

DANIEL M. HORRIGAN

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SUMMIT COUNTY  
CLERK OF COURTS IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

<b>DALE SUNDERLAND</b>	)	<b>CASE NO. CV 2014-01-0006</b>
	)	
<b>Appellant</b>	)	<b>JUDGE MCCARTY</b>
	)	
<b>-vs-</b>	)	
	)	
	)	<b><u>ORDER</u></b>
<b>STATE OF OHIO UNEMPLOYMENT</b>	)	
<b>COMPENSATION REVIEW,</b>	)	
<b>COMMISSION, <i>ET AL</i></b>	)	
	)	
<b>Appellees</b>	)	

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On April 15, 2014, the Plaintiff-Appellant, Donald Sunderland (“Mr. Sunderland”), filed this administrative appeal from the decision of the Ohio Unemployment Compensation Review Commission. Mr. Sunderland brought the case against Appellees State of Ohio Unemployment Compensation Review Commission; Director, Ohio Department of Job and Family Services (“ODJFS”); and Northern Health Facilities, Inc.

The transcript of proceedings was filed on February 11, 2014. The parties stipulated to a briefing schedule. The issues raised by this administrative appeal are now deemed submitted.

**FACTUAL BACKGROUND**

Mr. Sunderland worked as a LPN for Appellee Northern Health Facilities, Inc. (“The Nursing Home, from October 2011 until his discharge on July 8, 2013. Upon being hired, Mr. Sunderland signed a receipt of acknowledgement of the employee handbook. Included in the

handbook are policies for conduct and a description of conduct that will result in disciplinary action or dismissal. Mr. Sunderland was transferred from working with the typical resident population to the unit for Alzheimers, dementia, and behavioral patients. Mr. Sunderland was trained several times a year in proper procedures for dealing with this population of residents. This training included residents' rights.

On June 30, 2013, Mr. Sunderland was observed "pushing a resident from behind to help the resident exit a room with some force." He was also observed calling the same or a different resident a "nitwit." The witness, a Human Resources Director who worked for Appellee, also observed Mr. Sunderland grab the resident by the shirt. Two other employees witnessed this behavior. Mr. Sunderland was subsequently suspended pending an investigation. The investigation determined that Sunderland had committed two violations of Class 3 conduct, dischargeable offenses, as described by the employee handbook. These included verbal abuse of a resident and a serious violation of residents' rights. As such, Mr. Sunderland was discharged.

On July 30, 2013, Appellee Director issued an initial determination denying unemployment compensation and disallowing Mr. Sunderland's application for benefits, holding that Mr. Sunderland was discharged for just cause. Mr. Sunderland appealed. On September 4, 2013, the Director affirmed the previous denial. Mr. Sunderland again appealed. Appellee Director transferred jurisdiction to the Review Commission pursuant to R.C. 4141.281(B). The Review Commission Hearing Officer ("Hearing Officer") conducted two telephonic hearings on October 2 and October 24, 2013. On October 29, the decision to deny the unemployment compensation was affirmed and the Hearing Officer held that Mr. Sunderland was discharged for just cause. Mr. Sunderland requested further review by the Review Commission, which was

disallowed on December 4, 2013. Mr. Sunderland then appealed to this court seeking reversal of the denial of unemployment compensation benefits.

The issue central to this administrative appeal is whether Mr. Sunderland was discharged from his employer for just cause. Mr. Sunderland contends that the incidents that transpired on June 30, 2013 did not include physical force and that he simply called the resident a nitwit. Mr. Sunderland argues that nitwit does not constitute verbal abuse, particularly in the context in which he claims to have used it. Mr. Sunderland further contends that because no physical altercation occurred, no violation of resident rights occurred. Moreover, Mr. Sunderland argues that the Hearing Officer improperly used a prior incident as a basis for finding just cause.

ODJFS contends that the evidence in the record supports the Hearing Officer's decision. Specifically, that the Hearing Officer was correct in finding that Mr. Sunderland was discharged with just cause. ODJFS maintains that the decision was correct because the record reflects that Appellee Northern Health Facilities, Inc. made a determination that the conduct amounted to verbal abuse and a serious violation of residents' rights, which are specifically classified in the employee handbook as dischargeable offenses, and as such was required to report the incident to the Ohio Department of Health.

### **LAW & ANALYSIS**

The role of the Court of Common Pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the Court is limited to a

determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

After a thorough review of the record, the Court finds that there was competent, credible evidence to support the Hearing Officer's conclusions. There are sufficient grounds in the record to support this finding in spite of the Hearing Officer's alleged improper consideration of a prior employment incident involving Mr. Sunderland. The record reflects that Mr. Sunderland shoved a resident and called a resident a nitwit. This is clearly a violation of Class 3 conduct described by the employee handbook. Mr. Sunderland signed this handbook to acknowledge its contents and was also thoroughly trained on residents' rights. The record also reflects that Appellee Northern Health Facilities, Inc. determined that because this conduct was abuse it had to be reported to the Ohio Department of Health. It is clear that Appellee determined that this conduct was abuse and discharged Mr. Sunderland for violations of residents' rights and verbal abuse.

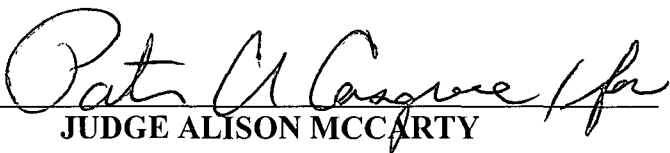
The record contains sufficient credible evidence to support the Hearing Officer's decision that Mr. Sunderland was discharged by Appellee Northern Health Facilities, Inc. for just cause. In considering whether the Review Commission's decision was unlawful, unreasonable or

against the manifest weight of the evidence, this Court finds that the decision was supported by the record.

The decision of the Ohio Unemployment Compensation Review Commission is  
AFFIRMED.

This shall serve as a final appealable order. There is no just cause for delay.

**IT IS SO ORDERED.**

  
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JUDGE ALISON MCCARTY

cc: Attorney Chris G. Manos  
Attorney Michael DeWine  
Attorney Susan M. Sheffield