



D106169064

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
MAY 08 2014

MICHAEL HARRIS, JR.,

: Case No. A 1307345

Appellant,

:

vs.

: Judge Robert C. Winkler

TALBERT HOUSE, INC., et al.

:

**ENTRY ADOPTING THE
MAGISTRATE'S DECISION**

Appellees.

:

:

Pursuant to Civil Rule 53(E)(4), the Court hereby adopts the Decision of the Magistrate entered in the above-captioned case on April 16, 2014. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

JUDGE ROBERT C. WINKLER

MAGISTRATE

MAY 07 2014

HAS SEEN

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MICHAEL HARRIS, JR.,

Appellant,

vs.

TALBERT HOUSE, INC., et al.

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: Case No. A 1307345

: Judge Robert C. Winkler

: Magistrate Michael L. Bachman

: **MAGISTRATE'S DECISION**



D105909317

RENDERED THIS 15TH DAY OF APRIL, 2014

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying Michael Harris, Jr.'s ("Appellant") claim for unemployment benefits on the basis that he was discharged with just cause. This appeal, filed pursuant to R.C. 4141.282, was taken under submission upon the conclusion of oral arguments made before the Common Pleas Magistrate.

BACKGROUND

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued an initial Determination allowing the Appellant's application for benefits. Talbert House, Inc. ("Talbert House") timely appealed the Determination and ODJFS issued a Redetermination affirming the Determination. The Appellee filed an appeal from the Redetermination and ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The Hearing Officer reversed the Redetermination, and denied the Appellant's claim for unemployment benefits finding that the Appellant was fired for just cause due to an inappropriate reaction to disciplinary measures taken by Talbert House. The Appellant requested further review of his claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision. The case was referred to the Magistrate.

STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. *Id.* The reviewing court must follow this same standard in assessing just cause determinations. *Irvine v. Unemp. Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). The determination of factual questions and the evaluation of witnesses' credibility is the responsibility of the Hearing Officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this Court. *Tzangas, Plakas, and Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995).

DISCUSSION

The Hearing Officer found the following Finding of Facts.

The claimant was employed by Talbert House, Inc. from October 16, 2012 through June 4, 2013. He last served as a food service specialist.

On May 31, 2013, claimant was concerned that Talbert House, Inc. food service specialist Renika Johnson had allowed a client to put brown sugar and cinnamon in grits that were on the employer's breakfast serving line. Claimant noted his concern to Talbert House, Inc. operational lead worker Michelle Hill. Claimant's comments regarding his concern were overheard by other staff as well as clients of Talbert House, Inc.

Ms. Hill felt that the manner in which claimant addressed his concern with Ms. Johnson was in appropriate and later that day, she instructed claimant to leave the workplace for the day. Claimant did not initially comply with Ms. Hill's instruction and he noted in a loud voice, "Why is she even speaking to me?" When the employer's security staff began to intervene, claimant left the workplace as initially instructed.

On June 4, 2013, claimant was called to a meeting with the employer's supervisory staff regarding his actions on May 31, 2013. Claimant shouted during the meeting with the employer's supervisory staff.

Claimant's supervisors felt that claimant's conduct on May 31, 2013 and June 4, 2013 was inappropriate and should lead to his discharge. He was discharged by Talbert House, Inc. on June 4, 2013.

The Court has reviewed the record provided by the Review Commission, the brief of ODJFS and the filings of the Appellant. The Appellant contends that he was not profane or violent when he communicated with Michelle Hill and other supervisors. The witness for Talbert House, Michelle Hill ("Hill"), testified that the Appellant had been addressed previously for his temperament. (Tr. p. 10). Ms. Hill and other supervisors believed that the Appellant should be removed from

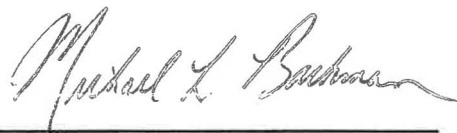
the facility because the last incident occurred in front of clients and because Renika Johnson expressed discomfort. (Tr. p. 12).

ODJFS contends that the Appellant was discharged for just cause as the Appellant's actions demonstrated an unreasonable disregard for the employer's best interest. ODJFS relying on *Williams v. Ohio Dep't of Job & Family Serv.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 24, argues that the Appellant is at fault for his discharge and therefore should not be entitled to unemployment benefits.

After reviewing the entire record and arguments of the parties, the court cannot find that the facts as expressed by the hearing officer are not supported by the record. The Hearing Officer held that the Appellant was discharged for just cause. The Court agrees with the Hearing Officer's conclusion.

DECISION

The decision of the Review Commission denying the Appellant unemployment compensation benefits is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight of the evidence.



**MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 4/16

Deputy Clerk: [Signature]