IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

JOHN DENICOLA	)	**CASE NO. 14CV000038**
	)	
Plaintiff-Appellant	)	
	)	
vs	)	**JUDGMENT ENTRY**
	)	
API PATTERN WORKS, et al.	)	
	)	
Defendants-Appellees	)	

This date, to wit: June 16, 2014, the within cause came on for consideration upon the following:

1. Appellant's Brief, filed March 19, 2014;
2. Brief of Appellee API Pattern Works, filed April 30, 2014;
3. Brief of Appellee, Director, Ohio Department of Job and Family Services., filed May 2, 2014

This action involves the Appeal of Appellant John DeNicola ("Appellant"), pursuant to R.C. 4141.282, of the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission"), disallowing Appellant's request for review of the Hearing Officer's decision that Appellant quit his employment without just cause.

Appellant was employed by API Pattern Works ("API") from November 29, 2004 through July 25, 2013, as a machine injector technician. Appellant left his employment during the middle of his shift on July 25, 2013. Appellant has asserted that he was fired without just cause, while API alleges that Appellant quit without just cause. Following the termination of his employment, Appellant filed an application for unemployment compensation benefits with the Ohio Department of Job and Family Services ("ODJFS"), and on August 16, 2013, ODJFS issued an initial determination denying the claim on the grounds that Appellant was discharged with just cause under R.C.

4141.29(D)(2)(a). Appellant filed an appeal, and on September 23, 2013, ODJFS issued a redetermination affirming the denial of benefits. Appellant then appealed the redetermination and ODJFS transferred jurisdiction to the Review Commission. On October 29, 2013, a hearing was held before a Hearing Officer, who modified the Director's Redetermination and concluded that Appellant quit his employment without just cause. The Review Commission disallowed Appellant's Request for Review, and Appellant timely filed the instant appeal.

Appellant's sole argument, in his pro se Brief, states that API submitted perjured testimony which "interrupted the due process rights of [A]ppellant."

In its Brief, ODJFS asserts that the decision of the Hearing Officer concluding that Appellant quit without just cause, is not unlawful, unreasonable, or against the manifest weight of the evidence under R.C. 4141.282(H). ODJFS argues that evidence in the record demonstrates that Appellant engaged in an insubordinate verbal altercation with his supervisor, Scott Jenne, and quit his employment after Appellant was informed that he was not permitted to watch a video on his DVD player at his work station, in violation of API's safety policy. ODJFS also notes that Appellant was never advised by API that his employment was terminated; rather Appellant abruptly quit his employment on July 25, 2013. Accordingly, ODJFS requests that the decision of the Review Commission be affirmed.

API filed a Brief incorporating the facts and arguments propounded by ODJFS.

Upon review, the Court finds Appellant's appeal not well taken. R.C. 4141.282(H) governs the scope of review of unemployment compensation appeals and provides in pertinent part:

> 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.

The Eleventh District Court of Appeals has stated that unemployment compensation appeals provide "the least opportunity for a reviewing court to weigh and assess evidence and credibility of witnesses of any R.C. Chapter 119 administrative

proceeding." *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103, 108, 705 N.E.2d 703 (11th Dist. 1997). The fact that reasonable minds might reach different conclusions is not a basis for reversal of the board's decision. Id., citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). "Where the board might reasonably decide either way, the courts have no authority to upset the board's decision." (Citations omitted.) *Ashtabula v. Rivas*, 11th Dist. No. 2011-A-0020, 2012-Ohio-865, ¶ 16.

The statutory interpretation of just cause "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Review Board*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), citing *Payton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975). Just cause determinations in the unemployment compensation context must be consistent with the legislative purpose underlying the Unemployment Compensation Act. "The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980). "When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament." *Rivas* at ¶ 20.

At the hearing, Appellant testified as follows: On July 25, 2013, Appellant was watching a video on a small DVD player at his work station during his break from 6:00 to 6:10 p.m. After the break concluded, he closed the screen "a little bit" so it was not visible, but he could listen to the video using headphones. The Second Shift Lead, Brandon Leonhardt ("Leonhardt"), approached Appellant, telling him to "close [the DVD player] all the way or go home," whereupon Appellant informed Leonhardt that he was quitting for the day and going home. A short time later, Leonhardt told Appellant that Scott Jenne ("Jenne"), the Injection Supervisor who had left for the day, was returning to the plant. When Jenne arrived, he angrily confronted Appellant and told him to sign a paper acknowledging that he was quitting voluntarily. Appellant refused to sign the form and said that he was not voluntarily quitting his job. Jenne swore at him and

shoved him while trying to grab the form, after which, Appellant ripped up the paper and placed it in his pocket because he had no intention of voluntarily quitting. Jenne continued to yell and swear at Appellant until he left the plant.

Conversely, Jenne testified that Leonhardt telephoned him after Jenne left work on July 25, 2013, to ask if Appellant was permitted to watch a DVD at his work station. Jenne told Leonhardt that Appellant was required to put away the DVD player, or he could leave for the day, and they would discuss the matter the next day. Jenne returned to API after Leonhardt called him a second time to inform him that Appellant refused to comply. When Jenne entered the plant, Leonhardt told him that Appellant had stated he was quitting. Jenne retrieved a company termination form and asked Appellant if he was quitting because he was not allowed to watch his DVD player at the machine press. Appellant replied, "[y]es, Scott I quit." After asking Appellant a second time if he wanted to quit over this issue, Appellant responded affirmatively, and Jenne presented him with the termination paper to sign. Appellant began to sign the form and then stopped and ripped it up directly in front of Jenne's face. Jenne asked Appellant to leave the property, whereupon Appellant responded with threatening and profane language, challenging Jenne to step outside to handle the matter "like men." After Appellant's threats and abusive language continued, Jenne informed Appellant that he would call the police if Appellant did not leave the premises, and Appellant eventually left.

Second Shift Lead Leonhardt also testified at the hearing. Although he was not physically close enough to hear much of the conversation between Appellant and Jenne, he stated that he could see the two men and did not see any physical contact at all between them. Additionally, Leonhardt testified that Appellant could not have intended to quit just for the day when he stated he was quitting, because Leonhardt had already told Appellant to go home for the day, prior to Appellant announcing that he was quitting.

The Review Commission found that (1) Appellant was insubordinate by blatantly refusing to close his DVD player when instructed to do so; (2) Appellant said "yes" when Jenne specifically asked him if he wanted to quit over a DVD player; and (3) Appellant

decided to quit his employment rather than follow API's reasonable instructions. Accordingly, the Review Commission concluded that Appellant quit without just cause.

After due consideration of the record in this case, the Court finds that the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence. "Concerning the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence, the reviewing court should defer to the Board of Review's findings." *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103, 109, 705 N.E.2d 703 (11th Dist. 1997). Since the Review Commission's decision is supported by evidence in the record, the Court finds that the decision ought to be affirmed pursuant to R.C. 4141.282(H).

WHEREFORE, it is the order of this Court that the decision of the Unemployment Compensation Review Commission finding that Appellant John DeNicola quit his employment from API Pattern Works, without just cause, is hereby affirmed. Appellant to pay court costs.

IT IS SO ORDERED.

JOSEPH GIBSON, JUDGE

Copies to:
John DeNicola, pro se.
Patrick MacQueeney, Asst. Atty. Gen.
Bruce I. Mielziner, Esq.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R.58 (B)