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**IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO**

KAREN P. ZELLNER

Appellant/Plaintiff,

v.

DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES, et al.,

Appellees/Defendants.

Case No. 2013-CV- 0380 R

**DECISION ON  
ADMINISTRATIVE APPEAL**

This employment termination case is before the court of common pleas upon the administrative appeal of Appellant/Plaintiff Karen P. Zellner (hereinafter "Zellner"), filed April 4, 2013. The court has reviewed the March 7, 2013 decision of the Unemployment Compensation Review Commission upon the certified record and transcript provided by the commission, and pursuant to O.R.C. § 4141.282(H). All parties have submitted briefs upon the issues to be considered in this administrative appeal. This court has reviewed the pleadings, the briefs submitted, the transcript of the hearing testimony, submitted by the Unemployment Compensation Review Commission pursuant to O.R.C. § 4141.282(F)(1), and the administrative record filed in this case.

## PROCEDURAL HISTORY

The instant appeal is brought for the court to review the Decision of the Unemployment Compensation Review Commission, mailed March 7, 2013. The following Case History appears in the Decision:

The claimant, Karen P. Zellner, filed an Application for Determination of Benefit Rights. The Director allowed the application with a benefit year beginning January 24, 2010.

In a Hearing Officer's decision, issued March 10, 2011, the claimant was found to have been discharged by Signature Health Services Mansfield LLC for just cause in connection with work. Claimant's benefits were suspended. The claims for benefits for the weeks ending August 10, 2010 through January 22, 2011, were denied. Claimant was held to be paid benefits for those claims to which she was not entitled in the amount of \$5,646.00. She was ordered to repay those benefits to the Department.

The claimant filed a timely Request for Review to this decision with the Review Commission on March 28, 2011. In a decision mailed April 24, 2011, the request was denied.

The claimant filed a timely appeal to the Common Pleas Court of Richland County on May 23, 2011. The Court remanded the matter to the Commission on December 6, 2011.

A telephone hearing was conducted by a Hearing Officer on behalf of the Review Commission on May 29, 2012. The claimant appeared. Attorney John Good represented the claimant. Ms. Becky Gordon appeared as a witness for the claimant. Ms. Deanna Fuller and Ms. Norma Hopkins appeared as potential witnesses for the claimant. They were not called to testify. Attorney Brenda G. Coey represented the employer. Ms. Barbara Locke and Ms. Teresa Wilkins appeared as witnesses for the employer.

The Decision was mailed to all interested parties on March 7, 2013. This appeal was timely filed on April 4, 2014 in the Common Pleas Court of Richland County, Ohio.

The March 7, 2013 Decision reversed the September 30, 2010 Director's Redetermination, and held that Zellner was discharged by Signature Health Services Mansfield LLC for just cause in connection with work.

## STATEMENT OF THE FACTS

The Unemployment Compensation Review Commission made the following

Findings of Fact in the March 7, 2013 Decision:

Claimant was employed by Signature Health Services for a period that began on September 29, 2003 and ended on August 12, 2010. Claimant worked as an as-needed LPN. The employer provided skilled home healthcare.

Claimant was issued a Notice of Termination on August 12, 2010. This document included several issues for her discharge. These issues included unprofessional conduct, improper documentation, and failure to maintain professional boundaries with clients. Claimant was presented this document on August 12, 2010.

The unprofessional behavior that the employer was referring involves at least two instances where the claimant was in a meeting with her supervisors. These meetings were held in June and August of 2010. These meetings were to discuss the issues with the claimant's performance. In both meetings, the claimant got up and left the meeting before the meeting was over. Claimant was asked to stay in both instances. Claimant refused. The last of these instances was on August 9, 2010.

The documentation issues concerned the claimant's practice of recording each visit as a thirty minutes visit. Claimant admitted in the hearing that if the visit took fifteen minutes, she recorded thirty minutes. If the visit she was performing in the client's home took forty five minutes, she documented thirty minutes. Claimant argues that she was taught to document in this manner.

Claimant also documented her visits consecutively. Claimant allowed for no travel time between visits to the clients' homes. Claimant admitted during the hearing that this was not actually how she performed her services. Claimant admitted that there was time between each visit where she would drive to the client's home. Claimant also argued that this was the manner in which she had been taught to document.

Upon further examination, however, the claimant stated, as a nurse, she understood that documents such as these should be recorded in real time. Claimant admitted that the practice in the medical profession is, where such documents are created, to document the actual time that it took to perform the service as well as the actual start and stop time that the service was performed.

