

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

NYSHAWN LITTLE, :
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 Appellant, : **CASE NO. 14 CVF 13012**
 :
 -vs- : **JUDGE COLLEEN O'DONNELL**
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 :
 DIRECTOR, OHIO DEPARTMENT OF :
 JOB AND FAMILY SERVICES, et al., :
 :
 :
 Appellees. :

DECISION AND ENTRY

O'DONNELL, JUDGE,

This matter comes before this Court upon an appeal pursuant to R.C. 4141.282(H) from the November 19, 2014 Decision of the Unemployment Compensation Review Commission (“Review Commission”). On August 1, 2014, Appellant, Nyshawn Little, filed an Application for Determination of Benefit rights for a benefit year beginning July 27, 2014.

A. Background

On September 11, 2014, Appellee, Director of the Ohio Department of Job and Family Services (“ODJFS”), issued a Redetermination disallowing Appellant’s application based upon the finding that he was discharged from employment with Columbus Fair Auto Auction, Inc., (“CFAA”), for just cause; and that no benefits would be paid until Appellant obtained covered employment, worked six weeks, earned wages of \$1,398.00 or more, and became otherwise eligible.

On September 12, 2014, Appellant appealed from that Redetermination. On September 15, 2014, ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission. R.C. 4141.281. On September 29, 2014, Hearing Officer Jeffrey Schaffner conducted a hearing via

telephone. Andrew Kimble represented Appellant, and Mr. Little testified on his own behalf. Christine Zeek, Human Resources coordinator for CFAA, represented the employer and testified.

In his October 1, 2014 Decision, the Hearing Officer made the following findings of fact:

Claimant was employed by Columbus Fair Auto Auction, Inc., for a period that began on July 8, 2014 and ended on July 17, 2014. Claimant worked in the Recon section of the employer. Claimant cleaned vehicles.

At the time of hire, the claimant was told that his employment with Columbus Fair Auto Auction was conditioned on his passing a drug test, a physical, and a criminal background check. Claimant did complete an application and indicated that he had been convicted of a felony when he was fifteen. Claimant did not elaborate on the type of felony for which he was convicted.

The employer performed a criminal background check on the claimant. It discovered the claimant had been convicted of a charge of murder with specification. The employer took this into consideration and determined this felony would prohibit the claimant from working in the facility.

Claimant was discharged on July 17, 2014, for this reason.

The claimant argues that he did disclose the felony. He felt it should not be held against him. This argument is without merit as he did not elaborate on the type of crime for which he had been convicted. He was given the opportunity on the application to explain the felony conviction. Had he done so, the employer would have had the opportunity to review the felony prior to allowing the claimant to begin his employment. Claimant knew or should have known that his employment was conditioned on a favorable background check. The employer does not prohibit individuals from work (sic) for it who has been convicted of a felony. However, the employer does reserve the right to determine what types of felonies would prohibit an employee from working in its facility.

The claimant was discharged on July 17, 2014.

See October 1, 2014 Decision.

Thereafter, Appellant filed a request for review. The Review Commission disallowed appellant's request for review and issued a decision affirming the findings and determination of the hearing officer. See November 19, 2014 Decision.

B. Standard of Review

This Court must uphold the decision of the Review Commission unless it concludes, upon

review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St. 3d 694 (1995). While a reviewing court is not permitted to make factual findings or determine the credibility of witnesses, it does have a duty to determine whether the decision of the Review Commission is supported by the evidence in the record.

The Unemployment Compensation 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 or she is no longer the victim of fortune's whims but instead is directly responsible for his/her own predicament. Fault on the employee's part separates him/her from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination. Thus, if the employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. See R. C. 4141.29(D)(2)(a). Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

In the facts before the Court, the record supports the finding that Appellant was terminated with just cause and that the Review Commission's November 19, 2014 Decision is supported by the evidence.

C. Appellant's Assignments of Error

Appellant sets forth the following legal arguments in his brief:

CFAA's post-employment determination that Mr. Little's conviction disqualified him does not constitute just cause for his determination.

