

DANIEL M. HERRIGAN

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IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

OBIE ADKINS	)	CASE NO: CV 2014-01-0206
	)	
Appellant,	)	JUDGE CROCE
	)	
v.	)	<u>ORDER</u>
	)	(Final and Appealable)
DIRECTOR, OHIO DEPARTMENT OF JOBS	)	
AND FAMILY SERVICES, et al.	)	
	)	
Appellees.	)	

This matter came before the Court as an Administrative Appeal of the denial of unemployment benefits based upon the Decision of the Unemployment Compensation Review Commission (the "Commission"). The Court has been advised, having reviewed the briefs, record and transcript, and applicable law. Upon due consideration, the Court finds Appellant's appeal not well taken and, therefore, affirms the Decision of the Unemployment Compensation Review Commission and the Hearing Officer.

PROCEDURAL HISTORY

Appellant Obie Adkins has filed a timely appeal of the Unemployment Compensation Review Commission's denial of his request for review of the Hearing Officer's denial of benefits. As the parties have fully briefed this matter and the record has been certified, the appeal is now ripe for this Court's review.

## LAW

Pursuant to R.C. §4141.282, the trial court is to hear the administrative appeal upon the certified record provided by the Commission. In addition, subsection (H) states:

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.

A determination that the decision is against the manifest weight of the evidence requires the Court, in its discretion, to find that the decision is “so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice.” *Upton v. Rapid Mailing Services*, 9th Dist. No. 21714, 2004 Ohio 966, at P10, citing *Shepherd v. Freeze*, 9th Dist. No. 20879, 2002 Ohio 4252, at P8. In making such determination, the Court is precluded from making findings of fact or weighing witness’ credibility. *Tzangas, Plakas & Mannos v. Ohio Bur. of Employ. Serv.* (1995), 73 Ohio St.3d 694, 696. Rather, the Court must merely determine whether the evidence in the certified record supports the Commission’s Decision. *Id.* In this regard, “every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].” *Upton*, supra, at P11. “The fact that reasonable minds might reach different conclusions is not a basis for reversal of the [Review Commission’s] decision. *Irvine v. State of Ohio, Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18.

The claimant has the burden of proving he is entitled to unemployment compensation benefits under R.C. 4141.29(D)(2)(a) if the former employee was discharged for just cause in connection with the individual’s work. “The determination of what constitutes ‘just cause’ within the context of unemployment compensation ‘necessarily depends upon the unique factual

considerations of the particular case' and involves a concurrent analysis of the legislative purpose of the Unemployment Compensation Act, R.C. 4141.01-4141.47 and 4141.99." *Upton*, supra, at P13, citing *Irvine*, 19 Ohio St.3d at 17. "Just cause" is that which an ordinarily intelligent person would find to be a justifiable reason for doing or not doing a particular act. *Upton*, supra, at P14, citing *Irvine*, 19 Ohio St.3d at 17. The inquiry into just cause is a factual one, which the reviewing court is precluded from making in an administrative appeal. *Durgan v. Ohio Bur. of Employ. Serv.* (1996), 110 Ohio App.3d 544, 551, citing *Irvine*, 19 Ohio St.3d at 17. It is well recognized that the purpose of the Act is "to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through *no fault of his own*." (Emphasis added.) *Irvine*, supra, quoting *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39.

#### DISCUSSION

Appellant/claimant asserts in his sole assignment of error that the Hearing Officer erred in finding a lack of merit in Claimant's argument that the employer failed to provide reasonable accommodations for his known disability – memory loss. Appellant asserts that insufficient evidence exists to support the termination because the Hearing Officer improperly required more of Mr. Adkins than either State or Federal Law requires for reasonable accommodations.

Upon review of the transcript and record, the Court does not find either the Commission's and underlying Hearing Officer's decision were unlawful, unreasonable, or against the manifest weight of the evidence. The certified record contains ample, competent and credible evidence to support the Commission and Hearing Officer's determinations that Appellant was discharged for just cause. The record reflects that Appellant was discharged for poor work performance. The Hearing Officer specifically found in his decision that the Claimant

was discharged under the employer's progressive disciplinary policy, namely – an initial warning on October 5, 2012 for failing to completely secure the store prior to closing; a written warning on April 12, 2013 for the failure to properly secure the evening cash bags; a final written warning on June 1, 2013 for making unprofessional comments to another employee; and the termination on July 10, 2013 for the failure to properly secure the evening cash bags. The Hearing Officer found the employer's representative's testimony and evidence she presented to be credible that the Claimant failed to secure the store's money bags prior to the store closing, that the Claimant had received prior written warnings; and that the Claimant knew or should have known his job was in jeopardy. Based upon this evidence, the Hearing Officer determined that the claimant was discharged for just cause in connection with work and not eligible for unemployment benefits.

Although Appellant asserts that the Hearing Officer did not properly take into consideration the employer's failure to provide him with a reasonable accommodation for his memory loss issues, the Hearing Officer did address this contention. The Hearing Officer determined that the Claimant had not provided his employer with medical documentation regarding the alleged medical condition nor did he formally request that the employee provide any type of accommodation. Furthermore, Appellant did not provide any medical evidence at the hearing to support said accommodation request. Kelly Truesdell, the Human Resources representative for Lowe's testified that she was unaware of any memory loss issues with respect to claimant, that Claimant never reported any concerns about his responsibilities as a store manager, and never voiced any concerns about his work in general. (Hearing Transcript, page 13). Also, the written disciplinary forms, wherein claimant could write comments regarding each infraction, did not make any statements with respect to his memory loss with the exception

of possibly his initial written warning wherein he stated "I will take another associate with me when walking the perimeter" - relating to his failure to lock the lawn and garden gate. The fact that the Hearing Officer chose to believe Ms. Truesdell's testimony over the Claimant's regarding the lack of notice of the alleged memory loss issues and/or the request for reasonable accommodation, is a determination that this Court cannot question. See e.g., *Sturgeon v. Lucas Plumbing & Heating, Inc.*, 9th Dist. No. 11CA010010, 2012 Ohio 2249, P16. As such, the Court finds that the Claimant failed to take reasonable steps to notify his employer of his disability and to prevent his disability, if he in fact has one, from affecting his job performance.

Wherefore, upon review of the transcript and record, the Court find the Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence. The Court cannot find that the decision is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice." Appellant's assignment of error is not well taken. In accordance with R.C. §4141.282(H), this Court affirms the Decision of the Unemployment Compensation Review Commission.

This is a final appealable judgment entry. There is no just cause for delay. Pursuant to Civil Rule 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment entry of the Court.

So ordered.

  
JUDGE CHRISTINE CROCE

cc: Attorney Michael Creveling  
Attorney Patrick MacQueeney  
Attorney Douglas Schnee