

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

RALPH J. REIDELL, III,

CASE NO. 2014 CV 01996

Plaintiff/Appellant,

JUDGE MARY KATHERINE HUFFMAN

-vs-

DECISION, ORDER AND ENTRY  
SUSTAINING MOTIONS TO STRIKE  
AND AFFIRMING DECISION OF THE  
UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION

THE REYNOLDS AND  
REYNOLDS CO., INC., et. al,

Defendants/Appellees.

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This matter is before the court as a result of an appeal taken by Appellant, Ralph J. Reidell III (hereinafter "Reidell" or "Employee"), from a determination of the Ohio Unemployment Compensation Review Commission, denying unemployment compensation benefits to him from his former employer, The Reynolds and Reynolds Co., Inc. Appellant filed his brief herein on July 3, 2014. Appellees, Director, Ohio Department of Job & Family Services (hereinafter "ODJFS") and the employer, The Reynolds and Reynolds Company (hereinafter "Reynolds"), filed their briefs on July 24, 2014. Appellant filed his Reply Brief on August 7, 2014. Appellees, ODJFS and Reynolds, each filed a Motion to Strike Exhibit Attached to Appellant's Reply Brief on August 8, 2014. On the same date Reynolds also filed its Sur-Reply Brief. Appellant filed his Reply to the Motions to Strike on August 18, 2014. This matter is now ripe for decision.

## **I. PROCEDURAL HISTORY AND FACTS**

On October 23, 2013, Appellant, Ralph Reidell, III, applied for unemployment compensation benefits as a result of the termination of his employment with Appellee, Reynolds. On November 12, 2013 a Determination of Unemployment Compensation Benefits was issued disallowing Reidell unemployment compensation. The determination provides, in part:

The claimant was discharged by THE REYNOLDS & REYNOLDS CO. (INC.) on 10/23/2013. Facts establish that the terms or conditions of an employment agreement required the drug test and/or that the employer had reasonable suspicion of drug use by the claimant. Claimant failed required drug test. Ohio's legal standard that determines if a discharge is with just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge justifiable. After a review of the facts, this agency finds that the claimant was discharged with just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. Therefore, no benefits will be paid until the claimant obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1380, and is otherwise eligible.

Reidell appealed the initial determination. On December 2, 2013, a Director's Redetermination was issued affirming the disallowance of benefits. Appellant filed an appeal from the Redetermination on December 14, 2013, and the matter was transferred to the Unemployment Compensation Review Commission on December 16, 2013. A telephone hearing was held on January 6, 2014.

The facts herein are not in dispute. Instead, the issue before the court is primarily a legal one. The court has reviewed the transcript of the telephone hearing before the hearing officer. The facts revealed in that transcript are consistent with the hearing officer's factual findings in her decision dated January 10, 2014. The decision includes the following findings of fact:

Claimant was employed by The Reynolds and Reynolds Co., Inc. from October 6, 2003, until October 23, 2013. He worked as a Network Specialist, and reported to Jim Ehrensberger, National Sales Manager.

The Reynolds and Reynolds Co., Inc. employs a strict Drug, Alcohol, and Tobacco/Nicotine-Free Workplace Policy in order "to provide a safe and healthy workplace and to promote the health and well-being of its associates," in addition to reducing health insurance costs. Pursuant to this policy, "all associates must maintain a smoke free, tobacco

free and nicotine free status at all times. Smoking or otherwise using tobacco or nicotine products (in any form or manner) at any time by associates is prohibited. This prohibition includes both on premises (including parking lots) and off premises, and both during work hours and non-work hours.” The tobacco and nicotine portion of the policy was phased in slowly over a period of several years, and employees who were smokers were provided with the opportunity to take a smoking cessation program. The policy also provides for random testing for illegal drug use and tobacco/nicotine use by associates. Claimant attended a smoking cessation program in 2008, and discontinued his regular smoking habit at that time. Claimant received a copy of the revised policy on December 17, 2010.

On June 4, 2013, claimant tested positive for nicotine in a random test. He was placed on a last chance agreement, and was permitted to maintain his employment in exchange for his agreement to be tested at least once per month for the next 12 months at his own expense. Pursuant to this agreement, claimant was advised that if he was found to be in violation of the drug policy again, his employment would be terminated.

