

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

ROBERT AMPONSAH, :
Appellant, : Case No. 13CVF-4875
v. : JUDGE BROWN
SWIFT TRANSPORTATION COPMPANY :
OF ARIZONA, LLC, et al., :
Appellees. :

**FINAL JUDGMENT ENTRY AFFIRMING THE ORDER OF THE DIRECTOR OF THE
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

Introduction

Robert Amponsah (Amponsah), Appellant, was employed by Swift Transportation (Swift), Appellee, beginning March 28, 2012. Swift separated Amponsah from employment November 21, 2012; Hearing Officer Tonya Brady found that Amponsah was separated by Swift for “just cause” and the Unemployment Review Commission (Commission) agreed.

Mr. Amponsah was ordered by the Commission to repay benefits he had already received erroneously. From that Order, Amponsah timely appealed to this Court. The issue has been fully briefed and is ripe.

Standard of Review and Applicable Law

In *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, the Ohio Supreme Court set forth the law that applies to this case. The Court said that an individual who is eligible for unemployment benefits can receive benefits unless the individual is disqualified as found in R.C. 4141.29(D)(2)(a). “The individual quit work without just cause or has been discharged for just cause in connection with the individual’s work * * *.” *Id.* at 335.

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However, R.C. 4141.46 provides that R.C. 4141.01 through 4141.46 is to be liberally construed. The *Williams* Court stated, “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. R.C. 4141.282(H).” *Williams*, 129 Ohio St.3d at 335. This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (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. *Id.* In other words, a reviewing court may not reverse the commission’s decision simply because “reasonable minds might reach different conclusions.” *Id.*

The Court continued, “[A]lthough it is not defined by statute, we have stated that “just cause” is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine*, 19 Ohio St.3d 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 whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489 (1991). “[W]hat 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.’” *Irvine* at 17, quoting *Leach v. Republic Steel Corp.*, 176 Ohio St. 221, 223, 199 N.E.2d 3 (1964).

However, the Court cautioned, “[T]he Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control.

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When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697-698, 653 N.E.2d 1207 (1995).

Fault on an employee's part is an essential component of a just cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer's instructions. *Id.* at 698. Unsuitability for a position constitutes fault sufficient to support a just-cause discharge. "An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position." *Id.* at syllabus.

Finally, the Court looked to, "the purpose of the Unemployment Compensation Act." And found that "The 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, Inc.*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980).

Facts

Tanya Brady was assigned by the Commission to conduct an oral hearing and consider additional admissible evidence culminating in a written decision in which she made findings of fact. The Court finds the facts found by Hearing Officer Brady to be supported by the preponderance of probative, substantial and reliable evidence contained in

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the record. Because the Court so finds, the findings of fact relied upon by the Commission in their decision are well founded.

The Hearing Officer found:

“Claimant was hired March 28, 2012. His last day of work was November 21, 2012. He worked as a Commercial Truck Driver.

On November 16, 2012, as claimant was delivering to a customer’s Sears location, the claimant dropped his trailer into a low area and tore up/damaged some property. Apart from this incident, the claimant had three preventable accidents in 2012 and two (2) speeding violations and an unsatisfactory audit of his logs.

Risk Analysis starts at 20 points. Twenty points was considered high risk. Claimant was made aware of the point system in his first month of employment by his supervisor after incurring a speeding violation. Claimant’s 2012 Driver Risk Analysis showed that he had the following crashes: June 15, 2012; September 04, 2012; and November 16, 2012. Claimant incurred 9, 12 and 12 points respectively for these crashes. Claimant also had two speeding violations on June 03, 2012. Claimant received 15 points for one speeding violation and 3 for another. Claimant also had an unsatisfactory audit of his logs for which he received 4 points. At the time of claimant’s separation he had 42 points. Claimant’s points were considered high by the safety review committee. His final points on his Driver Risk Analysis were 55.

On July 10, 2012, claimant received a First Formal Performance Counseling Report (PCR) for the June 2012 accident. The PCR stated that recurrence of this problem or another other (sic) performance/safety related problem(s) may lead to further disciplinary action, to include termination of employment. Claimant signed said Report.

On September 10, 2012, claimant received a Second and Final Formal Performance Counseling Report (PCR) for a second preventable accident he incurred on September 04, 2012. Claimant was advised per the Report that he had 48 points. Claimant signed said Report.

