

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

Arnetta Boham,

Appellant,

v.

JPMorgan Chase Bank, et al.,

Appellees.

LICKING COUNTY
COMMON PLEAS COURT

CASE NO. 13 CV 00970
2014 MAR 10 A 11: 27

FILED
GARY R WALTERS
JUDGMENT ENTRY

I. NATURE OF THE PROCEEDINGS

This matter is before the Court on appeal pursuant to R.C. 4141.282 from a decision of the Ohio Unemployment Compensation Review Commission issued September 25, 2013. For the reasons set forth below, the decision of the Commission is affirmed.

II. STANDARD OF REVIEW

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. 4141.282(H). “[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696 (1995). However, “[t]he board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Id.* at 697. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision.” *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

Judge
Thomas M. Marcelain
740-670-5777

Judge
W. David Branstool
740-670-5770

Courthouse
Newark, OH 43055

III. CONCLUSIONS OF LAW

Appellant was discharged from her employment with appellee, Chase, May 2, 2013. Appellant applied for unemployment compensation May 9, 2013. The Ohio Department of Job and Family Services (ODJFS) allowed appellant's claim, and on July 10, 2013 ODJFS issued a redetermination affirming the allowance. Chase timely appealed the redetermination July 30, 2013. Jurisdiction was transferred to the Unemployment Compensation Review Commission and a hearing was held August 23, 2013. Appellant did not appear for the hearing. August 26, 2013, the Hearing Officer issued a decision reversing the redetermination and finding that appellant had been discharged for just cause in connection with her work. Appellant requested review of the decision. Her request was disallowed September 25, 2013.

Appellant worked as an accountant for Chase from March 2004 until May 2013. The In 2012, appellant was given a written warning for unsatisfactory work performance and placed on a performance improvement plan. (Tr. at 9). Appellant was given another warning in 2013 for several performance errors including a failure to process an entry for \$729 million. *Id.* at 16. On April 30, 2013, appellant failed to process an \$839 million month end entry and failed to notify anyone else to post the entry. *Id.* at 13-14. Her error was discovered, and another employee posted the entry. *Id.* at 13. Appellant posted the entry she had failed to post April 30 on May 1 resulting in the entry being posted twice. *Id.* at 13-14. When asked by her supervisor about the incident she stated she had asked another employee to post it for her. *Id.* at 14-15. When asked why she then posted it the next day, she had no response. *Id.* at 15. The other employee denied that appellant had asked him to post the entry. *Id.* Appellant was terminated after this last incident. *Id.* at 14. There was no evidence

to contradict this testimony at the hearing since appellant did not appear. Based upon this evidence the Hearing Officer found that appellant had been discharged with just cause in connection with her work.

R.C. 4141.29(D)(2)(a) states that no individual shall be paid benefits if “[t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work....” Unemployment benefits exist to help those who find themselves unemployed through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39 (1980). “The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control.” *Tzangas* at 697. “Fault on the employee's part separates him from the Act's intent and the Act's protection.” *Id.* at 698. “That deficiency, which does not result from any outside economic factor, constitutes fault on the employee's behalf.” *Id.* at 698.

Appellant filed a letter with the Court January 10, 2014, but did not file a brief according to the briefing schedule. Appellee ODJFS filed a motion for judgment on the record as appellant had not filed a brief. Appellant then filed correspondence in response February 19, 2014. Neither of appellant's filings address the evidence presented at the hearing or the findings of the Hearing Officer set out above. There is nothing to contradict the evidence that appellant was discharged based upon her poor performance spanning a period longer than a year.

The burden of proof is upon the employee to prove his entitlement to unemployment compensation benefits under R.C. 4141.29(D)(2)(a). See *Irvine* at 18 and *Durgan v. Ohio Bur. of Emp. Serv.*, 110 Ohio App.3d 545, 550 (1996). A claimant must show he is “free from fault” for his termination. *Durgan* at 551.

Appellant has not demonstrated that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence.

IV. CONCLUSION

For the reasons set forth above, the decision of the Commission is AFFIRMED. Costs to appellant.

It is so ORDERED. There is no just cause for delay. This is a final appealable order.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



Thomas M. Marcelain, Judge

Copies to:

Alan Schwepe, Esq., Senior Assistant Attorney General, Health and Human Services
30 E. Broad St., 26th Flr., Columbus, OH 43215

Arnetta M. Boham, Defendant
158 Harbor View Heights, Thornville, OH 43076-8319

JPMorgan Chase Bank, N.A., Defendant
1111 Polaris Pkwy., Columbus, OH 43240