On October 14, 2013, claimant tested positive for nicotine in a random test. He was notified of the results, and discharge for violating the last chance agreement.

The hearing officer then found that Reidell was discharged for just cause and articulated the following reasoning:

Claimant was discharged from his employment with The Reynolds and Reynolds Co., Inc. on October 23, 2013, for violating a last chance agreement related to violations of the employer’s Drug, Alcohol, and Tobacco/Nicotine-Free Workplace Policy. Claimant admits that he received a copy of this policy on December 17, 2010.

The evidence shows that, on June 4, 2013, claimant tested positive for nicotine in a random test, and signed a last chance agreement on June 28, 2013, pledging to remain nicotine free. Less than 4 months later, claimant once again tested positive for nicotine. He was notified of the results, and discharged for violation of the last chance agreement.

Claimant does not dispute the facts as presented by the employer, but rather argues that he should be eligible to receive benefits because tobacco and nicotine are not illegal substances. However, employers are permitted to implement policies which prohibit many types of behaviors which are not illegal. Rather, the issue to be determined is whether the employer’s policy is reasonable. The evidence shows that The Reynolds and Reynolds Co., Inc. established this policy to provide a safe and healthy workplace and to promote the health and well-being of its associates, in addition to reducing health insurance costs. The evidence also shows that this policy was phased in over a period of several years, and employees who were smokers were provided with the opportunity to take a smoking cessation program. Claimant admitted that he took advantage of this opportunity in 2008, and discontinued his regular smoking habit at that time. While few companies have such a strict policy on tobacco and nicotine use, the Hearing Officer finds that the policy is related to legitimate business concerns, and was phased in in such a way to be reasonable. In light of the evidence presented in this case, the Hearing Officer finds that claimant was

discharged from his employment with The Reynolds and Reynolds Co., Inc for just cause in connection with work.

In addition to the facts noted in the hearing officer's decision, Jim Ehrensberger, Appellant's supervisor, testified that the nicotine policy was put in place to get lower insurance premiums. (Transcript, p. 7). Appellant acknowledged during the telephone hearing that he was aware that a positive nicotine test could result in his termination. (Transcript, p. 11). Appellant also acknowledged that he signed the last chance agreement following his first positive nicotine test. He also acknowledged that he consented to a monthly random drug test paid for by him and that any future positive nicotine tests would result in his termination. (Transcript, p. 12).

On March 6, 2014 the Unemployment Compensation Review Commission affirmed the decision of the hearing officer.

## **II. LAW AND ANALYSIS**

Appellant, Ralph J. Riedell, III, argues that he was discharged from his employment without just cause, thus permitting him to be eligible for unemployment compensation benefits. Appellees assert that Riedell was discharged for just cause in connection with his work and request that the decision of the Unemployment Compensation Review Commission be affirmed.

The first issue for the court to consider are the two Motions to Strike certain evidence supplied for the first time in this administrative appeal. Specifically, Appellees seek to strike Exhibit A attached to Appellant's Reply Brief filed on August 7, 2014. Exhibit A to Appellant's Reply Brief is a copy of a Determination of Unemployment Compensation Benefits for Tara M. Hall, a non-party to this administrative appeal, relating to her request for unemployment benefits as a result of her discharge from employment with Reynolds & Reynolds Co., Inc., in 2011. The Determination states, in part:

The claimant was discharged by THE REYNOLDS & REYNOLDS CO. (INC.) ON 05/12/2011. The employer discharged the claimant for violating a company rule. However, evidence supports that the rule was not in connection with the work. Ohio's legal standard that determines if a discharge is without just cause is whether the claimant's acts, omissions, or course of conduct were such that an ordinary person would find the discharge not justifiable....

The court must strike Appellant's Exhibit A to his brief filed August 7, 2014 for two independent reasons. First, there is no evidence in the exhibit to conclude that Hall was terminated as a result of the same company rule for which Reidell was discharged. Secondly, and more importantly, O.R.C. §4141.282(H) limits the record which the court can consider in an unemployment compensation appeal. That statute provides:

(H) Review by the Court of Common Pleas. The court shall hear the appeal on the certified record provided by the commission....