Claimant signed an “Acknowledge and Agreement” form on March 26, 2012, acknowledging that he read a copy of the Driver Handbook and was made aware that it was available on the employer’s intranet in the Human Resources section. Per the Handbook, multiple incidents of accidents while driving a Company vehicle can lead to immediate termination of employment.

Due to the claimant having three previous preventable accidents in 2012 and two speeding violations and an unsatisfactory audit of his logs and previous reviews and warnings, there was no improvement seen in claimant’s being a safe and responsible driver.

On November 22, 2012, claimant was discharged.”

Discussion

In his brief, Amponsah points to other “facts” in the record to which he testified. The Hearing Officer did not consider the facts that Amponsah wishes this court to take into

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account. The Hearing Officer did not explicitly reject Amponsah's testimony. It does not make any difference to the reviewing court that she may have found them to be irrelevant or that she may have found them to be not worthy of belief. *Irvine* held that a reviewing court, such as this one, may not make factual findings or credibility determinations if some competent, credible evidence in the record supports the facts found by the Hearing Officer and Commission. *See supra*. After a careful review of the entire record this Court finds competent, credible evidence establishes that the preponderance of reliable, probative, and substantial evidence supports the facts found by the Hearing Officer and no other relevant, credible facts have been established by Amponsah.

The Hearing Officer reasoned that the facts established that Amponsah was discharged by Swift for just cause in that his work record reflected a disregard for Swift's best interests. Amponsah had received employer sponsored corrective measures on July 10, 2012, counseling that Amponsah would be subject to further work-related disciplinary action, including termination, should he engage in further work place misconduct.

Despite such corrective actions and warning by Swift, Amponsah continued to accumulate points under the system applied by Swift to all drivers. Swift counseled Amponsah a second time on September 10, 2012. Amponsah signed the report acknowledging he had accumulated 48 points as of that date. Amponsah had been provided the Swift policy which stated that the accumulation of 20 points was considered by Swift to be high risk conduct.

Even after the two corrective interventions by Swift, Amponsah accumulated more points for conduct Swift considered high risk. Amponsah, at the time of termination, had accumulated 55 points on Swift's risk analysis system. Not surprisingly, the Hearing Officer found that despite Swift's efforts, "there was no improvement seen in claimant's being a safe and responsible driver."

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The Hearing Officer reasoned, and the Commission agreed, Amponsah's conduct demonstrated an unreasonable disregard for Swift's interests. This Court agrees.

Finally, Amponsah offers that he was denied due process of law at the hearing conducted by the Hearing Officer. The Hearing Officer conducted the hearing during which Amponsah participated, over a two day period. A Hearing Officer has broad discretion in accepting and rejecting evidence and in conducting the hearing in general. *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07 MA 124, 2008-Ohio-1061, ¶ 11. Although Amponsah believes relevant evidence was excluded by the Hearing Officer, the Court finds otherwise. Amponsah was given an opportunity to be heard along with an opportunity to cross-examine Swift's witnesses. As such, due process rights were afforded to Amponsah.

Moreover although Amponsah now complains that he was not allowed to use documents he provided to Swift and to the Hearing Officer, Amponsah did not proffer the documents. Absent a proper proffer, the Court is unable to conduct a meaningful review of the documents allegedly erroneously excluded by the Hearing Officer. A reviewing court presumes regularity in administrative proceedings below absent proof to the contrary. *Arnold v. Ohio Adult Parole Auth.*, 10th Dist. No. 11AP-120, 2011-Ohio-4928, ¶ 14. No proof to the contrary has been provided by Amponsah.

Conclusion

The Court **AFFIRMS** the Order of the State of Ohio Unemployment Review Commission in Docket No: H-2013003615 in all respects.

Costs to Appellant.

IT IS SO ORDERED.

JUDGE KIM BROWN

Franklin County Court of Common Pleas

Date: 08-28-2014

Case Title: ROBERT AMPONSAH -VS- SWIFT TRANSPORTATION
COMPANY ARIZONA LLC ET AL

Case Number: 13CV004875

Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in blue ink is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the inner edge, and "ALL THINGS ARE POSSIBLE" at the bottom. The signature is a stylized, cursive "KRB".

/s/ Judge Kim Brown

Court Disposition

Case Number: 13CV004875

Case Style: ROBERT AMPONSAH -VS- SWIFT TRANSPORTATION
COMPANY ARIZONA LLC ET AL

Case Terminated: 18 - Other Terminations