

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

DONALD J. FREY,

Appellant,

VS.

CASE NO.: 14CVF-04-3739

JUDGE: HOGAN

**OHIO STATE DEPARTMENT OF
JOBS AND FAMILY SERVICE, ET AL.,**

Appellees.

DECISION AND ENTRY

**ON MERITS OF THE ADMINISTRATIVE APPEAL
AFFIRMING THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S
DECISION OF MARCH 5, 2014**

HOGAN, J.

This action comes before the Court on an appeal of the Unemployment Compensation Review Commission's, (Commission) decision to deny benefits to the Appellant. Appellant named the Department of Job & Family Services, (Appellee) and his former employer US Security Associates. (Employer) As set forth below, the Decision of the Commission is **AFFIRMED.**

STATEMENT OF THE CASE

This appeal involves the Appellant's request to overturn the Decision Disallowing Request for Review as issued by the Commission stating that the Appellant was discharged for just cause by his Employer.

STATEMENT OF THE FACTS

The Appellant started working for his Employer on June 26, 2008 as a security officer. He was terminated late in 2013. (Hr. Tr. p. 7) One of the events that lead to his termination occurred on September 19, 2013 while he was working for his Employer at JP Morgan Chase

(Chase). Appellant had a verbal confrontation with a Chase employee. Appellant was ‘written up’ on September 25, 2013 for being ‘rude or boisterous’ while on duty.

Appellant was informed by his Employer that Chase no longer wanted him on the job. Appellant was then reassigned. Appellant next demanded that he be given a week off from work. He wanted October 4 – 12, 2013 off but he made the request in writing on October 3, 2013. The policy of his Employer was that vacation requests be submitted timely. The form used by the Appellant informed him that requests should be made 30 days in advance. Appellant took the time off without being approved. Appellant admitted that he never had the approval of his Employer to take the time off in his Brief.

The Employer tried to reach the Appellant and the Employer had to pay other workers overtime to cover the Appellant’s shifts. When Appellant next meet with a representative of his Employer on October 11, 2013, his Employer had already decided to terminate him over the Chase incident and the fact that he took time off without approval.

The Appellant filed for benefits on October 17, 2013. The Employer appealed the decision to allow compensation. On December 13, 2013 the Director of the Appellee issued a Redetermination that held that Appellant had been discharged without cause. Appellant continued to receive benefits.

The Employer filed an appeal and the matter was transferred to the Commission. On January 14, 2014 a hearing was conducted. A Decision was issued by the Hearing Officer on January 14, 2014. The Hearing Officer disagreed with the Director. The Hearing Officer held that the Appellant had been discharged for just cause. The Hearing Officer heard testimony that the Appellant violated the Employer’s policy when he argued with the Chase employee in September of 2013. (Hr. Tr. p. 13) Appellant was written up for the incident. (Hr. Tr. p. 14)

The following testimony came from the Employer's representative at the hearing at page 11:¹

17 Q: All right so you made the decision to terminate him um even before
18 that meeting?

19 A: Um yes due to his behavior with the Chase employee and then with
20 him taking the 10 days off without any notice and threatening the
21 supervisor, yes.

22 Q: Okay.

23 A: I did bring him in here to see if there was a reason. He had no
24 explanation I mean.

The Hearing Officer heard testimony that the Appellant violated his Employer's policy when he took his vacation without prior approval. (Hr. Tr. p. 13) It was also apparent from the hearing that the Appellant was aware of his Employer's policies on these issues. (Hr. Tr. p. 13, 18 - 19) The Appellant appealed the Hearing Officer's Decision.

On March 5, 2014 the Commission disallowed the Appellant's appeal and the administrative process came to its conclusion. Thereafter the Appellant commenced his appeal to this Court. The Appellant filed his Brief on May 21, 2014. The Appellee filed its Brief on June 25, 2014. Appellant's Employer filed its Brief on June 26, 2014. The Appellant responded with his Reply on July 2, 2014. This matter is now ready for review.

STANDARD OF REVIEW

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Ohio Unemployment Review Commission.

