

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

KIMBERLY GREEN,

CASE NO.: 2014 CV 06934

Appellant,

JUDGE DENNIS J. LANGER

-vs-

TWC ADMINISTRATION LLC et al,

Appellees.

**FINAL AND APPEALABLE DECISION,
ORDER, AND ENTRY AFFIRMING THE
DECISION OF THE UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION**

This matter is before the Court pursuant to the *Notice of Administrative Appeal* of Appellant Kimberly Green (hereinafter “Mr. Green”), filed on December 15, 2014. *See* Docket. A written transcript was filed by the Unemployment Compensation Review Commission (hereinafter “UCRC”) on January 6, 2015. *Id.* Pursuant to the Court’s *Order and Entry Setting Submission Dates on Administrative Appeal Briefs* filed on January 12, 2015, Mr. Green filed his *Brief* on January 29, 2015. *Id.* Thereafter, Appellee Ohio Department of Job and Family Services (hereinafter “ODJFS”) filed its *Brief of Appellee, Director Ohio Department of Job and Family Services* on March 17, 2015. *Id.* Appellee Time Warner Cable Admsitration, LLC (hereinafter “TWC Administration”) filed its *Brief of Appellee, TWC Administration, LLC* on March 19, 2015. *Id.* No reply brief was subsequently filed by Mr. Green. *Id.* This matter is now properly before the Court.

I. FACTS AND PROCEDURAL HISTORY

The instant action arises out of a claim for unemployment compensation. Mr. Green was employed by TWC Administration from August 2013 until March 2014. *See Transcript of Administrative Agency* at 5. On March 31, 2014, following an investigation, TWC Administration send Mr. Green a letter indicating that

he had been terminated from employment for a “policy violation.” *Id.* at 7. Thereafter, Mr. Green applied for unemployment compensation benefits on May 20, 2014, and was initially granted benefits on or about June 10, 2014. *Id.* at 14. On July 1, 2014, ODJFS received a request for redetermination of Mr. Green’s unemployment benefits from TWC Administration, due to the fact that “[t]he claimant was discharged for violation of a reasonable and known policy.” *Id.* at 20. TWC Administration further explained that on several occasions, Mr. Green notified a third party (Convergys) that monies were being collected from customers for down payments on services, but these monies were never turned over to TWC Administration, nor were they posted to the customers’ accounts, and that the total amount missing from Mr. Green’s accounts was approximately \$888.41. *Id.* at 21. TWC Administration argued that its employees are prohibited from mishandling company funds, and that all funds collected from its customers were to be turned in to TWC Administration within a twenty-four hour period. *Id.*

On July 23, 2014, ODJFS issued a Director’s Redetermination of Mr. Green’s unemployment benefits, finding that he was discharged for just cause and therefore ineligible for unemployment compensation and that Mr. Green had been overpaid benefits to which he was not entitled. *Id.* at 28-29.. Thereafter, Mr. Green appealed the Redetermination on or about July 30, 2014, and the case was transferred to the UCRC. *Id.* at 56. Three telephonic evidentiary hearings were thereafter held on August 14, August 28, and September 12 to determine whether Mr. Green was discharged by TWC Administration for just cause in connection with his work. *Id.* at 70, 128, 202. On September 29, 2014, the UCRC hearing officer issued his Decision, finding in part as follows:

[Mr. Green] did door-to-door sales, and customers were permitted to cancel sales contracts and receive payments back that they had paid to [TWC Administration]. If [Mr. Green] made a sale and collected money from a customer, [Mr. Green] was to call in the sale to Convergys and report the receipt of money to Convergys. If the customer then cancelled the sales contract or wanted to change the account payment to COD before [Mr. Green] turned in the customer’s money to the employer, [Mr. Green] would personally give the customer’s money back to the customer. [Mr. Green] did that based upon what Ms. Pruitt had taught him to do. However, if [Mr. Green] would give money back to a customer after notifying Convergys of the payment, [Mr. Green] would then neglect to call in that refund information to Convergys.

On March 19, 2014, [TWC Administration] discharged [Mr. Green] at least in part as a result of the claimant’s poor communication regarding accounts and/or account changes.

* * *

If [Mr. Green] called Convergys and reported a payment to Convergys from a customer before then giving that customer's money back to the customer, [Mr. Green] either knew or should have known that he needed to call Convergys back and report that refund to Convergys. At the very least, [Mr. Green] was negligent.