The last incident that occurred prior to the claimant's discharge was a meeting that was held on August 9, 2010. This meeting was held to discuss a complaint that the employer had received from a patient who alleged that the claimant made a medication error. Claimant again left the meeting prior to the end of the meeting. She did so without permission. She did so after being asked to stay.

After this incident occurred, the employer reviewed the claimant's performance. It was determined that she should be discharged. She was discharged on August 12, 2010.

After this separation, the claimant filed claims for benefits for the weeks ending August 8, 2010 through January 22, 2011. She received benefits in the amount of \$5,646.00 for these claims. Claimant did not work from the time of the separation through January 22, 2011.<sup>1</sup>

## LEGAL DISCUSSION

In an administrative appeal of a decision for the Unemployment Compensation Review Commission, the common pleas court shall hear the appeal on the certified record provided by the commission.<sup>2</sup> 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.<sup>3</sup>

An appellate court's standard of review in unemployment compensation cases is limited. An appellate court may reverse a board's decision only if the decision is unlawful, unreasonable, or against the manifest weight of the evidence.<sup>4</sup>

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<sup>1</sup> UCRC Decision of March 7, 2013, P. 4.

<sup>2</sup> O.R.C. § 4141.282(H).

<sup>3</sup> Id.

<sup>4</sup> *Marano v. Duramax Marine LLC*, 2011-Ohio-6147 at P 15 (5th Dist. 2011) citing *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St. 3d 694, 696, 1995 Ohio 206, 653 N.E. 2d 1207, citing *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15, 17-19 (additional citation omitted).

An appellate court may not make factual findings or determine the credibility of witnesses, but rather, is required to make a determination as to whether the board's decision is supported by evidence on the record.<sup>5</sup> The hearing officer is in the best position to judge the credibility of the witnesses as the fact finder.<sup>6</sup>

A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way; the courts have no authority to upset the commission's decision.<sup>7</sup> "Every reasonable presumption must be made in favor of the [decision] and the findings of fact [of the Review Commission]."<sup>8</sup>

As stated in the procedural history above, there was a prior appeal in this matter in 2011. This Court found that the prior Hearing Officer, Valerie A. Roller, had clearly lost her way and denied Appellant Karen Zellner her full panoply of due process rights. The court found that the Hearing Officer's actions were unlawful and unreasonable under O.R.C. § 4141.282(H). The Court remanded the matter to the Commission on December 6, 2011 in order to conduct a fair hearing to comport with the requirements of due process.

Upon remand, a telephone hearing was conducted by Hearing Officer Jeffery Schaffner on behalf of the Unemployment Compensation Review Commission on May 29, 2012. The court has reviewed the transcript of that hearing and finds that there was

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, citing *Shaffer-Goggin v. Unemployment Compensation Review Commission*, Richland App. No. 03-CA-2, 2003 Ohio 6907, citing, *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St. 2d 11, 233 N.E.2d 582; *Brown-Brockmeyer Co. v. Roach*, (1947) 148 Ohio St. 511, 76 N.E. 2d 79.

<sup>7</sup> *Id.* citing *Irvine*, *supra* at 17-18.

<sup>8</sup> *Id.* citing *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App. 3d 151, 2008 Ohio 301, 891 N.E.2d at ¶ 7 (9th Dist. 2008), quoting *Karches v. Cincinnati* (1988), 38 Ohio St. 3d 12, 19, 526 N.E. 2d 1350.

no comparable due process violation in the hearing conducted by Hearing Officer Schaffner. In the re-hearing, Appellant Karen Zellner was represented by competent counsel. Her witness, Becky Gordon, who had been denied an opportunity to testify in the first series of hearings, testified. Hearing Officer Schaffner had the opportunity to hear her evidence and weigh her credibility. In this case, Hearing Officer Schaffner found the testimony of the employer's witnesses to be more credible than that of Appellant Karen Zellner and her witnesses.

In the instant appeal the Court finds that the Unemployment Compensation Review Commission could reasonably have found either way; therefore, this court is required to give Unemployment Compensation Review Commission's decision deference.

The court finds that the March 7, 2013 Decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, nor against the manifest weight of the evidence for the reasons stated above.

IT IS THEREFORE ORDERED that the March 7, 2013 Decision of the Unemployment Compensation Review Commission is hereby affirmed.

  
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JUDGE BRENT ROBINSON