

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

Franklin County Auditor,		Case No. 12CV-03152
Appellant,		Judge McIntosh
vs.		
Nancy M. Riley, et al.,		
Appellees.		

**Decision and Judgment Entry Affirming Decision of Ohio Unemployment
Compensation Review Commission**

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 4141.282 administrative appeal, by the Franklin County Auditor, from a decision that the Ohio Unemployment Compensation Review Commission issued on February 16, 2012. The record that the Commission has certified to the Court reflects the following facts, which are undisputed.

Facts

On July 7, 1994, Nancy M. Riley applied to the Franklin County Board of Developmental Disabilities (Board) for a job as a bus driver. *Record (R.) 255-258*. The last paragraph in the employment application stated:

I understand and agree, that, as a condition of employment, I shall meet and maintain all required standards of my position which involves certification, registration, licensure and training. *R. 258, Hearing Transcript (T.) 13, 24*.

Five months later, on December 9, 1994, the Board hired Ms. Riley as a bus driver, and she was employed in that position for over sixteen years. *T. 7, 16-17*.

Pursuant to regulations promulgated by the Ohio Department of Education and the Ohio Department of Developmental Disabilities, Ms. Riley was required to maintain certification that permitted her to drive a school bus, and the certification was required to be renewed every August. *T. 8-9, 11-13.* Ms. Riley was a union member and therefore subject to a collective bargaining agreement (CBA). *T. 8, 19.* Pursuant to the CBA, the Board was obligated to pay for the training Ms. Riley needed in order to maintain her certification. *T. 8-9.* The Board therefore offered in-service trainings (“in-services”) to Ms. Riley throughout the year, to enable her to maintain her certification. *T. 9-10.* If Ms. Riley was unable to attend one of the Board’s in-services, she could (with prior Board approval) attend training offered by a school district. *T. 10-11.*

Ms. Riley’s birthday was in August, and she typically took vacation each year on her birthday. *T. 17.* During her sixteen years of employment with the Board, there were at least three occasions when she had been permitted to renew her certification late, after being on vacation on her birthday. *T. 17-19, 21-22.*

On August 6, 2010, Ms. Riley completed her in-service training to maintain her certification until August 6, 2011. *T. 12.*

On March 25, 2011, the Board offered in-service training, which Ms. Riley could have attended in order to maintain her certification. *T. 15.* Due to illness, however, she was not able to attend that training. *T. 15.* On August 5, 2011, the Board again offered in-service training, which Ms. Riley could have attended in order to maintain her certification. *T. 15.* She was not able to attend that training, however, because she was on a vacation which the Board had approved. *T. 17.* In addition to the in-services that the Board offered in 2011, there were other

training sessions, in various school districts, which Ms. Riley could have attended in order to maintain her certification. *T. 15.*

On August 6, 2011, Ms. Riley was on an approved vacation, as she often was on her birthday. *T. 17.*

On August 6, 2011, Ms. Riley's certification expired. *T. 12, 26.*

On August 15, 2011, after returning from vacation, Ms. Riley attended training sessions in two different school systems, and she believed that she had thereby completed the training necessary to renew her certification, because she had been permitted, in prior years, to complete her training late. *R. 20; T. 17-18, 20-21.*

On August 26, 2011, the Board terminated Ms. Riley's employment as a bus driver because she had failed to maintain her certification. *T. 7-8, 15-17.* During Ms. Riley's sixteen years of employment as a bus driver for the Board, she had a very good record, was never in trouble, and was never suspended. *T. 19.* The only reason she was discharged was her failure to renew her certification on time. *T. 15.*

The Board never notified Ms. Riley, in writing or otherwise, that she would be discharged from her employment as a bus driver if she failed to renew her certification on time. *T. 13-14, 16, 18-19, 24.*

On August 27, 2011, Ms. Riley applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment-compensation benefits. She identified her employer as the Franklin County Auditor (Auditor) because the Board's payroll was administered by the Auditor.

In a Determination issued on September 12, 2011, ODJFS allowed Ms. Riley's application, having determined that she was discharged from her employment without just cause in connection with work. The Auditor appealed the Determination.

In a Director's Redetermination issued on October 7, 2011, the Director of ODJFS affirmed the initial Determination and allowed Ms. Riley's application for unemployment-compensation benefits. The Auditor appealed the Redetermination, and the Director transferred jurisdiction of the appeal to the Commission.

On November 21, 2011, a Hearing Officer conducted a hearing on the appeal. *T. 1-28*. Ms. Riley testified at the hearing, as did Dan Darling and John Fleming, who were, respectively, the Director and the Assistant Director of Human Resources for the Board. The testimony of the witnesses is reflected in the statement of undisputed facts, above.

In a Decision issued on December 13, 2011, the Hearing Officer rendered the following findings of fact:

Claimant worked for the employer from December 9, 1994, until August 26, 2011, as a Bus Driver. By state law, bus drivers like claimant were required to maintain certification in several areas. The employer did not maintain specific policies stating that employees who failed to maintain the certification or failed to timely obtain the certification would be discharged.

Up until 2011, claimant obtained her certification in each of the areas required, but would often do so after the original certification had expired. Claimant was never reprimanded for getting certification late, and she was never warned that failure to timely obtain certification would result in discharge.

Claimant missed one of the opportunities for receiving certification through an in-service training on August 6 [*sic*], 2011, because she took a pre-approved vacation. Claimant's certification expired. When claimant returned from vacation, she attempted to find another opportunity to obtain certification. Claimant attended a class on August 22 [*sic*], 2011, to get certification. That night, claimant received a phone call from the employer informing her that she was discharged for failing to obtain her certification on time.

The Hearing Officer affirmed the Director's Redetermination and allowed Ms. Riley's application for unemployment-compensation benefits, having found that she was discharged by the Auditor without just cause in connection with work. The Hearing Officer provided the following reasoning for the decision:

The employer could not identify a written policy or document providing that employees would be discharged for failing to obtain certification on time. Although the employer provided evidence that certification was required by state law, there was no evidence that employees were informed that failing to meet this requirement timely would affect their employment status. Moreover, as claimant had been allowed to obtain certification “late” for several years, and was not informed that the employer would be strictly enforcing the certification expirations dates in 2011, she could not be aware that her job was in danger. Based on the evidence, the Hearing Officer finds that claimant was discharged by the employer without just cause in connection with work.

The Auditor requested that the Commission review the Hearing Officer’s Decision. On February 16, 2012, the Commission issued a Decision affirming the Hearing Officer’s Decision.

On March 12, 2012, the Auditor appealed the Commission’s Decision to this Court.

Analysis

Unemployment benefits are paid to eligible individuals in the amounts and subject to the conditions set forth in R.C. Chapter 4141 to compensate them for loss of remuneration due to involuntary unemployment. *Hicks v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 13AP-902, 2014-Ohio-2735, ¶ 32. A claimant who has been discharged from employment for just cause in connection with his or her work is disqualified from receiving unemployment-compensation benefits. R.C. 4141.29(D)(2)(a). The claimant has the burden to prove his or her entitlement to benefits. *Hicks*, ¶ 32.

A just-cause determination must be consistent with the legislative purpose underlying the Unemployment Compensation Act: to provide financial assistance to individuals who are involuntarily unemployed through no fault or agreement of their own. *Hicks*, ¶ 33. Accordingly, just cause under the Unemployment Compensation Act is predicated upon employee fault. *Id.* Just cause is conduct that would lead a person of ordinary intelligence to conclude that the surrounding circumstances justified the employee’s discharge. *Id.* Just cause for discharge

exists where the employee, by his or her own actions, demonstrates an unreasonable disregard for his or her employer's best interests. *Id.*

“[W]hen employment is expressly conditioned upon obtaining or maintaining a license or certification and an employee agrees to the condition and is afforded a reasonable opportunity to obtain or maintain the license or certification, an employee's failure to comply with that condition is just cause for termination for unemployment compensation purposes.” *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, ¶ 27.

A reviewing court may reverse a just-cause determination by the Commission only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H); *Hicks*, 2014-Ohio-2735, ¶ 13. A reviewing court may not make factual findings or determine the credibility of a witness. *Id.* A reviewing court must affirm the Commission's findings if some competent, credible evidence in the record supports them. *Id.*

The Auditor has argued, in support of this appeal, that the Commission's February 16, 2012 Decision was against the manifest weight of the evidence and that the Auditor provided “overwhelming evidence” of just cause to discharge Ms. Riley from her employment. The Court must disagree with the Auditor's assessment of the evidence, for the following reasons.

It is undisputed that Ms. Riley was required, by state law, to maintain her certification to drive a school bus. It is also undisputed that Ms. Riley was never informed, by the Board, that she would be discharged if she failed to obtain her certification on time. To the contrary, on at least three occasions prior to August 2011, Ms. Riley had been permitted to renew her certification late, and she was not informed, by the Board, that her failure to obtain her certification on time in August 2011 would result in her discharge. Moreover, upon Ms. Riley's return to work in August 2011 following her vacation, she attempted to renew her certification

by taking in-service training in two different school districts, consistent with the Board's past practice of permitting her to do so. There is no evidence that Ms. Riley, by her own actions, demonstrated an unreasonable disregard for her employer's best interests. In light of the fact that Ms. Riley was not afforded a reasonable opportunity to renew her certification upon her return to work from vacation, there is no evidence of fault on her part.

Conclusion

Having reviewed the certified record, the Court finds that the Commission's February 16, 2012 Decision was not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

Date: 09-07-2014

Case Title: FRANKLIN COUNTY AUDITOR -VS- NANCY M RILEY

Case Number: 12CV003152

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 12CV003152

Case Style: FRANKLIN COUNTY AUDITOR -VS- NANCY M RILEY

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes