

ORIGINAL

FILED  
LUCAS COUNTY

2014 JUL 28 P 3:37

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

THIS IS A FINAL  
APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

MAGARET R. RICHARDS INC.  
d.b.a SUPPLEMENTAL STAFFING,

Plaintiff-Appellant

-vs-

ADAM S. DURDEL.,  
and  
DIRECTOR OF OHIO DEPARTMENT  
OF JOB AND FAMILY SERVICES

Defendants-Appellees

\* Case No. CI201305669  
\*  
\*  
\* JUDGE FREDERICK H. McDONALD  
\*  
\*  
\* OPINION AND JUDGMENT ENTRY  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

This case is before the court upon plaintiff-appellant Margaret R. Richards, Inc. appeal from the October 24, 2013 decision of the State of Ohio Unemployment Compensation Review Commission (“Commission”), which granted defendant-appellee Adam Durdel unemployment benefits. Upon consideration of the pleadings, the record of the administrative proceedings, the memoranda of the parties, and the applicable law, I find that the decision of the Commission is neither unlawful, unreasonable, nor against the manifest weight of the evidence, and should be affirmed.

I.

Mr. Durdel was employed by Margaret R. Richards, Inc. d.b.a. Supplemental Staffing (“Employer”), through which Mr. Durdel accepted a long term assignment at Xunlight Corporation which lasted from March 17, 2013, until his termination from employment on June

E-JOURNALIZED

JUL 29 2014

21, 2013. Employer is an employee-staffing agency, which provides their clients with supplemental employees.

On June 21, 2013, Mr. Durdel was terminated for violating Employer's "Drug-Free Workplace Policy" after a positive drug test and reports of unusual behavior while in the workplace.

On June 30, 2013, Mr. Durdel filed an application for unemployment compensation benefits with the Director of Ohio Department of Job and Family Services (the Director").

On July 24, 2013, the Director issued a determination allowing Mr. Durdel's claim, which granted Mr. Durdel benefits for the benefit year October 7, 2012 through October 5, 2013.

On August 14, 2013, Employer timely appealed requesting a redetermination of the Director's decision. On September 4, 2013, the Director affirmed the July 24, 2013 determination. Again, employer timely appealed.

On September 25, 2013, the case was transferred to the Commission. On October 23, 2013, the Commission conducted a hearing on the appeal before a hearing officer. On October 24, 2013 the hearing officer issued her decision affirming the July 24, 2013 ruling that allowed Mr. Durdel's claim for benefits because Mr. Durdel was discharged from his job on June 21, 2013 without just cause.

On November 5, 2013, employer timely requested review of the hearing officer's decision. On November 20, 2013, review was denied and Mr. Durdel's unemployment benefits were affirmed.

On December 19, 2013, Employer timely filed its administrative appeal with this court against Mr. Durdel, and the Director. Employer filed a brief in support of their appeal and the Director filed a response.

## II.

There were three witnesses at the hearing. Ms. Letty Erd and Ms. Lisa Dison testified on behalf of the employer and Adam Durdel testified on his own behalf.

Ms. Erd testified that on June 20, 2013, a supervisor at Xunlight told Linda another employee of Xunlight that Mr. Durdel was acting confused and not himself, was off balance and goofing off. As a result Mr. Durdel was sent home from work and his work had to be redone. Ms. Dison testified that she was told by the human resources director at Xunlight that someone from Xunlight followed Mr. Durdel home and that he was weaving all over the road on his way home. Ms. Dison also testified that on the following day, June 21, 2013 she administered a drug test to Mr. Durdel and that he tested positive for opiates. Mr. Durdel's employment was terminated following the drug test on the grounds that he had violated employer's drug-free workplace policy.

Mr. Durdel testified that after the drug screen he informed Ms. Dison that he was taking prescription medication for back pain, and that an Internet search regarding his prescribed medication revealed that it contained opiates. Mr. Durdel testified that he had taken the prescribed medication prior to his shift because he was experiencing a lot of pain, and could not miss work. Mr. Durdel also testified that he had taken his prescribed medications in the past with no adverse side effects. Mr. Durdel further testified that he informed three individuals at Xunlight that he was taking prescription medication for back pain.

The hearing officer determined that Mr. Durdel did not violate the employer's drug free workplace policy. As a result of this determination, the hearing officer affirmed the decision of the Director.

