

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
2015 FEB 4 PM 12 14
JEANNE M. STEPHEN
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION**

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|------------------------------------|---|---------------------------------|
| IRVIN W. HUTH, | : | |
| | : | Case Number: 2013 AA 05 0396 |
| Appellant, | : | |
| | : | Judge Elizabeth Lehigh Thomakos |
| vs. | : | |
| | : | |
| DIRECTOR, OHIO DEPARTMENT | : | <u>JUDGMENT ENTRY</u> |
| OF JOB AND FAMILY SERVICES, | : | |
| et al., | : | |
| | : | |
| Appellees. | : | |

This matter came before the Court on **Remand** upon notification of the Opinion issued by the Court of Appeals, Fifth Appellate District, in Case No. 2014 AP 03 0011 filed on December 4, 2014. The Fifth District Court of Appeals ordered that the February 26, 2014 Judgment Entry in this case is affirmed in part and reversed in part. The Fifth District Court of Appeals ordered that this matter be remanded for further proceedings consistent with its opinion and the law.

The Fifth District Court of Appeals found that it was not an abuse of discretion for

this Court to deny Appellant’s motion to strike and to allow Lawrence Township to adopt the brief presented by Appellee, Director, Ohio Department of Job and Family Services (hereafter “ODJFS”). However, the Fifth District Court of Appeals sustained Appellant’s second, third and fourth Assignments of Error, which were dispositive of Appellant’s administrative appeal, and found that this Court’s decision to affirm the Commission’s Decision was in error. The Fifth District Court of Appeals found that (1) the evidence demonstrated that the reduction in Appellant’s hours was substantial and amounted to a constructive discharge, (2) the Commission’s decision that Appellant did not have just cause to leave his employment was against the manifest weight of the evidence, and (3) a reasonable person would have justifiably quit his or her job under the same conditions.

Based upon the Opinion of the Fifth District Court of Appeals and the record, the Court modifies its February 26, 2014 Judgment Entry to read as follows:

This matter came before the Court for an Administrative Appeal, based upon the **Notice of Appeal of Appellant - Irvin W. Huth filed on May 15, 2013.**

The Court has reviewed the following filed briefs, motions, and responsive arguments:

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|---------------------------|--|
| August 27, 2013 | Brief of Irvin W. Huth |
| September 24, 2013 | Brief of Appellee Director, ODJFS |
| September 25, 2013 | Notice Adopting the Brief of Appellee, Director, ODJFS filed by Appellee Lawrence Township, |

Tuscarawas County

| | |
|-------------------------|--|
| October 22, 2013 | Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS |
| October 25, 2013 | Appellee Lawrence Township's Response to Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS |
| October 28, 2013 | Appellant's Reply to Lawrence Township's Response to Motion to Strike Notice Adopting the Brief of Appellee, Director, ODHFS |
| October 28, 2013 | Reply Brief of Irvin W. Huth |

MOTION TO STRIKE

Appellant argues that Appellee, Lawrence Township, waived its right to assert the matters set forth in the Brief of ODJFS when Lawrence Township failed to assert the matters at the administrative hearing. Lawrence Township argues that Lawrence Township testified to the issues at the administrative hearing and raised no new issues in the **Notice Adopting the Brief of Appellee, ODJFS.**

Having considered Appellant's Motion filed October 22, 2013, this Court **FINDS** that **Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS** is not well-taken and should be **denied.**

STATEMENT OF THE CASE

This matter is an appeal from the State of Ohio Unemployment Compensation

Review Commission's ("Commission") Decision dated April 24, 2013, which disallowed Appellant's request for review by the Commission.

Appellant resigned from his position with Lawrence Township on December 31, 2012. Appellant filed an application for benefits with the Office of Unemployment Compensation. On January 25, 2013, the Office of Unemployment Compensation issued an initial Determination of Unemployment Compensation Benefits disallowing Appellant's application for unemployment compensation benefits.

Appellant filed an appeal. On February 19, 2013, the Office of Unemployment Compensation Benefits issued a Director's Redetermination affirming the initial determinations and denying unemployment compensation benefits.

Appellant appealed from the Director's Redetermination, and the Director transferred the appeal to the Commission. A hearing on Appellant's appeal was held before Hearing Officer Kristina Mitchell on March 13, 2013, by telephone. On March 20, 2013, the Commission issued a Decision affirming the Director's Redetermination and disallowing Appellant's Application for Determination of Benefit Rights, finding that he quit without just cause.

Appellant filed a Request for Review of the Hearing Officer's Decision with the Commission. On April 24, 2013, the Commission issued a Decision disallowing Appellant's request for review.

It is from the Decision of the Commission that Appellant filed an **Administrative Appeal** with this Court on May 15, 2013. The Court has reviewed the **Transcript of the Record of the Proceedings** from the Commission, which was filed with the Court on **June 27, 2013**, and amended on **July 11, 2013**.

ARGUMENTS

Appellant argues that the Commission's Decision is unlawful, unreasonable and against the manifest weight of the evidence. Appellant argues that both a change in Appellant's work status from full-time to part-time and the elimination of medical insurance benefits created an extreme hardship, which justified Appellant's resignation. Appellant argues that circumstances beyond Appellant's control caused Appellant to resign through no fault of his own after discussions with Employer regarding alternative employment options failed. Appellant argues that the Review Commission's Decision failed to follow the law regarding just cause.

