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FILED  
2-24-15

FILED IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

RYAN G. ~~BIERS~~ )  
 )  
Appellant )  
LAUREN G. KELLY )  
LAKE CO. CLERK OF COURT )  
vs. )  
 )  
GREEN TREE SERVICING LLC, )  
et al. )  
 )  
Appellees )

CASE NO. 14CV001803  
JUDGE EUGENE A. LUCCI  
ORDER AFFIRMING DECISION  
OF UNEMPLOYMENT  
COMPENSATION REVIEW  
COMMISSION

{¶1} The court has considered: (1) the appellant’s notice of appeal, filed September 12, 2014; (2) the transcript of the record from the Unemployment Review Commission (Review Commission), filed October 14, 2014; (3) the appellant’s brief, filed December 8, 2014; (4) Appellee Green Tree Servicing LLC’s (Green Tree) brief, filed January 9, 2015; and (5) Appellee Director, Ohio Department of Job and Family Service’s (ODJFS) brief, filed January 23, 2015.

{¶2} The appellant filed an application for unemployment benefits on May 7, 2014. On May 28, 2014, an initial determination was issued, finding that the appellant was not eligible for benefits because he was discharged for just cause. The appellant appealed the initial determination, and on June 10, 2014, the director issued a redetermination affirming the initial determination. The appellant filed an appeal from the redetermination, and the matter was transferred to the Review Commission.

{¶3} A telephone hearing was conducted on June 30, 2014. On July 17, 2014, the hearing officer issued a decision, finding that the appellant was discharged for just cause. Appellant filed a request for review which was disallowed by the Review Commission. On September 12, 2014, the appellant filed the instant appeal. The issues have been fully briefed.

{¶4} R.C. 4141.282(H) limits the scope of review by the court on appeal from a Review Commission decision. 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. 4141.282(H).

{¶5} A decision supported by some competent, credible evidence going to all essential elements of the dispute will not be reversed on appeal as being against the manifest weight of the evidence. *Shavers v. Administrator, Ohio Bureau of Unemployment Services*, 11<sup>th</sup> Dist. No. 3738, 1987 WL 26702 (Dec. 4, 1987). Accordingly, the duty of the reviewing court is to determine whether the Review Commission’s decision is supported by the evidence in the record. *Fredon Corp v. Zelenek*, 124 Ohio App. 3d 103, 109, 705 N.E.2d 703 (11<sup>th</sup> Dist. 1997).

{¶6} Green Tree alleges, and the Review Commission determined, that the appellant was discharged for just cause for violating Green Tree’s attendance policy. The appellant argues that the hearing officer’s decision was arbitrary, unconscionable, and against the manifest weight of the evidence because the hearing officer required the appellant to offer proof that he did not violate the attendance policy by taking unscheduled breaks, but did not require Green Tree to offer proof that the appellant did take the unauthorized breaks. The appellant does not cite to any portion of the transcript to support his arguments. During his testimony at the telephone hearing, the appellant testified that he did not understand the testimony provided by Green Tree that he had taken unscheduled breaks because when employees at Green Tree take a break, they log out on their phones, and if they are not logged out, the phones would show inactivity, and someone would contact the employee to question the inactivity. Transcript of June 30, 2014 telephone hearing, pp. 22-23. He further testified that no one ever contacted him to indicate inactivity on his phone. *Id.* The hearing officer then asked if the appellant had any proof or documentation regarding when he logged in and out, or took breaks. *Id.* at 24-25. The hearing officer later asked a representative of Green Tree whether anyone confirmed the unauthorized breaks through those records prior to the appellant’s termination. *Id.* at 42. The witness indicated that the information was confirmed by the appellant’s supervisor and the team lead. *Id.* Thus, the record does not reflect that the appellant was required to provide proof and the appellee was not. Rather, the hearing officer simply asked questions to further develop the testimony and evidence presented at the telephone hearing.

{¶7} At the telephone hearing, Green Tree presented evidence that the appellant had violated its attendance policy, and that it had followed its progressive discipline policy in discharging the appellant. Transcript of June 30, 2014 telephone hearing, pp. 9-15. Thus, the Review Commission's decision is supported by evidence in the record.

{¶8} While the appellant disputed the testimony provided by Green Tree's representatives and presented his own contradictory testimony, the court must give deference to the Review Commission in its role as the finder of fact. *Fisher v. Bill Lake Buick* (Feb. 2, 2006), Cuyahoga App. No. 86338, 2006-Ohio-457, 2006 WL 250726 at ¶ 24, citing *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587. The court "is not permitted to make factual findings or to determine the credibility of witnesses." *Irvine* at 18. Nor can the court reverse a decision simply because "reasonable minds might reach different conclusions." *Id.* In fact, if an issue is close and the Review Commission could conceivably decide either way, courts must affirm the commission. *Fisher* at ¶ 24. Thus, that the appellant presents evidence which, if believed, could result in a different finding does not make the Review Commission's decision unlawful, unreasonable, or against the manifest weight of the evidence.

{¶9} The record contains competent, credible evidence supporting the hearing officer's findings. Accordingly, the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Review Commission is affirmed. Court costs are assessed to the appellant.

{¶10} **IT IS SO ORDERED.**

  
EUGENE A. LUCCI, JUDGE

c: Adam R. Waller, Esq., Attorney for Appellant  
David J. Demers, Esq., Attorney for Appellee Green Tree Servicing, LLC  
V. Patrick Macqueoney, Esq., Attorney for Appellee ODJFS

FINAL APPEALABLE ORDER  
Clerk to serve pursuant  
To Civ.R. 58(B)