

with the procedure in the company handbook regarding medical leave and so she was discharged. Ms. Taylor testified to medical excuses covering a time period of February 11, 2014 to June 1, 2014.

The hearing officer issued a decision finding that Ms. Taylor had valid medical excuses covering the dates of February 12, 2014 until June 1, 2014 and that Ms. Taylor kept Milliron apprised of her medical condition. The Commission found no fault or negligence on the part of Ms. Taylor regarding the discharge and, therefore, found that she was discharged without cause. Milliron has appealed the decision of the Commission to this Court.

This Court has reviewed the submitted briefs in this matter, the case file and all of the relevant law in this matter and has come to the following conclusions.

Factual Findings of the Commission:

The Commission made the following findings of fact after reviewing the evidence and the testimony in this case:

1. Ms. Taylor worked for Milliron as an Administrative Assistant and was employed from January 19, 2009 through May 23, 2014.
2. Ms. Taylor was separated from employment when she was sent a Cobra document from the employer on or about May 23, 2014, noting that she was terminated from employment. The claimant did not have any idea prior to receiving Cobra documentation that her job was in jeopardy. The Cobra document noted that she no longer was covered by health insurance as of May 31, 2014.
3. Ms. Taylor had missed work due to on-going pregnancy health concerns, since on or about February 12, 2014. Ms. Taylor provided medical documentation to

Milliron that she would need to be off work until she recovered from having her child, which had a due date of May 13, 2014. However, the claimant ended up having a medically necessary C-section birth prior to her due date. Ms. Taylor's health care providers did not allow her to return to work until June 1, 2014. In total, Ms. Taylor was not able to physically work from February 14, 2014 until June 1, 2014.

4. Ms. Taylor kept Milliron updated about her medical condition and had spoken to Jill Milliron, HR Director, in April 2014, to let her know that her son was still in the hospital. Jill Milliron did not request Ms. Taylor to send in any updated medical documentation about her absence.

Analysis:

This Court may not disturb the Commission's decision below unless the Court finds it to be unlawful, unreasonable, or against the manifest weight of the evidence.¹ Judgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed as being against the manifest weight of the evidence.² The Court may not make factual findings or determine witness credibility.³ The Court must defer to the commission's findings of fact.⁴

Ohio Revised Code § 4141.29(D)(2)(a) prohibits the payment of benefits to an individual if the individual "has been discharged for just cause in connection with the individual's work." Just cause, in the statutory sense, is that which, to an ordinary

¹ Ohio Rev. Code § 4141.282 (H).

² *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

³ *Irvine v. Unemp. Comp. Bd. Of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

⁴ *McGee v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 09AP-680, 2010-Ohio-673, ¶ 11. See also, *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468 (1982).

intelligent person, is a justifiable reason for doing or not doing a particular act.⁵ What constitutes just cause is a question of fact, and the determination of purely factual questions is primarily within the province of the Commission.⁶

An employer may justifiably discharge an employee without incurring liability for wrongful discharge; however, that same employee may be entitled to unemployment compensation benefits.⁷ This is because the determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act, which the Ohio Supreme Court has declared to be that of providing "financial assistance to an individual who has worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own."⁸

Therefore, a consideration of the employee's fault or responsibility for her own predicament is necessary to a just cause determination.⁹ "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 [Unemployment Compensation] Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination."¹⁰

Discharge on the grounds of absenteeism has been held not to constitute just cause when the absenteeism has been entirely due to bona fide illness requiring the care

⁵ *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18, 482 N.E.2d 587 (1985).

⁶ See *Id.*.

⁷ *Durgan v. Ohio Bur. of Emp. Serv.* (1996), 110 Ohio App. 3d 545, 549, 674 N.E.2d 1208 (9th Dist. 1996).

⁸ *Irvine*, 19 Ohio St. 3d at 17, (citing *Salzl v. Gibson Greeting Cards*, 61 Ohio St. 2d 35, 39, 399 N.E.2d 76 (1980)).

⁹ *King v. State Farm Mut. Auto Ins. Co.*, 112 Ohio App. 3d 664, 669, 679 N.E.2d 1158 (6th Dist. 1996).

¹⁰ *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St. 3d 694, 697-698, 653 N.E.2d 1207 (1995)

of a doctor.¹¹ In the instant case, Milliron operated pursuant to what is commonly termed a no-fault attendance policy. The purpose behind this type of policy is to (1) provide the worker with control over his continued employment with the company, and (2) relieve the employer of the task of determining whether an employee has a valid or exculpating reason for absences.¹² Where an employer fires an employee for excessive absenteeism under a no-fault policy, the employee may still be entitled to compensation if she can establish that her absences were the result of a bona fide illness.¹³ The employer's failure to question or investigate the employee's claim of illness because of its no-fault absenteeism policy does not relieve the employee of this burden.¹⁴

While Milliron may have justifiably discharged Ms. Taylor under their own no-fault attendance policy, this does not mean that Ms. Taylor's discharge was for "just cause" under the definition used for determining unemployment compensation. The Commission's finding was not unreasonable or unlawful. The Commission made factual determinations that Ms. Taylor's absenteeism was entirely due to a bona fide medical condition which was documented. As there is competent and credible evidence on the record for this finding, this Court will defer to the finding of the Commission and not disturb the ruling of the Commission.

¹¹ See *Schultz v. Herman's Furniture Inc.*, 52 Ohio App. 2d 161, 368 N.E.2d 1269 (6th Dist.1976); *Durgan, supra*, at 550; *Marchese, Servs. V. Bradley*, 3rd Dist. Putnam No. 12-08-06, 2009-Ohio-2618, ¶ 27.

¹² *Sutherlin v. Interstate Brands Corp.*, 79 Ohio App. 3d 635, 637, 607 N.E.2d 1076 (1st Dist.1992)

¹³ *Durgan, supra*, at 550. See, also, *Johnson & Hardin Co. v. Ohio Bur. of Emp. Serv.*, 1st Dist. Hamilton No. C-880319, 1989 Ohio App. LEXIS 2535 (June 28, 1989), citing *Schultz, supra*.

¹⁴ See *Durgan, supra*, at 551.

Judgment Entry

It is therefore ordered that:

1. The July 23, 2014 decision of the Commission is hereby affirmed.
2. Costs are taxed to appellant;
3. The clerk shall serve copies of this order on Attorneys John & Gregory

Tarkowsky, Brian Spitz & Chris Wido, and Patria V. Hoskins telling them the date it was entered on the court's journal.



Judge Brent N. Robinson