

FILED
PREBLE COUNTY, OHIO
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CHRISTOPHER B. WASHINGTON
CLERK OF COURTS

IN THE COMMON PLEAS COURT, PREBLE COUNTY, OHIO

OCTOBER ENTERPRISES, INC.,

APPELLANT,

CASE NO. 13-CV-30045

V.

RANDA M. BURTON, et al,

APPELLEES.

DECISION AND ENTRY

Before the Court is Appellant's appeal of the Unemployment Compensation Review Commission's decision finding that the Claimant Burton was discharged without just cause. A briefing schedule was established and briefs were filed; however, the matter somehow "fell through the cracks" and it was just brought to the Court's attention that same needed consideration. With apologies for the delay, the Court finds as follows:

FACTS:

Claimant worked for the employer October Enterprises, Inc. from May 16, 2008 to May 15, 2013. On April 28, 2013, Claimant was injured at work, and, pursuant to the requirement of the employer, she went to the hospital.

Claimant was discharged and released to work without restrictions the same day. When Claimant returned to work on April 29, 2013, she presented Discharge Orders from Reid Hospital that indicated she was unable to return to work until May 3, 2013. The discharge Order contained the following language "ice, elevate, and take Ibuprofen every six hours with food for five days."

After investigating, October Enterprises determined that Burton had altered the Discharge Orders and she was terminated immediately.

DISCUSSION:

The claim was originally denied, but after a full hearing before a hearing officer the Review Commission determined that Burton was discharged without just cause and the Commission therefore approved the claim.

The hearing officer found that when Burton reviewed the Discharge Order she questioned a nurse, who had given same to her, about the lack of a return to work date, and that it was the nurse who added the language that Burton was to be off work until May 3, 2013. According to Burton's testimony, the nurse made the alteration because of the language requiring ice and elevation for five days. The hearing officer determined that Burton had not altered the Discharge Orders.

There is no question that the carbon copy of the Discharge Orders (that was given to Burton at the hospital and to October Enterprises by Burton) was altered.

The employer argues that the hearing officer simply ignored the evidence that, in the employer's opinion, clearly shows that Burton altered the Discharge Order so she could be off for a few days. Clearly, on the record before him, the hearing officer could have found that Burton was terminated for just cause because he had sufficient evidence before him to find that Burton altered the Discharge Order. However, there is sufficient evidence in the record (essentially Burton's testimony) to support the conclusion ultimately reached by the hearing officer that Burton did not alter the Discharge Order.

The standard of review is found in Ohio Revised Code Section 4141.282(H) as follows:

If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification; otherwise such court shall affirm such decision.

While the Court should not simply "rubber stamp" the Commission's decision, the Court should not overrule same if there is some evidence in the record that indicates the decision was reasonable.

In the instant case, it is clear that the hearing officer believed Burton's account of what happened and how the return to work date of May 3, 2013 came to be on the copy of the Discharge Order given by Burton to her employer. If Burton's account is believed, then it is clear that Burton did not misrepresent or withhold pertinent facts during employment.

The Court cannot find, on this record, that the Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, the decision is affirmed.

Costs to Appellant.



JUDGE DAVID N. ABRUZZO

CC: JAN E. HENSEL/ROBIN A. JARVIS/RANDA BURTON