Id. at 219-20. The UCRC hearing officer further found that Mr. Green was discharged by TWC Administration for just cause in connection with his work, and therefore Mr. Green was not entitled to unemployment compensation and was required to repay all benefits previously received to ODJFS. *Id.* at 218-20. Thereafter, Mr. Green filed a Request for Review of the hearing officer's decision on October 3, 2014, and the review was approved by UCRC on November 5, 2014. *Id.* at 242. Upon a review of the record, UCRC affirmed the decision of the hearing officer on November 20, 2014. *Id.* at 276. Mr. Green subsequently filed his appeal before this Court.

In his *Brief*, Mr. Green reiterated his arguments from his request for review of the hearing officer's decision, and listed seven (7) reasons for his appeal, stated as follows:

1. The hearing Jared Wade officer bias in his treatment of my case. Jared Wade overlooked evidence and [witness] statement provided. There was testimony provided that I broke no company rule or policy my supervisor M. Scott Moran my immediate supervisor.

2. There was testimony given by my field trainer Johanna Pruitt that it was ok[ay] to return cash to a customer within a 24 hour period. Johanna also stated that if she gave money back she would recall Convergys and report the change. Johanna also stated in her testimony that this was not a writer rule, or requirement to do this. Jared Wade has outright LIED in his finding of facts by saying something Johanna Pruitt did not say. Namely: "I was trained to call Convergys after given any money back,["] this was something that Johanna Pruitt choose to do.

3. I also believe that I was discriminated against because I [am] BLACK in this ruling by Jared Wade.

4. I have never been in any hearing as a former court officer, where the judge or magistrate interviewed my witnesses before I was given a chance to ask any question (Johanna Pruitt). This conduct as you will hear in the tape left me shocked and confused about my line of questions for my witness. This may be in order but it was never explained in Jared Wade opening statements.

5. I gave undisputed truth going over service order forms that NOTHING ever was a rule or company policy that I had to call Convergys after returning any cash.

6. Jared Wade stated in [his] fact finding he thought I should at leas[t] have know[n] better [] to call back Convergys, but there was no [basis] for this argument.

7. The magistrate Jared Wade did not follow his own rule of law that he used in *Irvine v. Unemployment Comp. Bd. of Review*(1985). I was fired without just cause.

See Brief at 1-2 (unnumbered). Mr. Green did not file a memorandum in support of his reasons for appeal. *Id.*

In its *Brief of Appellee, Director Ohio Department of Job and Family Services* (hereinafter “*ODJFS Brief*”), ODJFS clarifies that the missing \$888.41 related to twenty-nine accounts that Mr. Green had signed up for cable services. *ODJFS Brief* at 3. ODJFS points to testimony given during the telephonic hearings to support its termination of Mr. Green’s employment. *Id.* at 3-5. Specifically, ODJFS cites to the testimony of Direct Field Manager Kelly Meixner, who testified that Mr. Green was recorded by Convergys indicating that he had collected funds from customers, and that Mr. Green never tried to reverse the impression that the customers actually gave him the money. *Id.*, quoting *Transcript of Administrative Agency* at 75-85. ODJFS also points to the testimony of Senior Investigator of Security Operations Adam Huxell (hereinafter “Mr. Huxell”), who testified that when he confronted Mr. Green about the missing money, Mr. Green stated that he was disorganized and may have misapplied the money to wrong accounts or lost the payments. *Id.* at 3-4, quoting *Transcript of Administrative Agency* at 87-88. Mr. Huxell further testified that even though Mr. Green explained to investigators that he did not have any money belonging to customers, he later turned in money on several accounts within days of being confronted by Mr. Huxell. *Id.*, quoting *Transcript of Administrative Agency* at 87-88. ODJFS also quotes the testimony of Johanna Pruitt, who trained Mr. Green, and indicated that while training Mr. Green, she did give money back to one customer, but that that particular situation was atypical. *Id.* at 4, quoting *Transcript of Administrative Agency* at 207-08.

ODJFS initially argues that Mr. Green was denied unemployment compensation benefits on the ground that he was terminated for just cause pursuant to R.C. 4141.29(D)(2)(a). *ODJFS Brief* at 6. ODJFS asserts that Mr. Green violated TWC Administration’s cash handling policies. *Id.* at 7. Additionally, ODJFS argues that Mr. Green failed to follow TWC Administration’s “twenty-four hour” rule for turning in deposits, and points to the testimony of Kelly Meixner, who testified that on at least one occasion, Mr. Green turned in a deposit more than one week after its receipt. *Id.* The crux of ODJFS’s argument is that Mr. Green “unreasonably disregarded [TWC Administration’s] best interests by failing to keep up with the funds he collected from customers. [TWC Administration] is missing almost nine hundred dollars due to [Mr. Green’s] failure to keep track of the customer funds and follow procedures.” *Id.* at 8. ODJFS contends that “[a]n ordinary, intelligent person in [Mr. Green’s] shoes could not reasonably expect to be employed permanently when he fails to meet cash handling standards so much that he cannot account for missing money or know where it was applied.” *Id.* ODJFS included as an attachment to its *ODJFS Brief a Direct*

Sales Cash Handling & Check-In Procedures Acknowledgement Form, signed by Mr. Green, which confirms that he received and read the *Direct Sales Cash Handling and Check-In Procedures* form. *Id.* at Ex. 2.