Evidence outside of the certified record may not be considered by the court in carrying out its duties under O.R.C. §4141.282. Therefore, the court may not consider Appellant's Exhibit A to his brief filed August 7, 2014, as that evidence is not contained within the certified record. *See Shepherd Color C. v. Dir., Ohio Dep't. of Job & Family Servs.*, 2013-Ohio-2393. *See also General Motors Corp. v. Sanders*, Butler App. No. CA84-02-022 (June 28, 1985). As a result, the Motions to Strike of Appellees are **SUSTAINED**. Exhibit A to Appellant's Brief filed on August 7, 2014 is **STRIKEN** from the record.

The court now turns its attention to the merits of Appellant's appeal. The right to appeal from an administrative decision is not an inherent right, but instead is one conferred by statute. *See Harrison v. Ohio State Medical Board* (1995), 103 Ohio App.3d 317, 321. Where a statute confers a right to appeal, strict adherence to the statutory conditions is essential. *Holmes v. Union Gospel Press* (1980), 64 Ohio St.2d 187, 188.

Pursuant to R.C. 4141.281(A), a party may appeal a determination of unemployment benefit rights or a claim for benefits determination. "Within twenty-one days after receipt of the appeal, the

director of job and family services shall issue a redetermination or transfer the appeal to the unemployment compensation review commission. A redetermination under this section is appealable in the same manner as an initial determination by the director.” *R.C. 4141.281(B)*.

Once the final decision of the review commission has been sent to all interested parties, any party may appeal the decision to the court of common pleas within thirty days. *R.C. 4141.282(A)*.

*R.C. 4141.282(H)* delineates the standard of review for the court of common pleas during such appeal, stating:

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.

The reviewing court is limited to the record as certified by the review commission.

*Abrams-Rodkey v. Summit County Children Servs.*, 163 Ohio App. 3d 1 (2005). The court must give due deference to the agency’s resolution of evidentiary conflicts, and the court may not substitute its judgment for that of the agency. *Budd Co. v. Mercer*, 14 Ohio App. 3d 269 (1984). Moreover, “[a] reviewing court may not make factual findings or determine the credibility of witnesses, and may not overturn a decision of the commission simply because it might reach a different result.” *Gregg v. SBC Ameritech*, 2004-Ohio-1061, citing *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St. 3d 694, 696-697 (1995). While a reviewing court is “not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board’s decision is supported by the evidence in the record.” *Tzangas, supra.* at 696-697, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). Thus, the standard on review is a highly deferential one. *Case Western Reserve Univ. v. Statt*, 2012-Ohio-1055.

A trial court “must uphold the hearing officer’s decision so long as it is not unlawful or unreasonable and some competent, credible evidence supports it.” *Myers v. Director, Ohio Dept. of Job and Family Services*, 2009-Ohio-6023. The court, however, does not have the discretion to consider the credibility of the witnesses in its review of the decision of the hearing officer. Instead, the sole duty of the Court of Common Pleas is to determine whether the evidence on record supported the Commission’s decision. *Kilgore v. Board of Review*, 2 Ohio App. 2d 69, 71 (1965). “The Court may not substitute its judgment\*\*\*, it may not reverse simply because it interprets evidence differently\*\*\*.” *Angelkovski v. Buckeye Potato Chips, Co.*, 11 Ohio App.3d 159, 161 (1983).

An employee is ineligible for unemployment compensation benefits if he or she was terminated for just cause. O.R.C. §4141.29(D)(2)(a) provides, 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...has been discharged for just cause in connection with the individual’s work.

“An employee is not eligible for benefits if he has ‘quit work without just cause or has been discharged for just cause in connection with [his] work.’” *Lorain County Auditor v. Ohio Unemployment Compensation Review Comm.*, 113 Ohio St. 3d 124 (2007); *see also* O.R.C. §4141.29(D)(2)(a). The Ohio Supreme Court has defined “just cause” as “that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 16 (1985), *quoting Peyton v. Sun T.V.*, 44 Ohio App. 2d 10, 12 (1975). “(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.” *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985) quoting *Peyton v. Sun T.V.*, 44 Ohio App. 2d 10, 12 (1975). In reviewing such a determination, a court is not permitted to interpret the facts or put its spin to the facts. *Gallagher v. Alliance Hospitality Management*, 2010-Ohio-1882.

