

JANEL M. HOYMAN

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SUMMIT COUNTY
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

BRIDGET MCCAFFERTY

Plaintiff-Appellee

-vs-

DR. JOHN M. KIM, ET AL.

Defendant-Appellant

) **CASE NO. CV-2013-04-2036**

) **JUDGE AMY CORRIGALL JONES**

) **ORDER**

) **Final and Appealable**

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This cause came before the Court upon the Administrative Appeal filed by Defendant-Appellant Dr. John M. Kim. This appeal is taken from the March 21, 2013 decision of the Unemployment Compensation Review Commission determining that McCafferty had been terminated for reasons not in connection with work.

Appellant Dr. John Kim employed McCafferty as a receptionist from June 2011 until November 29, 2012. Dr. Kim and McCafferty dispute whether McCafferty quit or was terminated. The briefing is complete and the issues raised by this administrative appeal are now deemed submitted. The procedural history is undisputed.

There is not dispute that McCafferty's last day of employment with Dr. Kim was on November 29, 2012. McCafferty filed an application for determination of benefits and on December 9, 2012, the Director of Ohio Department of Job and Family Services (ODJFS) issued an initial determination that McCafferty was discharged without just cause and allowed the application. Dr. Kim, Employer, filed a timely appeal and in a redetermination opinion issued on January 11, 2013, the Director affirmed the decision, holding that McCafferty was discharged from employment without just cause and allowed the application for benefits. In a decision mailed February 19, 2013, the Hearing Officer affirmed the Director's redetermination decision. The Hearing Officer determined that McCafferty had been

discharged from employment without just cause and was therefore eligible for unemployment compensation benefits. Appellant-Employer timely filed this appeal.

McCafferty testified that she had just finished training three new employees when Dr. Kim's wife met with her on November 29, 2012 after the other staff left for the day. TOP 12. McCafferty further testified that Dr. Kim's wife told her that she was no longer needed in the office. TOP 12. McCafferty was told that she was not fired, but that she was no longer needed in the office. TOP 12. McCafferty testified that she believed that she was terminated because she was the witness to an assault on two former staff members by Mrs. Kim which resulted in criminal charges against Mrs. Kim. TOP 14-15. On December 5, 2012, Dr. Kim mailed a letter to McCafferty stating that she had not been to work since November 29, 2012 and that if she did not respond by December 10, 2012 that the Employer would assume that McCafferty had quit her job.

The Hearing Officer determined:

The claimant has provided credible testimony that she was discharged on November 20, 2012 when she was informed that her services were no longer needed. Claimant has consistently maintained that she was discharged on that date and in fact filed her application for benefits on November 30, 2012. The facts fail to establish that claimant committed sufficient fault or misconduct to suspend her unemployment compensation benefits. The Director correctly held claimant was discharged by Dr. John M. Kim without just cause in connection with work.

Pursuant to R.C. 4141.282(H), this Court can reverse a just-cause decision of the Commission only "when the court finds that the decision of the Commission was unlawful, unreasonable, or against the manifest weight of the evidence." Lorain Cty. v. State of Ohio Unemployment Review Comm., 2007 Ohio 4347. This Court's review is limited and the Court is not permitted to make factual findings or determine the credibility of witnesses. Id., quoting Irvine v. State Unemployment Comp. Bd. of Rev. (1985), 19 Ohio St. 3d 15, 17-18.

On review of an employment dismissal, the appointing authority must demonstrate by a preponderance of the evidence that the allegations against the employee are true. State ex rel. Bispeck v. Board of Commrs. (1988), 37 Ohio St.3d 26, 28. Furthermore, this Court is not required to answer every assignment of error advanced by Appellant. Schira v. Stow (1990), 69 Ohio App.3d 841, 843-

844. "Rather, the common pleas court's inquiry is limited to whether the order of the commission is supported by the preponderance of substantial, reliable and probative evidence." Barker v. Kattelman (1993), 92 Ohio App.3d 56, 68.

The Hearing Officer determined that pursuant to R.C. 4141.29(D)(2)(a) an individual is not disqualified for benefits if the individual was discharged without just cause in connection with work.

The Hearing Officer supported his decision based McCafferty's testimony and the finding that the testimony and evidence presented by McCafferty was more credible than that presented by Dr. Kim.

In the case at bar, this Court has reviewed the transcript and record properly before it in this administrative appeal. Upon review, this Court finds that the decision of the Commission is supported by a preponderance of substantial, reliable and probative evidence, and is not unconstitutional, illegal, arbitrary, capricious, or unreasonable.

It is therefore the determination of this Court that the decision of the Hearing Officer is supported by a preponderance of substantial, reliable and probative evidence, and is not unconstitutional, illegal, arbitrary, capricious, or unreasonable.

IT IS ORDERED AND ADJUDGED this Administrative Appeal by the Appellant is DENIED.

This is a final and appealable order. There is no just cause for delay.



JUDGE AMY CORRIGALL JONES