With respect to the seven errors addressed by Mr. Green, ODJFS initially notes that Mr. Green failed to comply with Mont. Co. C.P.R. 2.37(B), which requires an appellant to file a memorandum along with his claim(s) of error. *ODJFS Brief* at 9. ODJFS thereafter addresses each of Mr. Green's assignments of error. *Id.* at 9-10. With respect to Mr. Green's first assignment of error, ODJFS argues that Mr. Green does not point to the specific evidence and witness statements that the hearing officer allegedly overlooked, and that the record demonstrates that Mr. Green broke the twenty-four hour rule. *Id.* at 9. With respect to Mr. Green's second assignment of error, ODJFS argues that it was within the hearing officer's discretion to assess the evidence and testimony of Johanna Pruitt. *Id.* With respect to Mr. Green's third assignment of error, ODJFS maintains that there is no evidence that Mr. Green was discriminated against by the hearing officer. *Id.* at 10. ODJFS argues that Johanna Pruitt was not Mr. Green's witness but was subpoenaed by the hearing officer, and that Mr. Green's fourth assignment of error is without merit. *Id.* ODJFS additionally argues that it has already addressed Mr. Green's fifth and sixth assignments of error in its *Brief*. *Id.* Lastly, ODJFS argues that Mr. Green's case is dissimilar from the facts of *Irvine v. Unemployment Comp. Board of Review*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985), and that Mr. Green has not evidenced that the hearing officer failed to follow all proper rules and procedures. *Id.* Therefore, ODJFS requests this Court affirm the decision of the UCRC. *Id.*

In its *Brief of Appellee, TWC Administration, LLC* (hereinafter "*TWC Administration Brief*"), TWC Administration also points out Mr. Green's failure to comply with Mont. Co. C.P.R. 2.37. *See TWC Administration Brief* at 5-6. With respect to Mr. Green's first assignment of error that the hearing officer was biased, TWC Administration argues that Mr. Green failed to specify which evidence and/or statements the hearing officer allegedly overlooked. *Id.* at 6. Regarding Mr. Green's second assignment of error, TWC Administration argues that it was within the hearing officer's discretion to make credibility determinations of all witnesses, and that there was testimony given that Mr. Green had been trained on cash handling procedures. *Id.* at 6-7. With respect to Mr. Green's third assignment of error concerning discrimination, TWC Administration argues that there was no mention of Mr. Green's race, nor was Mr. Green aware of any other party's race given that all hearings in this matter were conducted by telephone. *Id.* at 7. Regarding Mr.

Green's fourth assignment of error concerning the hearing procedures, TWC Administration reiterates that Johanna Pruitt did not appear on behalf of Mr. Green, but was subpoenaed by the hearing officer. *Id.* With respect to Mr. Green's contention that there was no rule in place that he had to call Convergys after returning cash to customers, TWC Administration asserts that "there were cash handling policies in place, as well as the 24 hour rule and [the] record contains numerous instances of [Mr. Green] failing to adhere to these rules which led to a shortfall of \$888." *Id.* at 8. With respect to Mr. Green's sixth argument that there was no basis for the hearing officer to find that he should have known that he needed to call Convergys to let them know about changes to an order, TWC Administration contends that by his own admissions, Mr. Green violated TWC Administration's cash handling policies. *Id.* With respect to Mr. Green's final contention that the hearing officer failed to follow the precedent as stated in *Irvine v. Unemployment Comp. Board of Review*, TWC Administration argues that the cases are dissimilar and that the hearing officer only cited to that case for the definition of "just cause." *Id.* Additionally, TWC Administration argues that Mr. Green "was not discharged due to economic forces over which he had no control[,] but was discharged for just cause because of his "failure to follow the 24 hour rule and cash handling policy and the resulting missing funds of \$888 were the reason for his termination." *Id.* at 9-10. TWC Administration further argues that Mr. Green should have known that he needed to report that he did not collect cash on accounts where he previously reported collections. *Id.* at 10. TWC Administration further contends that Mr. Green was required to email his supervisor regarding amounts collected from customers, and that his supervisor Michael Moran testified that it would be an issue if Mr. Green returned money to customers, because that money belonged to TWC Administration and would need to be processed in a specific way. *Id.* at 10-11. Therefore, TWC Administration requests this Court affirm the decision of the UCRC. *Id.* at 11.