CFAA's recent claim that it terminated Mr. Little because he failed to disclose his felony is against the manifest weight of the evidence.

D. Law and Analysis

The Court will address Appellant's legal arguments simultaneously. Appellant asserted that he was not aware that his employment was conditional on several things, such as passing a drug test and a criminal background check. Tr. 25-26. Exhibit I. However, he did acknowledge signing several papers regarding company policies. Tr. 25. Ms. Zeek, CFAA's Human Resource coordinator, testified that on July 15, 2014, she received a copy of Appellant's background check and discovered that he was convicted of murder with a firearm specification. Tr. 21-24. The record demonstrates that Appellant did not disclose his murder conviction on the applications he completed, although he did acknowledge a felony conviction. Tr. 22.

On July 17, 2014, Jeff Barea, Appellant's supervisor, questioned him to obtain more details about his felony conviction. Appellant explained that the conviction was for a "drug deal gone bad" and that he shot and killed someone. Tr. 25. Appellant was sent home from work, given a "Notice of Intent To Take Adverse Action," and subsequently terminated.

The facts are undisputed that Appellant disclosed his felony conviction on his application. In response to the question, "Have you ever been convicted of a felony?" Appellant circled "YES." The question further provides "If yes, please explain." In response to that Appellant stated "As a juvenile in 1994 when I (sic) 15." It wasn't until Ms. Zeek received the copy of Appellant's background check that CFAA became aware of the nature and circumstances of Appellant's conviction. Tr. 8.

Appellant contends that he never intended to deceive CFAA regarding his conviction for murder with a firearm specification. Rather, he asserts that during Appellant's rehabilitation process, while incarcerated and preparing for release from prison, he learned job-seeking advice, and it was this advice on which he relied in applying to CFAA. Specifically, he asserts that he was

instructed not to provide too much information regarding his felony record. While that may be true, the materials in the record advise the soon-to-be-released prisoner to include the phrase “would appreciate a chance to explain in an interview” when completing a written job application that inquires about the commission of a felony. Exhibit G. The record demonstrates that Appellant did not discuss, either orally or in writing, the nature or circumstance of his felony conviction with CFAA before beginning work.

Ms. Zeek explained that after Appellant was notified of CFAA’s intent to terminate his employment, he was offered an opportunity to demonstrate why he should remain employed. Tr. 17; Exhibit C. She stated that Appellant did not respond. Ms. Zeek testified that CFAA would not have hired Appellant if he disclosed the murder conviction before he began work. Tr. 19. She relied on company policy regarding violent offenses and CFAA’s duty to protect its other employees. Tr. 8-11, 19. She stated that it was highly unusual circumstances for a 15 year-old to be convicted of murder with a firearms specification and be tried as an adult. Tr. 8, 20-21.

Appellant asserts that the Review Commission’s decision was against the manifest weight of the evidence. The hearing officer, as the trier of fact, was presented with two different versions of the facts in this case. The hearing officer chose to believe Ms. Zeek’s version of the facts. See *Todd v. Admr. Ohio Dept. of Job & Family Services*, 2004-Ohio-2185.

E. Decision

Appellant’s legal arguments are not well-taken and are hereby **OVERRULED**. This Court concludes as a matter of law that the Review Commission’s November 19, 2014 Decision is supported by the evidence in the record. Moreover, this Court concludes that the Review Commission’s November 19, 2014 Decision is lawful, reasonable and not against the manifest

weight of the evidence. Accordingly, the Review Commission's Decision, mailed on November 19, 2014, is hereby **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS

A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

signature page attached
JUDGE COLLEEN O'DONNELL

Copies to all parties.

Franklin County Court of Common Pleas

Date: 04-16-2015

Case Title: NYSHAWN LITTLE -VS- OHIO DEPARTMENT JOBS FAMILY SERVICES ET AL

Case Number: 14CV013012

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, "Colleen O'Donnell", is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE TRUE" around the bottom. The year "2003" is also visible on the seal.

/s/ Judge Colleen O'Donnell