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

TATIANA LOUGHMAN,	:	
	:	
Appellant,	:	
	:	Case No. 14 CVF-11749
vs.	:	
	:	JUDGE BROWN
DEPARTMENT OF PUBLIC SAFETY	:	
OHIO HIGHWAY PATROL, ET AL.,	:	
	:	
Appellees.	:	

FINAL JUDGMENT ENTRY & DECISION

AFFIRMING THE DECISION OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION

Rendered this 6th day of April, 2015

INTRODUCTION

Tatiana A. Loughman appeals the Unemployment Review Commission's Decision disallowing further review of the Hearing Officer's determination in this matter. Ms. Loughman timely appealed to this Court from that Decision. In her brief, Ms. Loughman maintains that: "[T]he Hearing Officer misapplied Ohio Law in determining no just cause existed for Ms. Loughman to quit work." She specifically states: "**The Hearing Officer failed to consider whether appellant had just cause to quit based on Appellee's failure to remedy her hostile work environment.**"

On June 4, 2014, Tatiana A. Loughman, Appellant herein, quit her employment with the Ohio State Highway Patrol. (Tr. P. 6, L. 2). She explained, "I didn't have any ability to function mentality (sic) so all I wanted was to run away from that place." (Tr. P. 8, L. 1-2).

The Ohio State Highway Patrol offered somewhat expansive testimony on Ms. Loughman's departure. The Patrol explained, "[J]ennifer McClendon (phonetic), was going to meet with her to offer some more jobs uh Ms. Loughman had been interviewed as part,

part of her administrative investigation. We got a statement from her to get specifics so could look into it thoroughly and in the process of offering her new jobs, she put her attorney's card on the table and said I quit, talk to my attorney." (Tr. P. 14. L. 20-26). Ms. Loughman did not dispute that account.

Hearing Officer Jessica Harmon found:

> On May 21, 2014 claimant made a complaint about a hostile work environment and sexual harassment. The employer began an investigation. Claimant requested time off on May 20, 2014 and was granted sick leave. On May 27, 2014 claimant returned to work and filed an official complaint with the Officer (sic) of Personnel. Claimant was transferred to the Office of Personnel during the investigation. On May 28, 2014 claimant was offered four separate positions including civilian positions in different areas than she previously worked. Claimant chose not to accept any of those positions due to her medical concerns. Claimant did not disclose these medical concerns to the employer or submit any medical documentation to them requesting an accommodation or leave of absence. On June 4, 2014 claimant submitted her resignation effective immediately.

(Decision, P. 3-4).

The record supports the facts cited by the Hearing Officer. Further, Ms. Loughman evaded the Hearing Officer's direct questions:

> Q: Okay did you um get a doctor's note to submit to your employer or ask for leave time?
>
> A: I had uh memory problems and I had difficulty concentrating, so I did visit the doctor, but due to those symptoms, I did not ask him to give me a note....I did not ask him to give me a note to, to advise me to resign. Later on um.
>
> Q: Okay, that's not what I asked you...

(Tr. P. 6, L. 18-24). The Hearing Officer later tried to elicit the same information from Ms. Loughman:

> Q: And you never gave your employer any medical evidence stating this (an inability to function as required)?
>
> A: Um just a second, I have to remember. I did say on my second administrative investigation...but I didn't provide, well actually I did, I just remembered. I emailed...I don't remember his last name...that day when I resigned....I did email all that info from the doctor saying that I have stress and symptoms."

(Tr. P.8. L. 2-15).

The Hearing Officer was well within her province to find such an explanation wanting. *D'Souza v. State Med. Bd. of Ohio*, 10th Dist. No. 09AP-97, 2009-Ohio-6901. A finder of fact "may take note of the inconsistencies and resolve them accordingly, 'believ[ing] all, part or none of a witness's testimony.'" *State v. Pilgrim*, 184 Ohio App. 3d 675, 922 N.E.2d 248, 2009-Ohio-5357, P32, quoting *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, P21, citing *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

Because the Court finds that the Hearing Officer's Decision is supported by the manifest weight of the evidence in the record and that the Decision is neither unreasonable nor unlawful, the Decision of the Unemployment Review Commission disallowing further review is **AFFIRMED** in all respects for the reasons which follow.

DISCUSSION

Standard of Review

In *Williams v. Ohio Dept. of Job & Family Servs.,* 129 Ohio St.3d 332, 951 N.E.2d 1031, 2011-Ohio-2897, the Ohio Supreme Court set forth the applicable law. The Court stated that R.C. 4141.29 governs the eligibility and qualifications for unemployment benefits, which states:

> (D) * * * [N]o 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* * *

The Court noted that R.C. §§ 4141.01-4141.46 are to be construed liberally and further set forth the appropriate standard of review for courts reviewing appeals from the Unemployment Compensation Review 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.' ... Thus, a reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if some competent, credible evidence in the record supports it. In other words, a reviewing court may not reverse the commission's decision simply because 'reasonable minds might reach different conclusions.' (internal citations omitted).

Williams at 335.

As it pertains to the issue of just cause, the Williams Court held that "just cause" is "'a justifiable reason for doing or not doing a particular act.'" *Williams* at 335, citing *Irvine v. Unemp. Comp. Bd. of Review,* 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), quoting *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E. 2d 751 (1975). "'[W]hat constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act.'" *Id.*, citing *Irvine* at 17, quoting *Leach v. Republic Steel Corp.*, 176 Ohio St. 221, 223, 199 N.E.2d 3 (1964). "'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." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697-698, 653 N.E.2d 1207 (1995). "The act was intended to provide financial assistance 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." *Id.* at ¶ 26, citing *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980).