II. LAW AND ANALYSIS

A. STANDARD OF REVIEW

The common pleas court's standard of review in unemployment compensation appeals is "very limited." *Silkert v. Ohio Dep't of Job & Family Servs.*, 184 Ohio App.3d 78, 2009-Ohio-4399, 919 N.E.2d 783, ¶ 26 (2d Dist.). A reviewing court is not permitted to make factual findings or determine witness credibility, but the court does have a duty to determine whether UCRC's decision is supported by evidence in the official record. *Id.*, quoting *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d

694, 696, 653 N.E.2d 1207 (1995). A court may reverse, vacate, modify, or remand a UCRC decision if “the decision . . . was unlawful, unreasonable, or against the manifest weight of the evidence.” R.C. 4141.282(H). Additionally, the court should “leave undistributed the board’s decisions on close questions. Where the board might reasonably decide either way, the courts have no authority to upset the board’s decision.” *Irvine v. Unemployment Comp. Board of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

B. JUST CAUSE

Under R.C. 4141.29(D)(2)(a), a claimant is not eligible for unemployment compensation benefits if he or she is discharged for “just cause in connection with the individual’s work.” R.C. 4141.29(D)(2)(a). “Traditionally, 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, supra*, at 17. “Just cause for discharge may be established by proof that the employee violated a specific company rule or policy * * * so long as the policy was fair and fairly applied.’” *Reidell v. Reynolds & Reynolds Co.*, 2d Dist. Montgomery No. 26392, 2015-Ohio-1048, ¶ 12, quoting *Jones v. Bd. Of Review*, 10th Dist. Franklin No. 93AP-430, 1993 Ohio App. LEXIS 4788, 4 (Sept. 28, 1993). However, an employer need not show that an employee violated a specific rule to prove just cause for termination, as “the critical issue * * * is whether the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interests.” *Kikka v. Ohio Bur. Of Emp. Serv.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist. 1985). The Ohio Supreme Court has further held that the determination of just cause must be made in light of the legislative purpose of the Act:

The [Unemployment Compensation 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. * * *

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. Thus, fault is essential to the unique chemistry of a just cause termination.

Tzangas, supra, at 696-97 (citations omitted). “Nevertheless, we keep in mind that the unemployment compensation statute must be liberally construed in favor of awarding benefits to the applicant.” *Reidell, supra*, at ¶ 13. Furthermore, “[e]ach unemployment compensation case must be considered upon its particular merits in determining whether there was just cause for the discharge.” *Id.* at ¶ 14, quoting *Johnson v. Edgewood City School Dist. Bd. Of Edn.*, 12th Dist. Butler No. CA2008-11-278, 2010-Ohio-3135, ¶ 14.

C. ANALYSIS

Upon a review of the certified record, this Court concludes that the determination made by the UCRC was lawful, reasonable, and not against the manifest weight of the evidence. Moreover, the Court finds that there exists competent and credible evidence that Mr. Green was terminated for just cause. Mr. Green mismanaged cash payments with respect to twenty-nine accounts, which resulted in a loss to TWC Administration of approximately \$888.41. Although Mr. Green argues that the customers never gave him the money, Mr. Green never took any actions to convey these changes in circumstance. Mr. Green could have simply called Convergys, noted the change in his work orders, and/or notified his supervisor in his nightly emails. However, Mr. Green failed to take any action to notify his employer that monies had not been received. By his actions, Mr. Green had demonstrated an unreasonable disregard for TWC Administration's best interests, and TWC Administration has suffered a loss of almost nine hundred dollars. *See Kiikka, supra*, at 169. An ordinarily intelligent person would understand that his employment may be terminated for mishandling cash payments, and such action was in direct violation of TWC Administration's policies. *See Irvine, supra*, at 17; *see also Reidell, supra*, at ¶ 12. Therefore, Mr. Green is not eligible for unemployment compensation under R.C. 4141.29(D)(2)(a), and the Court hereby affirms the decision of the UCRC.

III. CONCLUSION

For all of the foregoing reasons, the Court hereby affirms UCRC's decision that Mr. Green was discharged by TWC Administration for just cause in connection with his work, and therefore Mr. Green was not entitled to unemployment compensation and is required to repay all benefits previously received.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. LANGER

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Type: Decision
Case Number: 2014 CV 06934
Case Title: KIMBERLY GREEN vs TWC ADMINISTRATION LLC

So Ordered

A handwritten signature in black ink, reading "Dennis J. Langer".