“Just cause” is “conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee’s discharge.” *Carter v. Univ. of Toledo*, 2008-Ohio-1958. A determination of just cause sufficient to uphold the discharge of an employee under a civil service rule or a labor contract does not equate to just cause to prohibit an employee from receiving unemployment compensation benefits. *See Guy v. City of Stuebenville*, 147 Ohio App. 3d 142, 2002-Ohio-849.

When an employee demonstrates by his or her actions an unreasonable disregard for the employer’s best interest, there is just cause for the discharge. *Kiikka v. Ohio Bur. Of Emp. Serv.*, 21 Ohio App. 3d 168 (1985); *see also LaChappelle v. Ohio Dept. of Job and Family Serv.*, 184 Ohio App. 3d 166, 2009-Ohio-3399. “(T)he critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interests.\*\*\*” *Stephens v. Bd. of Rev.*, Cuyahoga App. No. 41369 (May 22, 1980); *see also Kiikka, supra*. “While the conclusions of the unemployment compensation review commission ‘as to the legal import of an essentially undisputed set of facts are entitled to some deference,’ the question of whether an employee was discharged with just cause is a question of law and ‘the reviewing court has a duty to reverse the [commission’s] decision if it is contrary to law.’” *Warren County Auditor v. Sexton*, 2007-Ohio-7081, quoting *Lombardo v. Ohio Bur. of Emp. Serv.*, 119 Ohio App. 3d 217, 221 (1997).

Appellant argues that Reynolds’ policy regarding nicotine use is a “far reaching intrusion into Appellant’s personal life,” and is not a lawful regulation of his conduct by his employer.



Appellant also argues that Reynolds is not treating him the same as all other employees, since Reynolds does business in some states that prohibit the termination of employees for nicotine use. However, there is no evidence that Appellant has been treated any different than similarly situated employees of Reynolds who work in the State of Ohio, where termination of employment for nicotine use is not prohibited by law. Furthermore, there is no evidence in the record, other than Appellant's speculation, that he has been treated differently than other employees.

The record makes clear that Reynolds' policy regarding nicotine was phased in over time, supplying adequate warning to all employees, including Appellant, about the requirement that all employees refrain from the use of nicotine. Still further, the policy states its purpose: "to provide a safe and healthy workplace and to promote the health and well-being of its associates, in addition to reducing health insurance costs." The stated purposes of the policy are reasonable work-place regulations of employees, particularly in light of the cost incurred by employers for federally-mandated health care coverage for employees.

After reviewing the evidence herein, the court finds that the decision of the commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The court further finds, without disturbing the hearing officer's findings of fact, that the decision of the commission is supported by any rational view of the evidence. The court further finds that, as a matter of law, Employee was discharged with just cause. Appellant, by his own admission, was provided with ample notice of the nicotine policy. Perhaps more importantly, though, he was not discharged for failing to comply with the nicotine policy, but for failure to comply with the last chance agreement. Additionally, the court finds that Appellants actions in failing to comply with the nicotine policy represented an unreasonable disregard for the employer's best interest, specifically its interests related to the cost of health insurance premiums that it is now mandated to pay by federal legislation. As a result, Appellant's discharge was for just cause.

### **III. CONCLUSION**

For the reasons stated above, the decision of the Unemployment Compensation Review Commission is **AFFIRMED**.

SO ORDERED:

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JUDGE MARY KATHERINE HUFFMAN

**THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.**

SO ORDERED.

\_\_\_\_\_  
JUDGE MARY KATHERINE HUFFMAN

**To the Clerk of Courts:  
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.**

\_\_\_\_\_  
JUDGE MARY KATHERINE HUFFMAN

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**Type:** Decision  
**Case Number:** 2014 CV 01996  
**Case Title:** RALPH J REIDELL vs THE REYNOLDS AND REYNOLDS CO  
INC

So Ordered

*Mary H. Huffman*