Appellee, ODJFS, argues that Appellant did not act as a reasonable, ordinary person when Appellant resigned from his position prior to obtaining a formal response from Employer regarding alternative employment options. ODJFS argues that Appellant could have retained his position until obtaining new employment. ODJFS also argues that the Commission's finding that Appellant resigned from his position without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence because competent,

credible evidence establishes that Appellant resigned from his employment without just cause.

STANDARD OF REVIEW

R.C. 4141.282(H), which addresses appeals from a final decision of the Commission to a court of common pleas, provides that:

“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.”

R.C. 4141.46 provides that “[s]ections 4141.01 to 4141.46, inclusive, of the Revised Code shall be liberally construed.”

R.C. 4141.29(D)(2)(a) provides that generally no individual may serve a waiting period or be paid benefits for the duration of his or her unemployment if the director finds that the individual quit work without just cause.

Just cause “is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995), quoting *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985).

“The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case.” *Irvine*, at 17-18, citing *Brown-*

Brockmeyer Co. v. Roach, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947); *Sutfin v. Carlsbad Marketing & Communications, Inc.*, 2nd Dist. Montgomery No. 24555, 2011-Ohio- 5988, ¶15.

The Fifth District Court of Appeals has found that a substantial reduction in wages can be a just cause for leaving employment if a reasonably intelligent person would do so under all of the same circumstances. *Doney v. Ohio Bureau of Employment Services*, 5th Dist. Tuscarawas No. CA-1540, 1981 WL 6580 (Dec. 10, 1981). "Whether an employer's reduction in hours is substantial enough to provide the employee with just cause to quit her job is a factual determination." *Bethlenfalvy v. Ohio Dept. of Job & Family Services*, 8th Dist. Cuyahoga No. 84773, 2005-Ohio-2612, ¶19, citing *Bainbridge Township v. Stellato*, Geauga App. No. 95-G-1936 (Mar. 8, 1996).

The determination of a purely factual question is primarily within the province of the board, and a court of law may reverse such decisions on appeal only if they are unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine*, at 17-18, citing *Brown-Brockmeyer Co.*, at 518. Upon an appeal based on factual grounds, the court of common pleas' role is limited to determining whether the board's decision is supported by the evidence in the record. *Morris v. Ohio Bureau of Employment Services*, 90 Ohio App.3d 295, 298, 629 N.E.2d 35 (10th Dist. 1993); *Irvine*, at 18.

A reviewing court, including the court of common pleas, may not make factual findings or determine the credibility of witnesses. *Hasch v. Vale*, 5th Dist. Stark No.

2001CA00361, 2002-Ohio-3092. "A reviewing court can not usurp the function of the triers of fact by substituting its judgment for theirs." *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468 (1982).

"The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision." *Irvine*, at 18. If the Commission could reasonably decide either way, the courts do not have authority to upset the board's decision. *Irvine*, at 18; *Doering v. Holmes County Dept. of Job & Family Services*, 5th Dist. Holmes No. 2008 CA 015, 2009-Ohio-5719, ¶59. However, a court should reverse an agency's ruling that reaches an unreasonable conclusion from essentially undisputed evidence at the administrative hearing. *Opara v. Carnegie Textile Co.*, 26 Ohio App.3d 103, 105-106, 498 N.E.2d 485 (8th Dist. 1985), citing *Griffith v. Administrator*, 8th Dist. Cuyahoga No. 48301, 1987 WL 6397 (Dec. 27, 1984).

DECISION

Upon review of the Court file, the Court **FINDS** that the evidence in the Record demonstrates that the reduction in Appellant's hours was substantial and amounted to a constructive discharge.

The Court **FINDS** that a reasonable person would have justifiably quit his or her job under the same conditions, and therefore, Appellant had just cause to leave his employment with Appellee Lawrence Township.

The Court **FINDS** that the Commission's decision that Appellant did not have just cause to leave his employment was against the manifest weight of the evidence.

The Court **FINDS** therefore, that the **Decision of the Commission** dated April 24, 2013, disallowing Appellant's Request for Review, should be **Reversed**, and this matter should be **Remanded** to the Commission to issue a decision consistent with this Judgment Entry and the Opinion of the Fifth District Court of Appeals.


It is therefore **ORDERED** that the Decision of the Commission dated April 24, 2013, disallowing Appellant's Request for Review, is **Reversed**, and this matter is **Remanded** to the Commission to issue a decision consistent with this Judgment Entry and the Opinion of the Fifth District Court of Appeals.

It is further **ORDERED** that Appellant's Motion to Strike Appellee Lawrence Township's Notice Adopting the Brief of Appellee, Director, ODJFS is denied.

It is further **ORDERED** that the costs of this Appeal shall be assessed to Appellees.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: Feb. 4, 2015

cc: Susan Sheffield, Assistant Attorney General
Dennis D. Traver, Esq.
Michela Huth, Esq.
State of Ohio Unemployment Compensation Review Commission
Court Administrator
Clerk of Courts