boards used for the pallets was outside the Claimant's control. Therefore, Claimant is neither unsuitable nor at fault and was not discharged for just cause in connection with his work

The determination of the Commission was not unlawful, unreasonable or against the manifest weight of the evidence.

After a review of the entire record in this matter, the Commission properly found that Claimant was discharged without just cause in connection with work. Claimant had explicit permission from his supervisor to assemble some pallets with substandard material. Accordingly, Claimant acted as an ordinarily, intelligent person under the circumstances.

Accordingly, the decision of the Unemployment Compensation Review Commission is hereby ORDERED affirmed in its entirety. Court costs shall be paid by Appellant.

ENTER AS OF DATE OF FILING: 10/11/11



Judge Ed Lane

c: Attorney Hoskins  
Attorney Soto

**NOTICE TO CLERK'S OFFICE  
FINAL APPEALABLE ORDER**