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MARGIE HUNTER
CLERK OF COURT
ALLEN COUNTY, OHIO

IN THE COMMON PLEAS COURT OF ALLEN COUNTY, OHIO

JAMES D. BASINGER : CASE NO.: CV2013 0796

Appellant,

JUDGE CHENEY

v.

**FINAL ORDER ON APPEAL OF
ADMINISTRATIVE DECISION**

NIPPON EXPRESS U.S.A.,
Et al.,

Appellees

This matter is before the Court for consideration of Plaintiff/Appellant, James Basinger's, Notice of Appeal filed on November 15, 2013 and brief filed on March 14, 2014. Defendant/Appellee, Nippon Express U.S.A., Inc, filed its Brief in Opposition on April 23, 2014. The subject Motion shall be treated as an administrative appeal pursuant to Local Rule 5. Upon consideration of the same, the Court **DENIES** Appellant's Motion.

FACTS

The relevant facts are not disputed by the parties. Appellant, James A. Basinger, was an employee of Appellee, Nippon Express U.S.A. from November 13, 2012 to March 13, 2013. Mr. Basinger was a senior account executive for Nippon. His position required considerable travel, for which he used a company vehicle. After an at-fault

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accident involving alcohol totaled Mr. Basinger's company vehicle, he began to use his personal vehicle which was in poor condition for travel related to his employment. During this time, Appellant's supervisor requested a new vehicle for his use in accordance with the Nippon Express asset procurement policy. Mr. Basinger made the poor condition of his vehicle apparent to Nippon, and was informed by Nippon Express supervisors that in the event of his personal vehicle ceasing to operate the company would acquire a rental car for his use. Mr. Basinger's vehicle became inoperable on March 1, 2013. For three consecutive days, beginning March 11, 2013, Mr. Basinger did not report to work and failed to notify his employer of the state of his car or of his absence. As such, Mr. Basinger's no call/no show was taken by the employer to be a voluntary termination of employment by the employee in accordance with company policy.

On April 10, 2013, following his departure from the company Mr. Basinger applied for unemployment benefits. Initially, on June 19, 2013, the Ohio Department of Job and Family Services allowed his application for benefits. In response, Nippon filed an appeal on August 19, 2013. Notice that the ODJFS had transferred the appeal to the Unemployment Compensation Review Commission was issued on August 21, 2013. Notice was then issued that a telephone hearing would be conducted by the Commission on September 5, 2013. Following the hearing, on September 10, 2013, the Commission issued a decision determining that Mr. Basinger quit without just cause and as such was not entitled to unemployment benefits.

On September 26, 2013, Mr. Basinger filed a request for review to the Commission from the Hearing Officer's Decision; a decision disallowing this request was later issued on October 16, 2013.

STANDARD OF REVIEW

In accordance with R.C. 2506.01, "every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may reviewed by the court of common pleas". In reviewing an appeal of a Review Commission Decision , "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). *See also Bernard v. Unemp. Comp. Rev. Comm.*, 136 Ohio St.3d 264, 2013-Ohio-3121, 994 N.E.2d 437. The court may not blatantly substitute its judgment for that of the Review Commission, particularly in areas of administrative expertise. Additionally, "judgments [of the Review Commission] supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Yuhasz v. Mrdenovich*, 82 Ohio App.3d 490, 492, 612 N.E.2d 763, 764-65 (9th Dist.1992). *See also, Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 10 OBR 408, 410-411, 461 N.E.2d 1273, 1276; *Chemical Bank of New York v. Neman* (1990), 52 Ohio St.3d 204, 207-208, 556 N.E.2d 490, 493-495; *Vogel v. Wells* (1991), 57 Ohio St.3d 91, 96, 566 N.E.2d 154, 159.

ANALYSIS

Appellant asserts that he acted reasonably and with just cause in terminating his employment given Appellee's failure to provide him with a company vehicle, constituting a material breach of the employment agreement. As such, he argues that he

should be allowed application for determination of benefit rights. This Court does not agree.

At issue in this case is whether Appellant was denied benefits on the basis that he terminated employment without just cause under 4141.29(D)(2)(a) which states:

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

“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. State Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587, 589 quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751 [73 O.O.2d 8].

The legal standard that determines whether a quit is with just cause is whether the claimant acted as an ordinary person would have under similar circumstances.

Appellant argues that he acted as an ordinary intelligent person would have had they not been provided with a company vehicle to perform his job. However, this is not the case. “While claimant’s transportation problems may have caused him to quit, he failed to reasonably address his concerns with management prior to quitting” (Hearing Officer Decision, September 9, 2013).

[G]enerally[,] employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore will

not be entitled to unemployment benefits.” *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006-Ohio-2313, 853 N.E.2d 335 quoting *DiGiannantoni v. Wedgewater Animal Hosp., Inc.* (1996), 109 Ohio App.3d 300, 307, 671 N.E.2d 1378.

It is undisputed that Appellant made inquiries regarding the acquisition a company vehicle. Aware of the lack of company transportation and poor condition of Appellant’s personal vehicle employer had made reasonable efforts to solve this problem by following the standard company procedure for acquiring a new company vehicle for Appellant. Additionally, providing him with a gas card, and reimbursing him on mileage. TR 19-21.

However, Appellant failed to notify his employer when his personal vehicle ceased to operate resulting in his three consecutive day absence from work. As such, Appellant failed to give the employer the opportunity to resolve the issue prior to his terminating employment. As indicated by the record, had the employer been notified of this, a rental car could have been secured for Mr. Basinger. TR 22-23. Without proper notification the employer had no reason to procure a rental vehicle. In addition, this Court must note that Appellant had the means to notify his employer. He was provided with a working company smartphone and laptop, both of which would have enabled him to notify his employer of both the state of his personal vehicle and of his forthcoming absence from work. TR 14. As such, due to his failure to provide proper notice to his employer Appellant terminated employment without just cause and, therefore will not be entitled to unemployment benefits.

CONCLUSION

Upon consideration of the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the decision and ordered, and the conclusions of fact made by the Unemployment Compensation Review Commission. The Court finds that the decision and order of the Unemployment Compensation Review Commission is not unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, probative evidence on the whole record. Therefore, the decision and order of the Unemployment Compensation Review Commission is **AFFIRMED**.

IT IS SO ORDERED.



JUDGE DAVID A. CHENEY

Dated: 5-30-14

CC:

Andrea M. Brown

Eric A. Baum

Unemployment Compensation Review Commission

The Clerk of this Court shall forward a file stamped copy of this Judgment Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and checked as costs.