Appellant's Assignment of Error

Appellant states that the Hearing Officer misapplied Ohio law in determining that no just cause existed for her to quit her employment. Ms. Loughman does not argue that the

Hearing Officer's finding of facts are unreasonable, unlawful, or against the manifest weight of the evidence. Rather, Ms. Loughman seeks to amplify facts not found relevant to this inquiry by the Hearing Officer. By way of example, Ms. Loughman details the underlying conduct of alleged sexual harassment by her supervisor.

After Ms. Loughman received time off from work, she was reassigned away from her supervisor in the Office of Personnel. She was offered four different positions including civil service positions in different areas than she had previously worked. In an e-mail dated May 29, 2014, Jennifer McLendon stated: "we were sorry to hear you declined the 3rd shift Police Officer Position 2 at the Shipley building. However Julie Lee informed that you would be interested in a 1st shift position….below are 1st shift positions we currently have available…" (R. E2260-D09). Despite this exchange, Ms. Loughman quit work without explanation. Instead of accepting any of the alternative positions of employment, Ms. Loughman placed an attorney's card on the table and tendered her resignation. The Hearing Officer found that Ms. Loughman "failed to inform her employer of any medical problems that would prevent her from accepting the other positions and failed to request an accommodation or leave of absence prior to quitting." (Decision, p. 4).

Appellant correctly cites Ohio law for the proposition that where an employee is a victim of sexual harassment in the workplace, she has a duty to: 1) notify the employer and 2) give the employer an opportunity to cure the problem. *Krawczyszyn v. Ohio Bureau of Unemployment Services,* 54 Ohio App.3d 35, 560 N.E.2d 807, 809 (8th Dist. 1989).

After addressing Ms. Loughman's complaint adequately, the Ohio State Highway Patrol took steps to continue her employment. The Patrol's efforts were met with resistance without explanation. The Patrol offered Ms. Loughman four different positions, including civilian positions, in different locations. She accepted none of them and instead made the unilateral decision to resign. She did not inform her employer that a medical professional

had advised her to quit work (at best she orally informed and emailed some unidentified person a medical opinion that she was having "stress and symptoms" Tr. P. 8). When asked by the Hearing Officer if she ever made a formal request to take a leave of absence or told her employer she could not physically work, she answered, "No sir, I did not." (Tr. P. 12, L. 26).

The applicable law is summarized in *DiGiannantoni v. Wedgewater Animal Hospital*, 109 Ohio App.3d 300, 671 N.E.2d 1378 (10th Dist. 1996). The Court held: "[W]e are constrained to find under Ohio statutory law that generally employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer and request that it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to have quit without just cause and, therefore, will not be entitled to unemployment benefits." *Id.* at 307.

Here, Ms. Loughman notified her employer of the initial allegation of hostile work environment. Her employer took appropriate action and disciplined the offender. Ms. Loughman made a subsequent complaint of sexual harassment and hostile work environment. Her employer again took appropriate action, began an investigation, and afforded Ms. Loughman alternative employment within the Ohio State Highway Patrol. However, Ms. Loughman did not advise the Patrol that she had a medical condition that rendered her unable to accept such alternative employment prior to quitting her job. As set forth in the Hearing Officer's legal reasoning, "[A]n employee must advise their employer of a medical condition and allow the employer to adapt employment accordingly before a medical condition can constitute just cause for quitting under R.C. 4141.29(D)(2)(a)." (Decision, p. 4) (internal citations omitted). Ms. Loughman did not give prior notice to her

employer as required and quit while her employer was attempting to make accommodations for her.

Ms. Loughman cites to case law from other jurisdictions for circumstances not applicable to hers. The Ohio State Highway Patrol acted appropriately in response to her complaint. The Court finds that the cases cited by Ms. Loughman, where circumstances made the procedure set forth in *Krawczyszyn* futile or non-productive, have no factual support. (Cf. *McEwan v. Everett*, Ark. App. 32, 637 S.W.2d 617 (1982) (Arkansas intermediate appellate law cited for the proposition that where an employee's efforts to report sexually harassing conduct would have been futile such reporting requirement was excused)).

CONCLUSION

The Hearing Officer found that the Ohio State Highway Patrol was in the process of finding Ms. Loughman alternative employment when she quit work without disclosing her medical conditions to her employer or submitting any medical documentation requesting an accommodation or leave of absence. Ms. Loughman's work situation was being resolved when she voluntarily and unilaterally resigned. Accordingly, the Court **AFFIRMS** the Decision of the Unemployment Review Commission in all respects based on the finding that Ms. Loughman resigned from her employment without just cause.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 04-06-2015

Case Title: TATIANA LOUGHMAN -VS- OHIO STATE DEPARTMENT PUBLIC SAFETY ET AL

Case Number: 14CV011749

Type: DISMISSAL ORDER CASE

It Is So Ordered.

/s/ Judge Kim Brown

Court Disposition

Case Number: 14CV011749

Case Style: TATIANA LOUGHMAN -VS- OHIO STATE DEPARTMENT PUBLIC SAFETY ET AL

Case Terminated: 18 - Other Terminations