

FILED  
COURT

2014 SEP 11 P 2: 15

MARGIE MURPHY MILLER  
CLERK OF COURTS  
ALLEN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

KORY GEBHART,

Plaintiff/Appellant

-v-

SPHERION OF LIMA, INC., et al.,

Defendant/Appellee

\*

\*

\*

\*

\*

\*

CASE NO.: CV2014 0176

DECISION & JUDGMENT  
ENTRY

\*\*\*\*\*

This is an appeal by Kory Gebhart (employee) from a decision of the Unemployment Compensation Review Commission dated and mailed on February 19, 2014 in which the Commission disallowed Gebhart's request for review of an earlier decision of the Commission, which was mailed on January 28, 2014 and in which the Commission decided that Gebhart was not entitled to unemployment benefits because he "was

16SR

CV14

6043

discharged by Spherion of Lima, Inc. for just cause in connection with work." The hearing officer reasoned that:

"Claimant has a significant accident in the employer's parking lot, damaged client property, and did not report the incident to Spherion of the client. Claimant also told Ms. Arnold [Spherion's manager at DTR] that he did not plan to report the accident. Claimant violated two of the employer's established policies and his actions reasonably justified his discharge. [...]"

A claimant who has been discharged for just cause in connection with his or her work is not entitled to unemployment compensation benefits. R.C. 4141.29(D)(2)(a). Unemployment compensation is not available to an employee who quit work without just cause or who was discharged for just cause. R.C. 4141.29(D)(2)(a). Just cause in this context is that which, to an ordinarily intelligent person, is a justifiable reason for terminating an employee or for an employee's act of quitting. *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 698, 653 N.E.2d 1207 (1995). "The critical issue is not whether an employee has technically violated some company rule, but \* \* \* whether the employee, by his actions, [has] demonstrated an unreasonable

disregard for his employer's best interests." *Manor W. Health Care & Retirement Ctr. v. Conrad* (Dec. 23, 1994), 7th Dist. No. 93CA95, quoting *Kiikka v. Ohio Bur. of Emp. Servs.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (1985).

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)] and is largely an issue for the trier of fact. *Watkins v. Dir., Ohio Dept. of Job & Family Serv.*, Franklin App. No. 06AP-479, 2006-Ohio-6651. Determination of purely factual questions are primarily within the province of the hearing officer and the commission. *Watkins*, at ¶ 16. Upon appeal to the court of common pleas, "the court shall hear the appeal on the certified record provided by the commission." *Atkins*, at ¶ 13. A reviewing court can reverse the Unemployment Compensation Review Commission's decision regarding whether a termination was with just cause only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Geretz v. Ohio Dept. of Job & Family Servs.*, 114 Ohio St.3d 89, 2007-Ohio-2941, 868 N.E.2d 669, ¶ 10, citing *Tzangas* at 697.

A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the court's have no authority to upset the commission's decision.

*Watkins*, at ¶ 16, citing *Irvine, supra*, at 17. "If some evidence supports the commission's decision, the reviewing court, whether a common pleas court or court of appeals, must affirm." *Id.* at ¶ 17, 482 N.E.2d 587, citing *Crisp v. Scioto Residential Serv., Inc.*, Scioto App. No. 03CA2918, 2004-Ohio-6349. "[A] reviewing court may not reverse the commission's decision simply because 'reasonable minds might reach different conclusions.'" *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20, quoting *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

At the telephonic hearing before the Commission hearing officer [Claire Patterson], Ms. Arnold testified that Gebhart damaged the employer's client's (DTR) property when he moved his car. He did not report the damage when it happened. Arnold said Gebhart told her "numerous times that he had no intention of telling [the employer] what happened. The employer had an established policy requiring an employee to report such an incident. Gebhart testified that he never told Arnold that he did not plan to report the incident.

"The determination of what constitutes 'just cause' within the context of unemployment compensation \* \* \* involves a concurrent analysis of the legislative purpose of the Unemployment Compensation Act[.]" *Roberts v. Hayes*, 9th Dist. No. 21550, 2003-Ohio-5903 at ¶ 17, citing *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587. 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 or agreement of his own." *Irvine*, supra, at 17. Consistent with the purpose of the Act, "a discharge is considered for just cause where an employee's conduct demonstrates some degree of fault[.]" *Markovich v. Employers Unity, Inc.*, 9th Dist. No. 21826, 2004-Ohio-4193, at ¶ 8. See also *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696-97, 653 N.E.2d 1207 (1995), at paragraph two of the syllabus. Fault includes behavior that displays a disregard for the best interests of the employer. *Markovich* at ¶ 8.

Based on the above cited statutes and case law the Court finds that the hearing officer could have believed Arnold's testimony that Gebhart told her that he had no intention to report the damage to the client's property and could have decided not to believe Gebhart. The commission could have reasonably decided either way, and so, this Court has no authority to upset the commission's decision. Ohio precedent is clear on the matter: a just cause determination requires an analysis of the employee's fault in the situation leading to his termination. The Ohio Supreme Court has clearly explained the standard:

"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*, 73 Ohio St.3d at 697-698, 653 N.E.2d 1207.

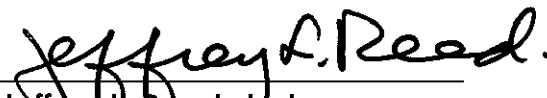
The Court finds that the hearing officer reasonably decided that Gebhart was at fault in his termination. Gebhart, by his actions, demonstrated an unreasonable disregard for his employer's best interests. After carefully reviewing the evidence before the hearing officer, the Court finds the hearing officer's determination that Gebhart was discharged with just cause is supported by evidence in the record. The determination is not unlawful, unreasonable, or against the manifest weight of the evidence. Only a decision that 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' " is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. of Emp. Servs.* (Aug. 26, 1988), 6th Dist. No. S-88-8. If some competent, credible evidence going to all the essential elements of the case supports the commission's decision, the decision must stand. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus. This Court is limited to determining whether some competent, credible evidence contained in the record supports the referee's decision. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 161 (1983). This Court "cannot usurp the function of the trier of fact by substituting its judgment for the hearing officer. The decision of purely factual questions is primarily within the province of the referee and the board of review."

See *Clark v. Buckeye Rubber Products, Inc.* (Nov. 14, 1990), Allen App. No. 1-89-76, unreported.

Therefore, it is ORDERED, ADJUDGED and DECREED that the claimant's appeal is not well taken and the decision of the Review Commission is affirmed. The claimant/appellant shall pay the costs. Judgment for costs.

It is so ORDERED.

September 11, 2014

  
\_\_\_\_\_  
Jeffrey L. Reed, Judge

**The clerk of this court shall forward a file stamped copy of this judgement Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and charged as costs.**