IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

DOLLY BEATTIE,

Appellant,

vs.

ODJFS, et al.,

Appellees.

: Case No: A 1400728

: Judge Beth A. Myers

: **ENTRY ADOPTING THE MAGISTRATE'S DECISION**

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that disallowed benefits to the Appellant Dolly Beattie. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby adopted.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

MAGISTRATE

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Beth A Myers
JUDGE BETH A. MYERS

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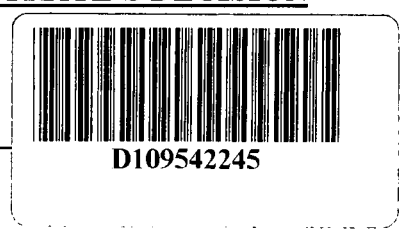
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

DOLLY BEATTIE,	:	Case No. A1400728
Appellant,	:	Judge Myers
v.	:	
CHILDREN'S HOSPITAL MEDICAL CENTER, INC., et al.,	:	**MAGISTRATE'S DECISION**
Appellees.	:	



RENDERED THIS 10TH DAY OF FEBRUARY, 2015.

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") January 8, 2014 Decision disallowing a request for review of the October 4, 2013 Ohio Department of Job and Family Services' ("ODJFS") Redetermination that claimant Dolly Beattie ("Beattie") was discharged from her position with Children's Hospital Medical Center ("Children's Hospital") without just cause.[1] This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' filed briefs on July 7, 2014.

BACKGROUND

Beattie was employed by Children's Hospital as a Financial Services Representative from October 2009 through July 2013.[2] On June 5, 2013, Children's Hospital received a letter alleging that Beattie was using her work computer for improper purposes. The letter was sent by Terrence F. McCoy, M.D., who admitted to having an affair with Beatty while she was his patient. McCoy alleged, in part, that Beattie had "posted 2 videos of me that I had sent her during our affair. They were both sexual in

[1] / *In re claim of Dolly A. Beattie, C2013-025666.* Appellant Brief, Ex. C.
[2] / Appellant Brief, p. 1.

nature. She has also posted the videos on You Tube under my name. I believe she was using her computer at work to post these videos."[3] In response to the letter, Children's Hospital investigated the allegations. On July 3, 2013, Beattie met with members of Children's Hospital's human resources department. During the meeting, Beattie apparently admitted she had shown the You Tube video to a colleague during work. After first suspending Beattie during the pendency of the investigation, Children's Hospital eventually terminated Beattie's employment.

Beattie filed an Application for Determination of Benefit Rights. The ODJFS Director issued a Redetermination on finding that Beattie was discharged from her employment with Children's Hospital with just cause. Beattie appealed the Redetermination on October 23, 2013. ODJFS transferred jurisdiction to the Review Commission. The Review Commission heard the appeal on November 22, 2013. Following those hearings, the Review Commission issued a decision on November 25, 2013 upholding the ODJFS Redetermination and finding that Beattie was discharged from her employment with just cause.[4] Beattie appealed the Decision of the Review Commission to this Court, seeking reversal of his disqualification for unemployment benefits.[5]

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse,

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[3] / *Id.* at Ex. D.
[4] / Appellant Brief, Ex. A.
[5] / Brief of Appellant, filed on February 29, 2012.

vacate, or modify the decision, or remand the issue to the Review Commission.[6] Otherwise, the court shall affirm the decision.[7] The reviewing court must follow this same standard in assessing just cause determinations.[8] The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.[9]

JUST CAUSE

The Ohio Revised Code states:

> Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions: * * * (2) For the duration of the individual's unemployment if the director finds that:
> (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.][10]

Each just cause determination must be based upon the merits of the particular case.[11]

> 'Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.' " *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists " '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.' " (Emphasis *sic.*) *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 123, 199 N.E.2d 3, 5. " 'The [A]ct was intended to provide financial assistance

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[6] / Ohio Rev. Code § 4141.282(H) (West 2008).
[7] / *Id.*
[8] / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.
[9] / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).
[10] / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).
[11] / *Irvine*, supra, at 17.

> 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* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 52, 399 N.E.2d 76, 79. Thus, while a termination based upon an employer's economic necessity may be *justifiable,* it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.
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> The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. 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.[12]

DISCUSSION

Beattie argues that the Decision of the Review Commission should be reversed because Children's Hospital failed to follow its progressive discipline policy and she did not act against the hospital's best interest. The hearing officer found that Children's Hospital "does have a progressive discipline policy. However, due to the nature of the violation- viewing a pornographic video on the clock on a work computer-several steps were skipped, as permitted by the policy, and the claimant was terminated." The hearing officer concluded "at the time of her hire it was improper for claimant to view pornographic videos while on the clock on her work computer."

The court finds the hearing officer correctly determined that Beattie was properly disciplined pursuant to Children's Hospital's disciplinary policy. It is undisputed that Beattie had no prior disciplinary history before being terminated. Beattie argues that Children's Hospital was required to follow its progressive discipline policy and she was wrongfully terminated since this was her first offense. §4.2.1 of Children's Hospital's Disciplinary Policy states, "Disciplinary action is cumulative in nature regardless of the

[12] / *Tzangas,* supra, at 697-98.

offense (with the exception of attendance issues). The disciplinary action may begin at or progress at a higher level even if prior behavioral or performance issues were different."[13] However, §4.3.1 of the policy states, "CCHMC employees are employed-at-will and CCHMC may skip any or all preliminary warnings and move immediately to any discipline step, including immediate termination."[14] While Children's Hospital had a progressive discipline policy in place, the policy was explicitly not mandatory. As Appellees point out, the cases cited by Beattie all found that employers had failed to follow mandatory progressive discipline policies. Here, the hearing officer correctly found that Children's Hospital's progressive discipline policy was not mandatory and Beattie could be terminated without a prior disciplinary history.

Beattie also argues Children's Hospital failed to follow its "unwritten" policy of zero tolerance for pornographic material viewed at work. It is undisputed that the video is pornographic in nature and showed a fully naked man. There was some dispute as to who viewed the video and when. At the meeting on July 3 with human resources personnel, Beattie initially asked if the meeting was related to the YouTube video. Both Ms. Burns and Ms. Widdowson of the hospital's human resources department testified that at the meeting Beattie admitted to showing the video to a colleague during work hours.[15] However, Beattie refused to name the co-worker. Beattie also testified and denied viewing or posting the video at work. Beattie claimed it was her co-worker that had viewed the video and any admissions she made were under duress. Both members of Children's Hospital's human resources department testified that Children's Hospital has

[13] / Appellant Brief, Ex. E.
[14] / *Id.*
[15] / Trans. p.8: L.20-23, p.25: L. 1-17..

an unwritten zero tolerance policy for any pornographic material viewed at work.[16] Beattie disputes this claim because the co-worker that allegedly viewed the video was not terminated.

The court finds Beattie's argument unavailing. Ms. Burns testified Beattie admitted to showing a colleague the video during work hours. Beattie then refused to name the colleague. Ms. Burns stated the hospital has an idea of who was shown the video, but cannot be sure.[17] Beattie cannot frustrate an investigation and then rely on the fact that others were not disciplined. Beattie stated that she ultimately "took ownership" of the video, which is possibly why she was reluctant to name her co-worker.[18] Furthermore, there was no evidence in the record regarding the status or discipline of the co-worker. Therefore, the court cannot find that Children's Hospital improperly applied its zero tolerance policy.

Finally, Beattie argues she was not terminated for just cause because she did not act against the best interest of Children's Hospital. It is Beattie's position that Children's Hospital only found out about the video because of the letter and therefore no harm was caused. Again, the court must disagree with Beattie. As Children's Hospital states in its brief, "it is axiomatic that accessing pornography and showing it to co-worker while working at a facility specifically meant to treat children is unacceptable misconduct."[19] Beattie rebuts this argument by stating she was not in contact with any patients or medical staff. However, as Beattie learned in this case viral videos can spread quite quickly. By posting the video, Beattie may have gotten the desired attention on Dr.

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[16] / Trans., p.9: L15-17, p. 25: L. 21-24.
[17] / Trans., p. 9: L3-12.
[18] / *Id.*, pp. 29, 33.
[19] / Children's Hospital Brief, p. 7.

McCoy, but also exposed herself and Children's Hospital to liability. Children's Hospital has the upmost interest in ensuring its entire facility is dedicated to and appropriate for children. Beattie failed to live up to that standard and knew what she did was wrong. Despite her later statements to the contrary, the credible evidence indicated she admitted showing the video to a co-worker during work hours. Whether Beattie accessed the video herself or caused another co-worker to view the video at work is immaterial. The hearing officer was absolutely correct when he concluded, "A person of reasonable intelligence would consider this to be a justifiable reason for discharge."[20]

DECISION

The unemployment compensation appeal of Appellant Dolly A. Beattie is DENIED. The findings of the hearing officer's November 25, 2013 decision are AFFIRMED IN FULL.

MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

[20] / Appellant Brief, Ex. A at p. 4.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 2-12 Deputy Clerk: _____