

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

KAREN E. SCOTT,

APPELLANT,

vs.

DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES

APPELLEE

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CASE NUMBER 13CV12147

JUDGE CAIN

DECISION TO AFFIRM
AND
JUDGMENT ENTRY

CAIN, J.

This is an administrative appeal from an adjudication order issued by the Unemployment Compensation Review Commission on October 9, 2013 denying review of its hearing officer's August 26, 2013 decision denying appellant's request for unemployment compensation. The commission's operative decision at the review level found that appellant's employment was terminated for just cause in connection with her work. Appellant was thus disqualified from receiving benefits for the entire duration of her unemployment in accordance with R.C. 4141.29(D)(2)(a), which provides:

- (D) Notwithstanding division (A) of this section, no Individual may serve a waiting period or be paid benefits under the following conditions:
 - (2) For the duration of the individual's unemployment if the administrator finds that:
 - (a) The individual quit work without just cause or has been discharged for just cause in connection with

the individual's work . . .

A review of the record on appeal reveals appellant was employed by Susan Garner Eisenman in the capacity of being a paralegal and personal assistant. Appellant was employed by appellee Eisenman from May 24, 2006 to October 22, 2013. In August 2012, job performance issues of a duration of about 6 – 7 months were noted by appellee and brought to the attention of appellant. Following that, improvement was not noted and appellant was discharged in October 2013. Appellant disputes that she was discharged for just cause.

In reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court may reverse the Commission's decision only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. § 4141.282(H). Otherwise, the Court must affirm such decision. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, at 696. Reviewing courts should defer to the Commission's findings regarding the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

Although a reviewing court may not make factual findings or determine the credibility of witnesses, it has the duty of determining whether the evidence in the record supports the administrative agency's decision. *Tzangas*, supra at 696. The court may not reverse the decision of the agency, however, simply because it interprets the evidence differently than did the agency. *Angelkovski*, supra at 161.

The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the agency's decision. *Tzangas*, supra.

In the instant action, and when considering the issue of whether the discharge of appellant was for just cause, the consideration must focus on the reason the employment relationship was brought to a conclusion. "The term 'just cause' has not been clearly defined in our case law. We are in agreement with one of our appellate courts that 'there is, of course, not a slide-rule definition of just cause.' Essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12.

Essentially, appellant contends the evidence does not support the conclusions reached by the hearing officer, including the finding that appellant was discharged for just cause in connection with her work. In addition to having the responsibility of providing a fair hearing, a function of the hearing officer is to receive the evidence, consider it and draw from it reasonable conclusions consistent with the quality of the evidence presented.

On appeal, appellant raises three issues she contends merit a disaffirmance of the unemployment review commission's supporting the finding of a discharge for just cause. First, appellant contends the hearing officer's decision was against the manifest weight of the evidence because the decision did not address appellee Eisenman's original contention that appellant had embezzled

funds from her. As appellant acknowledges, however, the claim that appellant was embezzling was dropped or abandoned by appellant during the course of the hearing before the hearing officer. As a consequence, the hearing officer proceeded rationally and withheld comment in his decision concerning the forsaken claim of embezzlement. No error is found concerning appellant's first issue on appeal.

Next, appellant contends the decision on appeal was unlawful, unreasonable and against the manifest weight of the evidence because the employer did not make known her expectations of appellant at the time of her hiring. Here, appellant focuses particularly on appellee's IOLTA trust account. She claims it was not made known to her at the commencement of her employment that she would be responsible for appellee's IOLTA account.

On this issue *Roberts Elec. Constr. Co. v. Quinichett*, 2012 Ohio 1156, 2012 Ohio App. LEXIS 1021 (Ohio Ct. App., Franklin County Mar. 20, 2012) is instructive. There it is noted:

An employee's "[u]nsuitability for a position constitutes fault sufficient to support a just-cause discharge." *Williams [v. Ohio Dept. of Job & Family Servs.]*, 129 Ohio St. 3d 332, 2011 Ohio 2897] at ¶ 24. An employer may find an employee unsuitable for the required work and, therefore, to be at fault, when the following factors are present: (1) the employee does not perform the required work; (2) the employer informed the employee of its expectations at the time of hiring; (3) the expectations were reasonable; and (4) the requirements of the job did not change substantially from the date of the original hiring. *Id.*; *Tzangas, [Plakas & Mannos v. Ohio Bur. of Emp. Servs.]*, 73 Ohio St.3d 694, 697-98, 1995 Ohio 206, 653 N.E.2d 1207 (1995)].at paragraph four of the syllabus.

Concerning the first enumerated criterion, (that the employee does not perform the required work), there exists ample evidence in the record that support the conclusion that appellant's work product was substandard. In fact, appellant was placed on probation and was instructed on what she needed to do to improve in identified areas of concern. The evidence in the record is that the necessary improvement was not forthcoming.

Concerning the issues of whether the employer informed the employee of its expectations at the time of hiring and whether the expectations were reasonable it is clear that appellant knew her job of being responsible for office clerical and paralegal work in a small law office. Appellant was employed by appellee Eisenman in the small law office operation for six years. Undoubtedly the duties appellant was called upon to perform in such a setting were well known to her and were reasonable.

Last, (that the requirements of the job did not change substantially from the date of the original hiring and the requirements of the job changed) appellant specifically notes her admitted difficulty in handling appellant's IOLTA account. It is well known that when performing as a paralegal and personal assistant in a very small law office, one is called upon to perform numerous tasks. From that perspective, keeping track of interest earned on the attorney's trust account and dealing with it as required does not add an entirely novel dimension to appellant's job responsibilities. In other words, a finding that the requirements of the job did not change substantially from the date of the original hiring is supported in the record.

Concomitant with the difficulties appellant had with the IOLTA account, the evidence supports a finding that appellant's performance was deficient in other facets of the job. Shortcomings were demonstrated with regard the preparation of pleadings, timely assuring file preparation for trial or hearing, not being attentive to making certain attachments to legal filings, and failure to make sufficient inquiry into a court maintained registry.

It must be recalled the claimant has the burden of proving her entitlement to unemployment compensation benefits under Ohio Rev. Code Ann. §4141.29(D)(2)(a). In that regard, R.C. 4141.46 mandates that the Unemployment Compensation Act be liberally construed. See also *Abate v. Wheeling-Pittsburgh Steel Corp.* (1998), 126 Ohio App.3d 742, 748. The purpose of the Act is to provide financial assistance to those without employment through no fault of their own. *Irvine*, supra. Here, it was demonstrated that appellant displayed ample shortcomings that survived warnings and probation.

Upon a full consideration, this court finds the subject adjudication order is not unlawful, unreasonable, or against the manifest weight of the evidence. It is therefore affirmed.

David E. Cain, Judge

Addendum

Appellee Eisenman has filed a motion to strike appellant's reply brief. The court will not strike the entire brief. The court has, however, refused to consider references in the reply brief that were outside the composition of the record on appeal.

Franklin County Court of Common Pleas

Date: 05-12-2014

Case Title: KAREN E SCOTT -VS- SUSAN G EISENMAN ET AL

Case Number: 13CV012147

Type: DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 13CV012147

Case Style: KAREN E SCOTT -VS- SUSAN G EISENMAN ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes