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IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, OHIO

JASON P. BARNICLE

and

OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES,

PLAINTIFFS-APPELLEES,

vs.

KYKLOS BEARING
INTERNATIONAL, INC.,

DEFENDANT-APPELLANT.

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JUDGE TYGH TONE

CASE NO. 2014CV0040

OPINION AND JUDGMENT ENTRY

This matter is before the Court on Appellant's administrative appeal from the Ohio Unemployment Compensation Review Commission's final decision granting unemployment benefits to Appellee. After thorough review of the pleadings this Court **AFFIRMS** the Decision of the Ohio Unemployment Compensation Review Commission.

STATEMENT OF THE CASE

On July 10, 2013, Appellee Ohio Department of Job and Family Services allowed Mr. Barnicle's application for benefits based upon the initial determination that Kyklos Bearing International Inc., hereinafter KBI, fired Mr. Barnicle without just cause. On July 25, 2013, the determination was affirmed. Hearings were held on September 12 and October 8, 2013. On October

29, 2013, the hearing officer affirmed the decision of the determination declaring that Mr. Barnicle was entitled to unemployment benefits. A request for final administrative review was allowed, and the Review Commission ultimately affirmed the hearing officer's finding on January 8, 2014. Appellant KBI filed this administrative appeal seeking reversal of the Review Commission's final decision.

FACTS

Mr. Barnicle worked at KBI as a journeyman tool and die maker from November 27, 2009, to June 14, 2013. He and his coworkers work with KBI-issued tools, and they check out their tools by swiping their employee identification cards.

The record indicates that in early June 2013, KBI noticed that an unusually high number of tools had been checked out. KBI investigated the matter and identified five employees, including Mr. Barnicle. Of these five, two returned the tools they had checked out and kept their jobs. Two others were fired because they did not produce all the tools that they had checked out.

Although Mr. Barnicle returned most of the tools that he had checked out, three items were still missing: two boxes of inserts and a cutter. Mr. Barnicle testified that he gave tools to other employees for work-related reasons. There is no indication in the record that Mr. Barnicle checked out any tools for any untoward purpose. He, further, testified that some of the tools in question were "perishable," i.e., that they wear out quickly and, thus, can be disposed of without management approval.

William Lorcher, KBI's tool-room supervisor, testified that Mr. Barnicle was a good employee. Regardless, KBI fired Mr. Barnicle for violating a work rule, viz., its proscription against theft and misappropriation of tools.

STANDARD OF REVIEW

The standard of review for the Common Pleas Court when considering appeals of decisions

rendered by the Review Commission is set forth in R.C. 4141.282(H):

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 determination of just cause is a factual question and thus “is primarily within the province of the referee and board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence.” *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17-18 (1985). “Thus, a reviewing court may not make factual findings or determine a witness’s credibility and must affirm the commission’s finding if some competent, credible evidence in the record supports it.” *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, at ¶20. As a court of limited power, this court cannot reverse the Review Commission’s decision simply because reasonable minds might reach different conclusions. *Irvine*, at 18.

ARGUMENTS

Appellant’s Argument

According to appellant KBI, Mr. Barnicle’s behavior was no different from that of the two employees whom it fired in connection with the missing-tools investigation and whose unemployment claims were denied. KBI also asserts that the Review Commission’s decision was against the manifest weight of the evidence.

Appellee’s Argument

Appellee Director, Ohio Department of Job and Family Services, hereinafter ODJFS, argues that the Review Commission’s decision is supported by some competent, credible evidence and

therefore should be affirmed. ODJFS argues that Mr. Barnicle's situation differs from that of his fired coworkers in that (1) he returned most of the tools in question, (2) the few tools that he did not return were "perishable," (3) KBI had no policy in place to govern how and when perishable tools are disposed of, (4) Mr. Barnicle, unlike his fired colleagues, lacked a motive to steal any tools, and (5) Mr. Barnicle legitimately gave some of the tools to coworkers for work-related purposes.

ODJFS argues that the hearing officer's decision supported by some competent, credible evidence and, thus, is entitled to deference.

ANALYSIS

A claimant is entitled to unemployment benefits if s/he is discharged without just cause. *See* R.C. 4141.29(D)(2)(a), which provides in pertinent part that no individual shall be paid benefits if s/he "quit work without just cause or has been discharged with just cause."

"Just cause" is determined on a case-by-case basis. The Ohio Supreme Court has stated that "essentially, each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which to an ordinary intelligent person is a justifiable reason for doing or not doing a particular act." *Irvine*, 19 Ohio St.3d 15, 15, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12 (10th Dist.1975). Also, the legislative purpose underlying the Unemployment Compensation Act must be considered when determining just cause. The Act's purpose 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 or agreement of his own." *Irvine* at 17, quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39 (1980).

Appellant KBI claims it had just cause to discharge employee Mr. Barnicle. "If an employer has been reasonable in finding fault on behalf of an 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.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 698 (1995). In the present case, the hearing officer determined that Mr. Barnicle provided credible evidence to show that the tools that he checked out were used for work-related purposes and that those he could not return were perishable. Although Appellant KBI claims that Mr. Barnicle’s explanation is meritless, this Court cannot make factual findings or determine a witness’s credibility. Mr. Barnicle’s testimony, along with other items in the record, does provide some competent, credible evidence to support the factual finding by the hearing officer that the evidence fails to establish sufficient fault or misconduct to warrant disqualification from unemployment benefits.

CONCLUSION

The decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The hearing officer’s determination that Appellant Kyklos Bearing International Inc. fired Appellee Jason P. Barnicle without just cause is based upon competent, credible evidence.

JUDGMENT ENTRY

IT IS ORDERED that Jason P. Barnicle, Appellee, is entitled to and eligible to receive unemployment benefits. **IT IS ORDERED** that the decision of the Unemployment Compensation Review Commission is **AFFIRMED**. It is further **ORDERED** that there is no just reason for delay pursuant to Civ.R. 54(B).

Date

8/26/14


Judge Tygh M. Tone