

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

BRIAN R SHACKELFORD,

CASE NO.: 2013 CV 07409

Appellant,

JUDGE STEVEN K. DANKOF

-vs-

SAMPLE MACHINING INC. et al,

**ENTRY AFFIRMING DECISION OF
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION DENYING
BENEFITS**

Appellees.

This matter is before the Court on Appellant's December 4, 2013 Notice of Administrative Appeal pursuant to Revised Code § 4141.282.

On January 6, 2014, the Unemployment Compensation Review Commission ("Commission") filed the Certified Transcript of the Record of the Proceedings. Pursuant to the Court's January 10, 2014 Briefing Schedule, Appellant filed his Brief ("Appellant's Brief") on February 18, 2014. On March 17, 2014, Appellee Ohio Department of Job & Family Services ("ODJFS") filed its Response ("ODJFS Response"). On March 31, 2014, Appellant filed his Reply to the ODJFS Response ("Appellant's Reply").

For the following reasons, the Court **AFFIRMS** the decision denying benefits issued by the Commission.

I. Procedural Posture

Appellant was discharged by his employer on June 12, 2013. On June 13, 2013, Appellant applied for unemployment compensation. On July 3, 2013, the Office of Unemployment Compensation issued its initial determination denying Appellant's application. Following Appellant's appeal of the decision, the Office of Unemployment Compensation, on July 19, 2013, affirmed its initial determination. Thereafter, Appellant appealed to the Commission. On August 30, 2013, the Hearing Officer conducted a telephone

hearing during which Pam Cummings, the human resources representative for Appellant's former employer ("Ms. Cummings"), Richard Hartley, an employee of Appellant's former employer who witnessed some of the events at issue in this appeal ("Mr. Hartley"), and Appellant testified.

On September 5, 2013, the Hearing Officer issued his decision affirming the denial of unemployment benefits, finding that Appellant was fired for just cause and therefore ineligible for benefits. Again, Appellant timely appealed the Hearing Officer's decision, and, on November 6, 2013, the Commission affirmed the Hearing Officer's decision. This appeal followed.

II. Law

Revised Code § 4141.282 provides that any interested party may appeal a final decision of the Commission to the court of common pleas within 30 days of the issuance of the decision.¹ For an employee appellant who resides in or was last employed in Ohio, the appeal shall be filed in the county where the appellant resides or was last employed.² Upon notice of appeal, the Commission must file, within 45 days, a certified transcript of the record of the proceedings.³ Thereafter, the court

"shall hear the appeal on the certified record provided by the [C]ommission. If the court finds that the decision of the [C]ommission 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 [C]ommission."⁴

"[A] reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if *some* competent, credible evidence in the record supports it."⁵ "In other words, a reviewing court *may not* reverse the commission's decision simply because '*reasonable minds might reach different conclusions.*'"⁶

Pursuant to § 4141.29(D)(2)(a), an individual is not eligible for unemployment benefits "if the director finds that . . . [t]he individual . . . [was] discharged for just cause in connection with the individual's

¹ § 4141.282(A).

² § 4141.282(B).

³ § 4141.282(F).

⁴ § 4141.282(G)(emphasis added).

⁵ *Folck v. Patton*, 2014 Ohio 2304 at ¶ 23 (2nd Dist. Ohio Ct. App. Clark County May 30, 2014)(quoting *Irvine v. Enemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985); emphasis added).

⁶ *Id.* (quoting *Irvine*, 19 Ohio St. 3d at 18)(emphasis added).

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.”⁷

III. Analysis

As an initial matter, Appellant is a resident of Montgomery County, Ohio, and the appeal was timely filed. Further, the Commission timely filed the certified transcript. Thus, the only remaining consideration for the Court is whether the Commission’s decision was based on *some* competent, credible evidence in the record.

The Hearing Officer made the following findings of fact:

“[Appellant] was employed by Sample Machining Inc. from September 10, 2012 through June 12, 2013. [Appellant] last served as a machine operator for the employer. The employer manufactures aerospace parts. [Appellant] reported to David Calmes, plant manager.

On June 12, 2013, [Appellant] approached Mr. Calmes following a staff meeting and informed him that he felt singled out during the meeting when Mr. Calmes informed staff that they needed to be ready to work at their starting time. Mr. Calmes raised his voice during the exchange and informed [Appellant] that he disagreed that the [Appellant] was on time.

Following the exchange, [Appellant] met with Ms. Cummings in her office to report that he believed Mr. Calmes had treated him in an unprofessional manner. During the meeting [Appellant] raised his voice and was asked to calm down. He reported that he could not ‘tolerate looking at Mr. Calmes’ [f***ing] face’ and had difficulty working with Mr. Calmes. Ms. Cummings suggested a transfer to second shift and [Appellant] raised his voice stating it was unfair he would have to move. [Appellant] stated that the situation was ‘bull’ and pointed his finger during the exchange. [Appellant] was then asked to clock out at which time he made statement [sic] to the affect [sic] that he was ‘mad as hell and a grown [*ss] man.’ [Appellant] eventually clocked out as directed. [Appellant]’s tirade was heard by members of upper management including the president.

Later in the day, Ms. Cummings contacted [Appellant] and informed him he had been discharged. The employer concluded that [Appellant] created a hostile work environment. [Appellant] denies the allegations and contends he was calm and professional during the meeting.”⁸

The issue before the Commission was whether appellant was discharged for just cause in connection with work.⁹ The Hearing Officer reasoned that “[t]he employer . . . provided credible testimony that [Appellant] behaved unprofessionally in a meeting with the human resources manager on June 12, 2013.”¹⁰ Further, the Hearing Officer reasoned that Appellant’s refusal to calm down, use of profanity, and refusal to “look at the plant manager” constituted (1) actions an employer should not reasonably expect and (2) fault in

⁷ *Id.* at ¶ 22 (quoting *Irvine*, 19 Ohio St. 3d at 17).

⁸ September 5, 2013 Decision of Hearing Officer.

⁹ *Id.*

¹⁰ *Id.*

connection with work. Thus, the Hearing Officer determined that Appellant was terminated for just cause and ineligible for benefits.

The Court has reviewed the August 30, 2013 Hearing transcript and finds that the Hearing Officer's findings and conclusions are clearly supported by the record. Appellant's Brief and Reply do nothing more than take issue with factual determinations made by the Hearing Officer. It is not for this Court to weigh the credibility of the witnesses. Indeed, the Hearing Officer's factual findings are based largely on the Hearing Officer's crediting of one witness over another – precisely the sort of determination which must be left by this Court to the Hearing Officer.

And, in the end, the Hearing Officer's determination that Appellant was terminated for just cause is supported by some competent, credible evidence in the record.

IV. Conclusion

Based upon the foregoing, the Court finds that the Commission's decision was supported by some competent, credible evidence in the record and thus hereby **AFFIRMS** the Commission's decision denying unemployment compensation benefits to Appellant.

SO ORDERED:

JUDGE STEVEN K. DANKOF

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Case Number: 2013 CV 07409
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So Ordered