

DANIEL M. MORRIGAN

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

WAYSIDE FARMS NURSING HOME	:	CASE NO. CV 2013-08-4049
AND REHABILITATION CENTER	:	
APPELLANT	:	JUDGE ROWLANDS
VS.	:	
CARLA J. COLEMAN, et al.	:	
APPELLEES.	:	<u>ORDER</u>

This matter is before the Court on Appellant’s administrative appeal from the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to R.C. 4141.282. The Review Commission found that Carla J. Coleman (“Claimant”) was discharged from her employment with Wayside Farms Nursing and Rehabilitation Center (“Employer”) without just cause in connection with work.

Claimant was employed by Employer from January 4, 2013 until February 27, 2013 as a housekeeper. Claimant was previously employed with Employer in 2012. Claimant previously quit due to a move to a different state, however, she later relocated back to the area. Claimant submitted a new application with Employer in January 2013. She was hired pending the results of a background check. The background check revealed that she had a conviction for domestic violence menacing, a 4<sup>th</sup> degree misdemeanor under the Akron Municipal Code (AMC) 135.16(C) from 2009, which she had sealed in 2012.

Employer discharged Claimant, saying she was prohibited by state law to work at the nursing home pursuant to R.C. 3721.121 (C)(1) governing criminal records checks for direct care providers. The hearing officer found that AMC 135.16(C) is not a disqualifying offense (although R.C. 2919.25, Domestic Violence, is a disqualifying offense) and that Claimant’s position as a housekeeper was not a direct care position. Employer appeals from Review

Commission's decision that Claimant was discharged without just cause in connection with work. R.C. 4141.29(D)(2)(a). Employer asserts that the Review Commission's decision is arbitrary and unlawful.

"[A] reviewing court may reverse the [Commission's] determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207. The reviewing court is not permitted to make factual findings or determine witness credibility. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 Ohio B. 12, 482 N.E.2d 587. "If some competent, credible evidence supports the commission's decision, the reviewing court, whether a common pleas court or a court of appeals, must affirm." *Brooks v. Ohio Dept. of Job & Family Servs., 10th Dist. No. 08AP-414, 2009 Ohio 817*, ¶15. "On close cases, where the commission might reasonably decide either way, reviewing courts must leave undisturbed the commission's decision." *Id.*, citing *Irvine* at 18.

Pursuant to R.C. 4141.29(D)(2)(a), an individual is not eligible for unemployment compensation benefits if he or she has been "discharged for just cause in connection with the individual's work." The term "just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine* at 17, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). Further, "[f]ault on an employee's part is an essential component of a just-cause determination." *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011 Ohio 2897, ¶ 24, 951 N.E.2d 1031. "[T]he critical issue is not whether the employee has technically violated some company rule, but whether the employee by his actions [or inactions] demonstrated an unreasonable disregard for his employer's interests." *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004

Ohio 1061, ¶ 39, quoting *Piazza v. Ohio Bur. of Emp. Servs.*, 72 Ohio App.3d 353, 357, 594 N.E.2d 695 (8th Dist.1991).

In the case at bar, the Court finds that the Review Commission's decision is supported by some competent, credible evidence, and that its decision was not unreasonable or arbitrary or against the manifest weight of the evidence. It is undisputed that Claimant was not discharged for any acts or omissions which demonstrated an unreasonable disregard for her employer's interests. The sole issue is her eligibility to be employed by Employer.

R.C. 3721.121 explicitly disqualifies an individual that has been convicted of or pleaded guilty to R.C. 2919.25, or a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to that offense, from being a direct care provider. If the state lawmakers intended to expand R.C. 3721.121 to include the more expansive provisions of R.C. 2901.04 (C) which incorporates comparable municipal ordinances, they would have done so.

A direct care provider provides service to an older adult (over age 60) or group of older adults in one or more of the following ways: routine contact such as face to face, hands on physical assistance, verbal cuing, reminding, standing by or monitoring of activities, activity that routinely requires Claimant to be alone with older adults or to routinely have access to older adults' personal property or financial documents. OAC 3701-13-01. "Routinely" is the adverb form of "routine", which means, "a regular course of procedure" according to Merriam-Webster's online dictionary. After a careful review of the job description of housekeeper and the definition of a direct care provider, the Court cannot say that the Review Commission was unreasonable or arbitrary in finding that a housekeeper is not a direct care provider.

The Court finds that the Review Commission's findings are supported by some competent, credible evidence and that its decision was not unreasonable, arbitrary or against the manifest weight of the evidence. The findings of the Review Commission are AFFIRMED. IT IS SO ORDERED.

  
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JUDGE MARY MARGARET ROWLANDS

cc: Laurence Snyder, Esq.  
John Childs, Esq./Katherine Basch, Esq.  
Jerome T. Linnen, Esq.