### III.

The general rules governing review by a court of common pleas of a decision by the Unemployment Compensation Review Commission are well established.

R.C. 4141.282 states in relevant part:

#### “(H) REVIEW BY THE COURT OF COMMON PLEAS

“The court shall hear the appeal on the certified record provided by the commission. 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.”

It is the Commission’s function to make factual findings and determine the credibility of witnesses in unemployment compensation cases. *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 18, 482 N.E.2d 587 (1985). So long as the record contains evidence to support the Commission’s decision, a reviewing court cannot substitute its own findings of fact for those of the Commission. *Wilson v. Unemp. Comp. Bd. of Rev.*, 14 Ohio App.3d 309, 310, 471 N.E.2d 168 (8th Dist.1984).

R.C. 4141.29 provides that an employee is not entitled to unemployment benefits if the employee was discharged for just cause. It states in pertinent part:

“(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

“\* \* \*

“(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 \* \* \*.”

“Just cause” has been defined as “\*\*\* that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine* at 17, quoting *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975).

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.’ \*\*\* *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223 \*\*\*. 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 \*\*\*.

*Irvine*.

The employee bears the burden of proving that a discharge is without just cause. *Marchese Servs., Inc. v. Bradley*, 3rd Dist. Putnam No. 12-08-06, 2009-Ohio-2618, ¶ 24. Hearsay evidence may be considered by a hearing officer in an unemployment compensation hearing. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St. 2d 41, 44, 430 N.E.2d 468 (1982).

#### IV

The employer’s Drug-Free Workplace Policy states:

“Under the influence” means the employee is affected or impaired by an alcohol or illegal drug or the combination of an illegal drug and alcohol in any detectable manner.”

“Drug: is any narcotic, controlled substance, drug or drug-like substance which is a) not legally obtainable, b) obtainable but which has not been legally obtained. The term includes legal drugs (i.e. prescribed maintenance drugs, dosage drugs, and over-the-counter drugs) which are not being used for prescribed purposes.”

Applicability

“Our drug-free workplace policy is intended to apply whenever anyone is representing or conducting business for Supplemental Staffing and all subsidiaries. Therefore, this policy applies during all working hours,

whenever conducting business or representing Supplemental Staffing and all subsidiaries, while on call, paid standby, while on Supplemental Staffing and all subsidiaries property and at company-sponsored events.”

#### Shared Responsibility

“All employees are required to not report to work or be subject to duty while their ability to perform job duties is impaired due to on-or off-duty use of alcohol or other drugs.”

Most of the evidence before the hearing officer was undisputed. Mr. Durdel took a prescription medication containing an opiate before he went into work at Xunlight. He had a prescription for the medication. He was reported to have been acting erratically and was sent home from work. He took a drug test the following morning that tested positive for opiates.

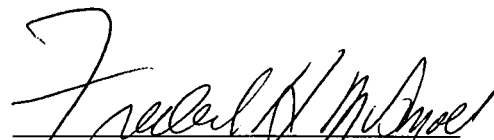
The hearing officer found that Mr. Durdel was discharged without just cause. In her decision, the hearing officer found that the “employer presented hearsay in support of an allegation that claimant was acting in such a way to demonstrate the he was under the influence of something.” However, the hearing officer did consider the hearsay in her decision as permitted by case law. The hearing officer then noted that the “credible evidence demonstrates that claimant was taking prescription medication, as needed, for back pain.” As a result, the hearing officer determined that “insufficient evidence was presented to demonstrate that claimant violated the terms and conditions of the policy that is part of this record.” Since determining the credibility of the witness was within the province of the hearing officer, this court does not have authority to substitute its judgment for that of the hearing officer. In addition, according to Employer’s Drug-Free Workplace policy, the definition of “drug” in the policy does not include legal drugs being used for its prescribed purposes. As a result, Mr. Durdel’s prescribed medication is not a drug under Employer’s policy and thus his use of the medication for his back pain did not constitute a violation of Employer’s Drug-Free Workplace policy. The finding by

the hearing officer is lawful, reasonable and supported by the manifest weight of the evidence. It follows that the decision of the Commission should be affirmed.

**JUDGEMENT ENTRY**

It is ordered that the October 24, 2013 decision of the State of Ohio Unemployment Compensation, Review Commission is affirmed. It is further ordered that this case is dismissed with prejudice.

July 28, 2014

  
Frederick H. McDonald, Judge