R.C. 4141.282(H) provides:

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 remand

¹ The darker text is a 'copy image' of the transcript contained in the certified record filed with this Court.

the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Review Commission are primarily responsible for the factual determinations and for the judging of the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162. If an employer has been reasonable in finding fault on behalf of the employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

The civil standard for the ‘manifest weight’ of the evidence is as follows:

Judgments 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. See *Chicago Ornamental Iron Co. v. Rook* (1915), 93 Ohio St. 152 , 160; *Portage Markets Co. v. George* (1924), 111 Ohio St. 775 (paragraph one of the syllabus); and 3 Ohio Jurisprudence 2d 817, Appellate Review, Section 820, and the cases cited therein. *The C. E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, at 280, 281.

This Court will defer to the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162. Please also note the following:

When reviewing a UCRC decision, "[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission]." *Upton v. Rapid Mailing Servs.*, 9th Dist. No. 21714, 2004-Ohio-966, at ¶11, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. In addition, "if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the trial court's verdict and judgment." *Upton* at ¶11, quoting *Karches*, supra.

Because the resolution of factual questions falls under the UCRC's scope of review, *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, at ¶8, this Court's "role is to determine whether the decision of the UCRC is supported by evidence in the certified record." *Id.*, citing *Durgan*, *supra*. If such support is found, then the reviewing court may not substitute its judgment for the judgment made by the UCRC. *Id.* "The fact that reasonable minds might reach different conclusions is not a basis for [] reversal." *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18. *Curtis v. Infocision Mgmt. Corp.*, et al., 2008-Ohio-6434 at ¶¶ 7 & 8.

The Commission determined that the Appellant had been terminated for 'just cause'.

Please note the following from *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15 at 17:

The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work. *Shannon v. Bur. of Unemp. Comp.* (1951), 155 Ohio St. 53, 97 N.E.2d 425 [44 O.O. 75]; *Canton Malleable Iron Co. v. Green* (1944), 75 Ohio App. 526, 62 N.E.2d 756 [31 O.O. 304]; 54 Ohio Jurisprudence 2d (1962), Unemployment Compensation, Section 35.

The term "just cause" has not been clearly defined in our case law. We are in agreement with one of our appellate courts that "[t]here 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." *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751 [73 O.O.2d 8].

The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose is "to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day." (Emphasis sic.) *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 199 N.E.2d 3 [27 O.O.2d 122]; accord *Nunamaker v. United States Steel Corp.* (1965), 2 Ohio St.2d 55, 57, 206 N.E.2d 206 [31 O.O.2d 47]. Likewise, "[t]he act 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* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76 [15 O.O.3d 49].

In regard to the right to unemployment compensation, the following is applicable to the issues raised in this appeal:

The Act's existence is not to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, the employee is directly responsible for his own predicament, and such fault separates the employee from the Act's intent and the Act's protection. *Scouler v. Ohio Dept. of Family Servs.*, 2007-Ohio-2650

From within this framework, this Court will render its decision.

ANALYSIS OF APPEAL

The Appellant in this matter is *pro se*. Appellant attacked the credibility of the Employer's witness. Appellant felt that his version of the facts should have been believed over the Employer's witness's version. Appellant's Brief and Reply misapplied the law to the facts. Appellant's Brief and Reply failed to point out material inconsistencies in the testimony of the Employer's witness that could have made said testimony incredible. However, the facts are undisputed that there was an incident between the Appellant and a Chase employee and there was an unexcused absence from work. Both events were 'with cause' grounds to terminate the Appellant.

Appellee and Employer did file Briefs that asserted that the Commission's decision must be upheld because it was lawful, reasonable, and supported by the manifest weight of the evidence. Both the Employer and Appellee asserted that the evidence established that the Employer discharged the Appellant for just cause in connection with his work. The transcript from the Hearing supports that argument.

From this Court's review of the certified record it is clear that the Commission's decision is supported by the facts and is lawful. Therefore, this Court Affirms the Commission's decision.

DECISION

Having applied the law to the facts, having reviewed the arguments and evidence at the administrative level, having, when appropriate, given due deference to the Commission, this

Court finds that the Commission's Decision Disallowing Request for Review is appropriate.

Therefore, the Decision of March 5, 2014 is **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER.

Daniel T. Hogan, Judge

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Franklin County Court of Common Pleas

Date: 07-08-2014
Case Title: DONALD J FREY -VS- OHIO STATE DEPARMENT JOBS
FAMILY SERVICE ET AL
Case Number: 14CV003739
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. T. Hogan", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom.

/s/ Judge Daniel T. Hogan

Court Disposition

Case Number: 14CV003739

Case Style: DONALD J FREY -VS- OHIO STATE DEPARMENT
JOBS FAMILY SERVICE ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes