IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

LT Battle,	]	**Case No. 13CV-11046**
Appellant,	]	**Judge Sheeran**
vs.	]	
Jones Law Group, LLC, et al.,	]	
Appellees.	]	

Decision and Judgment Entry Affirming Decision of Ohio Unemployment Compensation Review Commission

Notice of Final Appealable Order

Sheeran, J.

This case is a Revised Code 4141.282 administrative appeal, by LT Battle (Appellant), from a decision that the Ohio Unemployment Compensation Review Commission issued on September 4, 2013. In that decision, the Commission denied Appellant's request for further review of a Hearing Officer's decision, in which the Hearing Officer disallowed Appellant's application for unemployment compensation benefits.

The record that the Commission has certified to the Court includes a hearing transcript, the pages of which were numbered by the transcriber, i.e., *Transcript (T.) 1-25.* The remainder of the record consists of unnumbered pages. Where necessary, therefore, the Court has supplied page references, i.e., *Record (R.) 1-158.*

The record that the Commission has certified to the Court reflects the following facts.

Facts

Appellant was employed as a debt collector by the Jones Law Group, LLC, from November 11, 2011 to November 28, 2012. *R. 3, 5, 7, 12; T. 7.* When Appellant was hired, the

firm was called The Law Office of Eric A. Jones, LLC. *R. 12.* The firm was located at 580 South High Street in Columbus, Ohio, and shared offices with two other law firms, The Bainbridge Firm LLC and The Fitch Law Firm. *R. 12.*

Appellant's job was to collect delinquent accounts on behalf of the Jones Law Group's clients. *T. 8.* The Jones Law Group served as Special Counsel for the Ohio Attorney General, collecting receivables such as personal income tax, sales tax, and corporate franchise tax. *T. 8.* As a debt collector, Appellant was responsible for processing the checks he collected from debtors. *T. 13.* Debtors gave checks to Appellant with instructions to process the checks immediately or in the future. *T. 13.*

During Appellant's employment with the Jones Law Group, his conduct was governed by an Employee Handbook, which set forth the firm's policies on a number of topics, including harassment, time records, the use of the firm's telephones, and computer conduct. *R. 38-44.* The firm prohibited its employees from harassing fellow employees, and any act of harassment could result in disciplinary action, up to and including discharge. *R. 41.* The firm required its employees to record their starting and ending times each day, and to record their starting and ending times for lunch; the failure to accurately record one's time could lead to the termination of employment. *R. 42.* The firm required that, except in emergency cases, employees were not to use the firm's telephones for personal calls during work hours. *R. 43.* The firm required its employees to use the firm's computers and computer resources (including the Internet and e-mail) only for authorized firm business. *R. 44.*

In October 2012, Appellant collected a check from a debtor, who instructed Appellant not to process the check until the debtor notified Appellant that the debtor had received an anticipated 401(k) distribution to cover the check. *R. 30-33.* Appellant told the debtor that he

would hold the check, but Appellant processed the check before the debtor notified Appellant that there were funds in the debtor's checking account to cover the check, and the check bounced. *Id.* As a result of Appellant's conduct, the Jones Law Group was obligated to reimburse the debtor for the penalty fees she was charged by her bank. *R. 30-31.* On October 8, 2012, Eric Jones, the principal of the Jones Law Group, cautioned Appellant that he should not have processed the check, and that he should have followed up with the debtor to make sure there were sufficient funds in the debtor's checking account to cover the check. *R. 30.*

On November 28, 2012, Appellant was discharged from his employment with the Jones Law Group. *R. 3, 5, 13; T. 7-8.* Appellant requested a written explanation of the reasons for his termination. *R. 32.*

By letter mailed on December 5, 2012, Mr. Jones advised Appellant that he had been terminated for unsatisfactory collections work, repeatedly failing to clock out for lunch, working on the side for the Fitch Law Firm while on the clock for the Jones Law Group, using the Jones Law Group's skip-trace subscription service to perform work for the Fitch Law Firm, routinely processing bad checks, and making unwanted sexual comments to female co-workers. *R. 32-34.*

Commission Proceedings

On December 11, 2012, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning December 2, 2012. *R. 3.* ODJFS thereafter requested separation information from the Jones Law Group. *R. 5.*

By letter dated December 14, 2012, Mr. Jones, on behalf of the Jones Law Group, submitted the following position statement to ODJFS:

> Mr. Battle began his employment with the Jones Law Group, LLC on or about November 11, 2011. At the time of his hire, our firm was known as The Law

Office of Eric A. Jones, LLC. We were, and to this day remain, a small law office with fourteen (14) employees including the owner of the firm, Eric A. Jones, Esq. We have four (4) lawyers in-house, one of whom is part-time, and we employ ten (10) additional full-time support staff including collection personnel. Of the fourteen employees at our firm, eight (8) are women and six (6) are men, and we have eleven (11) Caucasian and three (3) African Americans working in our office. The law firm was formed five (5) years ago with two (2) people: Mr. Jones and Greg Wood, an African American gentleman who acted as Mr. Jones' right hand man during the early development of the firm and who is still an employee to this day. Our office is located at 580 S. High Street in Columbus, and we have an office-sharing arrangement with two other firms: The Bainbridge Firm LLC and The Fitch Law Firm.

Being a small firm, the employees who have come to our firm over the years did so by word-of-mouth referrals from other legal and collection professionals or by submitting resumes. We do not have a form application that is filled out by prospective applicants, and this was true in Mr. Battle's case as well. We have an Employee Handbook which was in use during Mr. Battle's tenure at the firm. Mr. Battle was well aware of company policies.

Our firm does legal work in numerous areas including collections, social security disability, personal injury, contract law, and general civil litigation. However, more than 50% of our practice is devoted to consumer and commercial collections on behalf of creditor clients. These clients include lending institutions and governmental entities. Mr. Battle was hired as a collector and came to us with many years of collection experience in a collection agency setting but not in a law firm setting.

During Mr. Battle's one (1) year with the firm, he struggled with meeting the bare minimum goals established by his supervisors. During his time at our firm, Mr. Battle had two (2) collection supervisors who would routinely discuss with him the firm's expectations of its employees in general and of him in particular.

Mr. Battle was terminated from our firm on November 28, 2012. Lynn Jackson and the undersigned were present when Mr. Battle was informed of the termination. The decision to terminate Mr. Battle's employment was based upon poor work performance and other violations of company policy. Mr. Battle's substandard performance had been discussed with him on numerous occasions by his former supervisor, Greg Wood, and Lynn Jackson. In addition to poor collection performance, Mr. Battle also routinely processed bad checks and other forms of debtor payments in order to reach collection levels that would entitle him to a monthly cash bonus. In many instances these payments appear to have been accepted intentionally by Mr. Battle with full knowledge that they were worthless, or at least with a reasonable expectation that they may prove to be worthless. In addition, Mr. Battle processed checks from at least one debtor without the debtor's express consent. This is a violation of federal and state law as well as

company policy and it exposed the Jones Law Group to potential legal ramifications. Mr. Battle was paid a bonus based upon these illegitimate payments when he otherwise would not have been entitled to such. Unfortunately there does not appear to be a way for the firm to recover these funds, which were paid in good faith by the firm but were clearly not earned in good faith by Mr. Battle.

Additionally, Mr. Battle's time records indicate that he repeatedly failed to clock out for lunch breaks. This ultimately allowed him to receive compensation to which he was not entitled as his work hours were falsified. This is theft of company time and money, and Mr. Battle was repeatedly warned to discontinue this behavior, as evidenced by the affidavits of Mr. Wood and Ms. Jackson.

Moreover, Mr. Battle has admitted that he worked "on the side" for Mr. Fitch and engaged in skip-tracing and other activities for a competing law firm while on the clock for the Jones Law Group, which was unbeknownst and unpermitted by the Jones Law Group. It is against company policy to work for another company, especially a competing law firm, while on the clock at the Jones Law Group. This too is theft of company time. Also, while doing this "side work" for the Fitch Law Firm while also on the clock at the Jones Law Group, Mr. Battle used company online subscription services and charged the costs of his usage to the Jones Law Group. This is theft of resources.

Finally, some female employees reported to Mr. Jones that Mr. Battle made unwanted sexual comments to them on a number of occasions. No employee, whether working at the Jones Law Group or anywhere else, should ever be made to suffer a hostile work environment based upon their gender, age, race, sexual orientation or religious affiliation. Our firm takes these kinds of allegations seriously and we do not believe anyone should be subjected to this sort of unacceptable and illegal behavior. Mr. Battle's actions were an intentional violation of firm policy and a flagrant violation of federal and state law that could expose the Jones Law Group to significant legal action.

It should also be noted that following his termination, Mr. Battle has been seen loitering in the company parking lot for the purpose of intimidating current firm employees. This behavior is unacceptable and Mr. Battle has been told to cease this activity immediately or the firm would be forced to report the behavior to the authorities.

In conclusion, the Jones Law Group hires and retains employees who exhibit the highest possible work ethic and character and show the ability to perform to the highest standards. As evidenced by the racially-diverse makeup of our firm, a person's color or race is not, and never has been, a motivating component in either the hiring or firing decisions of the firm, nor is it a factor in setting the collectors' goals or performance standards.

> Thank you for your consideration and I invite you to contact me should you need further information. (Emphasis in original.) *R. 12-14.*

Although Mr. Jones referred to "the affidavits of Mr. Wood and Ms. Jackson" in the December 14, 2012 position statement, there do not appear to have been any affidavits submitted to ODJFS with the position statement.

In a Determination issued on January 2, 2013, ODJFS allowed Appellant's application for unemployment compensation benefits, having determined that he was discharged from his employment without just cause in connection with work. *R. 16-21.*

On January 23, 2013, the Jones Law Group appealed the Determination. *R. 22-44.* Mr. Jones, on behalf of the Jones Law Group, submitted the following statement to ODJFS in support of the appeal:

> The Law Office of Eric A. Jones, LLC (dba Jones Law Group, LLC) is appealing the determination of the initial application for unemployment benefits issued January 2, 2013. Mr. Battle was discharged on November 28, 2012 for cause for violating company multiple [*sic*] rules and poor performance.
>
> Mr. Battle was employed as a Collector and responsible for collecting delinquent accounts. Mr. Battle's performance was unsatisfactory and he was never a top performer. More importantly, Mr. Battle violated company policies and state and federal laws by processing a check for over $10,000.00 from a debtor without the debtor's consent. Mr. Battle did this to increase his performance numbers and to receive a higher compensation bonus. This was a direct violation of company policy placing the company at risk of being sued and a violation of state and federal laws.
>
> Second, Mr. Battle repeatedly failed to clock out for lunch breaks in violation of company policy. By doing so, Mr. Battle received compensation for unearned time. Mr. Battle was repeatedly counseled about the requirement to clock out for lunch breaks and repeatedly failed to do so.
>
> Third, Mr. Battle was engaging in employment for another law firm while on the clock at the Law Office of Eric A. Jones, LLC. Mr. Battle was using research services that are paid for by the Law Office of Eric A. Jones, LLC [to] do this work. This is considered theft of company time and resources.
>
> Finally, Mr. Battle made unwanted sexual comments to a coworker, Lynn Jackson, whose affidavit is attached.

> The above stated facts clearly demonstrate the [*sic*] Mr. Battle's separation from his employment was for cause and unemployment benefits should be denied. *R. 23-24.*

On January 23, 2013, the Jones Law Group submitted two affidavits to ODJFS in support of the appeal. In an affidavit executed on December 14, 2012, Lynn Jackson testified:

> I, Lynn Jackson, who first being duly sworn, depose and state:
>
> 1. I have personal knowledge of the facts of the within matter, am competent to testify about these facts, and am duly authorized to do so;
>
> 2. I am an African American female and have been employed by the Jones Law Group, LLC since January, 2009;
>
> 3. I am a collector in the Jones Law Group's collection department. I was promoted to Collection Supervisor in October, 2012. I was L.T. Battle's immediate supervisor from the date of my promotion to the day Mr. Battle was terminated, which was November 28, 2012;
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> 4. I had several discussions with Mr. Battle regarding his collection goals and overall performance objectives. Unfortunately Mr. Battle failed to perform up to the performance requirements of the Jones Law Group;
>
> 5. Mr. Battle was given warnings with respect to making sure he clocked in/out of his desktop computer when leaving for lunch, but Mr. Battle consistently did not heed those warnings;
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> 6. Mr. Battle was given warnings with respect to ensuring that he was correctly taking debtor payments only when he had the authority to do so, and only when it appeared that the payments would be legitimately paid to the firm by a payor institution, but Mr. Battle did not comply with these instructions and took payments when he was not given the authority to do so by the debtor and/or he posted payments that he knew or should have known were not valid, resulting in payment of bonuses to Mr. Battle to which he was not entitled. One such instance, when Mr. Battle improperly took a $13,000 payment, I notified Mr. Battle that the payment was being "backed out" of the account and that he wouldn't be given credit for it since it wasn't valid. Mr. Battle became angry and began yelling at me. When I told him to go home he yelled "Make me go home! -- I'd like to see you make me go home!";
>
> 7. Mr. Battle has made unwanted sexual comments to me on a number of occasions while he was employed by the firm;

8. As Mr. Battle's supervisor, I was the one responsible for notifying him of his termination. Mr. Battle was fired for the actions listed above and was not in any way motivated by racial discrimination. As an African American woman, I am appalled that Mr. Battle would irresponsibly choose to allege that racial discrimination was the motivating factor behind his termination given all of Mr. Battle's inappropriate actions;

9. Since his termination, Mr. Battle has made personal contact with me at our employee parking lot, and during this contact I felt intimidated[.] *R. 25-26.*

In an affidavit executed on December 14, 2012, Greg Wood testified:

I, Greg Wood, who first being duly sworn, depose and state:

1. I have personal knowledge of the facts of the within matter, am competent to testify about these facts, and am duly authorized to do so;

2. I am an African American man and have been employed by the Jones Law Group, LLC since its inception in January, 2008. In fact, I was the firm's lone employee, along with Mr. Jones, when the firm first started;

3. I was the Collection Supervisor for all collectors in our office from my date of hire to October, 2012. I was L.T. Battle's immediate supervisor from his hiring, in November, 2011, to October, 2012;

4. I had several discussions with Mr. Battle regarding his collection goals and overall performance objectives. Unfortunately Mr. Battle failed to perform up to the performance requirements of the Jones Law Group;

5. Mr. Battle was given warnings with respect to making sure he clocked in/out of his desktop computer when leaving for lunch, but Mr. Battle consistently did not heed those warnings[.] *R. 29.*

In a Director's Redetermination issued on February 11, 2013, the Director of ODJFS reversed the initial Determination and disallowed Appellant's application for unemployment compensation benefits, having determined that Appellant was discharged from his employment for just cause in connection with work. *R. 45-46.*

On February 11, 2013, Appellant appealed the Director's Redetermination. *R. 52.* Appellant asserted, in support of his appeal, that "[t]he only reason the Law office of Eric Jones is trying to reverse this Unemployment claim is because the EEOC ruled in their favor and didn't

give me the right to suit letter." *R. 52.* On February 12, 2013, the Director transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission. *R. 51.*

On March 6, 2013, a Hearing Officer conducted a telephone hearing on Appellant's appeal. The Jones Law Firm did not participate. Appellant was represented by an attorney and testified. *T. 1-25.*

At the hearing on March 6, 2013, Appellant denied that he had performed poorly as a debt collector. *T. 20-21.* He admitted that he failed to clock out for lunch on many occasions but he explained that, on some of those occasions, his supervisor gave him permission not to clock out because he was running errands for the firm during his lunch hour. *T. 8-10.* On other occasions, he "felt that it was okay not to clock in and clock out because everyone else was doing it[.]" *T. 12.* Appellant admitted that he worked for the Fitch Law Group, serving subpoenas, when he was employed by the Jones Law Group, but he denied that he did the side work while he was on the clock for the Jones Law Group. *T. 16-18, 22.* He admitted that he used the Jones Law Group's skip-trace subscription service in order to serve the subpoenas for the Fitch Law Group, but he testified that his supervisor, Greg Wood, gave him permission to do that. *T. 17-18, 22.* Appellant denied that he ever made sexually inappropriate comments to female co-workers. *T. 18, 22.*

On the issue of processing bad checks, Appellant engaged in the following discussion with the Hearing Officer:

> Q: [By the Hearing Officer.] *** There was an issue it appears that one of the issues that is cited by the employer as *** one of the reasons for your separation has to do with the processing of checks. [W]e've got tell me what happened there appears to be an incident there was an incident involving *** one debtor I believe this was a female debtor *** who *** her $10,000.00 check was processed before it should have been and you were the person who processed or ran that check. Tell me about the $10,000.00 check that was processed in advance.

A: I can't recall a $10,000 check[.]

Q: You *** don't recall a $10,000.00 check?

A: Do you have the name *** I processed a lot of $10,000.00 checks[,] do you have the name of the check?

Q: Well I mean what I guess the reason that *** this sticks out is because there's an email *** that you sent to Eric Jones on October 8, 2012, *** and *** Mr. Jones *** is *** *** you said it's a *** it was a reply you said thank you to Mr. Jones. And Mr. Jones had sent you an email where *** about this particular issued involving a *** female *** person whose check was *** processed a $10,000.00 check was processed and it appears that this person asked that the check not be processed immediately. I *** and because she was awaiting funds from a 401K to cover the check and the check was run and it was an NSF charge *** to this particular persons [*sic*] account. And there were other fees that were incurred by her because the check was processed before you sent the check through before it should have been sent through so what can you tell me about that.

A: Well *** again that's *** I processed a lot of $10,000.00 checks and I don't know which one that Mr. Jones is recalling, but I can remember a check going through and it was issued as a bona fide error.

Q: But I mean I guess the question though is *** in terms of the check being processed by a debtor improperly processed the information in the record indicates that you improperly processed a check by a debt [*sic*] that was give [*sic*] that was issued or whether it was electronic or in some type of regular paper form *** by a debtor. And it cost that debtor money and also cost the employer money because of the *** they had to cover the charges so I guess I'm just curious to know what your response is to that particular incident and the harm that came in specifically to the debtor and in addition to indirectly to the employer.

A: I already gave my response it was a bona fide error.

Q: What does that mean? What does a bona fide error mean? ***

A: A bona fide error is a mistake that is made by a company *** mistakably.

Q: *** [W]hat company.

A: Any company.

Q: *** You processed this person's check it went through before it should have been and before funds were available and before the debtor said it

should have gone through so if you sent it through before it should have gone through then whose error is it?

A: It's a bona fide error.

Q: From by who.

A: By the company.

Q: But you're the person who processed the check.

A: And I represent the company.

Q: So no so it was your error, it's your mistake you sent the check through if you knew that the check was not supposed to go through and you sent it through before it should have then it was your error is that right?

A: It's a bona fide error.

Q: Okay.

A: That's my answer. *T. 13-16.*

On July 30, 2013, the Hearing Officer issued a decision on Appellant's appeal. *R. 118-131.* The Hearing Officer made the following factual findings:

> The Jones Law Group, LLC employed claimant from November 11, 2011 to November 28, 2012. At the time of his separation, claimant was a Collector. Claimant's job duties included collecting delinquent taxes on behalf of the Office of the Ohio Attorney General.
>
> During the months preceding his separation, claimant was counseled multiple times for poor job performance. He had the worst record for processing bad checks of all the collectors in the office and his overall collection record was unsatisfactory. Claimant processed checks received from debtors without the debtors' consent resulting in the accrual of fees for insufficient funds. On October 8, 2012, claimant processed a check received from a debtor totaling $13,000.00 without permission. The check bounced and the debtor incurred insufficient fees. Fees were also assessed against the employer.
>
> The time records revealed that claimant repeatedly failed to clock out for lunch breaks as required by policy. As a result, claimant was paid for time that he did not work. Although claimant was counseled, he still did not clock out as directed. Claimant also performed work for another law firm while on the clock for the employer.

> During the months preceding claimant's separation, female employees complained that he subjected them to unwanted sexual comments on multiple occasions. One of the female employees ultimately became claimant's immediate supervisor. Claimant's actions violated the employer's harassment policy as outlined in the employee handbook.
>
> Despite ongoing warnings and intervention, claimant's job performance remained unsatisfactory and he did not follow the time clock in/out procedures. The employer reviewed the matter and concluded that claimant's employment could not continue. Claimant was subsequently discharged. *R. 118-119.*

The Hearing Officer found that Appellant was discharged by the Jones Law Group for just cause in connection with work. *R. 119-120.* The Hearing Officer provided the following reasoning for the decision:

> The evidence presented in this matter establishes that claimant's job performance as a collector was routinely unsatisfactory. Claimant had the worst record of processing bad checks of all collectors in the employer's office. He sometimes processed checks from debtors without the debtors' permission. In one instance, claimant processed a check for $13,000.00 without a debtor's authorization. As a result, both the debtor and employer incurred fees.
>
> The evidence presented further establishes that claimant regularly failed to clock out before he left for lunch. Although claimant was repeatedly counseled and warned, he continued to ignore the clock in/out procedures. Claimant performed work for another law firm while on the clock for the employer. In essence, claimant was paid by the employer for time that he did not work. Claimant's actions constitute theft of time.
>
> Claimant subjected female employees to unwanted sexual comments in violation of the employer's harassment policy. Under the evidence presented in this matter, the Hearing Officer finds that claimant's actions constitute fault sufficient to justify his discharge. Therefore, the Jones Law Group, LLC discharged claimant for just cause in connection with work. *R. 119.*

The Hearing Officer affirmed the Director's Redetermination and disallowed Appellant's application for unemployment compensation benefits. *R. 119.*

On August 20, 2013, Appellant requested that the Commission review the Hearing Officer's decision. *R. 132-141.*

On September 4, 2013, the Commission issued a "Decision Disallowing Request for Review," in which the Commission disallowed Appellant's request for further review of the Hearing Officer's decision. *R. 147-157.*

On October 4, 2013, Appellant appealed the Commission's decision to this Court.

Law

Ohio's Unemployment Compensation Act is intended to provide financial assistance to an individual who has worked and is able and willing to work, but is temporarily without employment through no fault of his own. *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St. 2d 35, 39 (1980). A claimant who has been discharged from employment for just cause in connection with work is disqualified from receiving unemployment compensation benefits. R.C. 4141.29(D)(2)(a).

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 v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 17 (1985). An employee is discharged for just cause when, by his actions, he demonstrates an unreasonable disregard for his employer's best interests. *Kiikka v. Admr., Ohio Bur. of Emp. Servs.*, 21 Ohio App. 3d 168, paragraph two of the syllabus (8th Dist. 1985). The employee's conduct need not rise to the level of misconduct, but there must be a showing of some fault by the employee to deny unemployment compensation benefits. *Sellers v. Bd. of Review*, 1 Ohio App. 3d 161, paragraph two of the syllabus (10th Dist. 1981). The critical issue is not whether the employee has technically violated some company rule, but whether the employee, by his actions or inactions, has demonstrated an unreasonable disregard for his employer's interests. *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061, ¶ 39.

Revised Code 4141.282(H), which governs this appeal, provides:

> 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.

This is the standard of review for unemployment compensation appeals, regardless of the level of appellate review. *Houser v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶ 7, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 696. In reviewing a Commission decision, a court is not permitted to make factual findings or reach credibility determinations. *Id.* Similarly, a court may not substitute its judgment on such issues for that of the Commission. *Houser*, ¶ 7, citing *McCarthy v. Connectronics Corp.*, 183 Ohio App. 3d 248, 2009-Ohio-3392, ¶ 16. Instead, a court must determine whether the Commission's decision is supported by the evidence in the record. *Id.* Judgments supported by some competent, credible evidence on the essential elements of the controversy may not be reversed as being against the manifest weight of the evidence. *Houser*, ¶ 7, citing *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 12.

Analysis

Appellant has asserted five arguments in support of this appeal.

Appellant's first argument is that the Hearing Officer exceeded her statutory authority in her questioning of Appellant at the hearing on March 6, 2013. Revised Code 4141.281(C)(2), which governs hearings before the Commission and its hearing officers, provides:

> *** In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. **Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record.** Hearing officers are not bound by common

> law or statutory rules of evidence or by technical or formal rules of procedure. No person shall impose upon the claimant or the employer any burden of proof as is required in a court of law. *** After considering all of the evidence, a hearing officer shall issue a written decision that sets forth the facts as the hearing officer finds them to be, cites the applicable law, and gives the reasoning for the decision. (Emphasis added.)

Pursuant to R.C. 4141.281(C)(2), the Hearing Officer had an affirmative duty to question Appellant (the only witness) in order to ascertain the relevant facts and to fully and fairly develop the record. The Court has reviewed the hearing transcript and finds nothing in the Hearing Officer's questioning of Appellant to suggest that she exceeded her authority. Furthermore, Appellant was represented by an attorney at the hearing, who declined to object to the Hearing Officer's questioning of Appellant, thereby waiving any claimed error.

Appellant's second argument in support of this appeal is that the Hearing Officer erred by relying upon hearsay evidence contained in the Director's file, purportedly to the exclusion of Appellant's non-hearsay testimony at the hearing on March 6, 2013. However, pursuant to R.C. 4141.281(C)(2), *supra*, the Hearing Officer was not bound by Evid. R. 802, the rule against hearsay. The Hearing Officer therefore did not err by relying upon hearsay evidence contained in the Director's file.

Furthermore, R.C. 4141.281(C)(3) and (6) provide:

> (3) HEARING OFFICER LEVEL
>
> *** The hearings shall be de novo, except that the director's file pertaining to a case **shall** be included in the record to be considered.
>
> ***
>
> (6) NO APPEARANCE - APPELLEE
>
> For hearings at either the hearing officer or review level, if the appellee fails to appear at the hearing, the hearing officer shall proceed with the hearing and shall issue a decision **based on the evidence of record**. *** (Emphasis added.)

Pursuant to R.C. 4141.281(C)(3) and (6), the Hearing Officer was obligated to issue a decision based on the evidence of record, including the Director's file. In addition, Appellant's attorney did not object to the Hearing Officer's consideration of the evidence in the Director's file, thereby waiving any claimed error.

Appellant has asserted that the Hearing Officer relied upon the evidence in the Director's file to the exclusion of Appellant's testimony at the hearing on March 6, 2013. If the Hearing Officer did not give great weight to Appellant's testimony, it was the Hearing Officer's prerogative to believe or disbelieve all or any part of Appellant's testimony. Indeed, it appears to the Court, from the Hearing Officer's decision, that she did not find Appellant to be a credible witness. In reviewing the Commission's decision, this Court is not permitted to reach credibility determinations or substitute its judgment on credibility determinations for that of the Commission. See *Houser*, *supra*, 2011-Ohio-1593, ¶ 7.

Appellant's third argument in support of this appeal is that the Hearing Officer improperly considered Appellant's post-termination conduct in reaching her decision. However, there is no mention of Appellant's post-termination conduct in the Hearing Officer's decision. Consequently, there is no support in the record for Appellant's assertion that the Hearing Officer considered Appellant's post-termination conduct in reaching her decision.

Appellant's fourth argument in support of this appeal is that the Jones Law Group did not establish that, by improperly processing a check, Appellant violated a written work rule. However, the critical issue is not whether Appellant technically violated his employer's rule, but whether Appellant, by his actions or inactions, demonstrated an unreasonable disregard for his employer's interests. See *Gregg v. SBC Ameritech*, *supra*, 2004-Ohio-1061, ¶ 39. By

improperly processing a check that he had no authority to process, Appellant demonstrated an unreasonable disregard for the interests of the Jones Law Group.

Appellant's fifth argument in support of this appeal is that the Hearing Officer erred by not permitting Appellant to testify about a discrimination charge he filed against the Jones Law Group with the U.S. Equal Employment Opportunity Commission (EEOC).

During the hearing on March 6, 2013, the following exchange took place between Appellant and the Hearing Officer:

> Q: [By the Hearing Officer.] *** I don't know that I have any other questions Mr. *** that I have any more questions for you Mr. Battle is there anything additional *** that you'd like for me to consider while reviewing your appeal.
>
> A: Well yes I do there's one *** thing that I have to consider. Obviously, Mr. Jones the Jones Law Group was paying me unemployment up to the up to almost 35 or a little bit more than $3500.00 when I filed back in December I received *** after I was terminated I went to the EEOC ***[.]
>
> Q: Okay I'm gonna stop I'm gonna stop you right there. I don't I'm not *** we're not gonna talk about any other proceeding that's the reason why I said at the beginning issue presented. I don't *** what happened in any other tribunal what happened before anybody else total irrelevant. And I'm not taking any testimony on it. This is unemployment EEOC, OCRC, Federal Court, Title 7 all of that totally different totally different *** category[.]
>
> A: *** I'm sorry.
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> Q: So I'm not I'm not gonna talk about that.
>
> A: Well I will talk about that during the time that I was employed there I was one of the top collector's [*sic*] in the building ***, performance issues okay *** I'm done thank you very much.
>
> Q: All right Mr. Sherrod [Appellant's attorney] you can ask Mr. *** Battle questions if you have them. *T. 19-20.*

Appellant's attorney then questioned Appellant. *T. 20-24.* Appellant's attorney, however, did not ask Appellant about the discrimination charge he filed against the Jones Law

Group with the EEOC. Nor did the attorney object to the Hearing Officer's refusal to permit Appellant to testify about that subject. Inasmuch as Appellant's attorney failed to object to the Hearing Officer's evidentiary ruling, Appellant waived any claimed error.

Having considered all of the arguments that Appellant has set forth in support of this appeal, the Court does not find any of the arguments to be well taken.

The Court has reviewed the certified record provided by the Commission. Having done so, the Court does not find that the Commission's September 4, 2013 decision was unlawful, unreasonable, or against the manifest weight of the evidence. The position statement submitted to ODJFS by the Jones Law Group on January 23, 2013, the affidavit of Lynn Jackson executed on December 14, 2012, and the affidavit of Greg Wood executed on December 14, 2012 established that the Jones Law Group discharged Appellant because his collection work was unsatisfactory, he repeatedly failed to clock out for lunch, he worked on the side for the Fitch Law Firm while he was on the clock for the Jones Law Group, he used the Jones Law Group's skip-trace subscription service to perform work for the Fitch Law Firm, he routinely processed bad checks, and he made unwanted sexual comments to female co-workers on a number of occasions. On the issue of employee fault, the evidence supports the conclusion that Appellant was not acting in his employer's best interests. Accordingly, there is evidence in the record to support the Hearing Officer's determination, as affirmed by the Commission, that Appellant was discharged from his employment for just cause in connection with work, thereby disqualifying him from receiving unemployment compensation benefits.

Conclusion

Having reviewed the certified record provided by the Ohio Unemployment Compensation Review Commission, the Court concludes that the Commission's September 4, 2013 "Decision

Disallowing Request for Review" is not unlawful, unreasonable, or against the manifest weight of the evidence. The decision is therefore **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 03-31-2015

Case Title: LT BATTLE -VS- JONES LAW GROUP LLC ET AL

Case Number: 13CV011046

Type: DECISION/ENTRY

It Is So Ordered.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 13CV011046

Case Style: LT BATTLE -VS- JONES LAW GROUP LLC ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes