

FILED

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Direction to Clerk:
Serve upon all parties not in
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date of entry upon the journal.

MARY L. SMITH
BUTLER COUNTY
CLERK OF COURTS

**IN THE COMMON PLEAS COURT
GENERAL DIVISION
BUTLER COUNTY, OHIO**

TRUPHENA KIBOR,

*

Case No.: CV2014 08 2341

Appellant,

*

JUDGE: CRAIG D. HEDRIC

vs.

*

STARTEK INC., et. al.

*

**ENTRY AND DECISION
AFFIRMING THE DECISION OF
THE UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION**

Appellees.

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FINAL APPEALABLE ORDER

Final Appealable Order

This administrative appeal arises from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”). Appellant, Truphena Kibor (“Appellant”), appeals the decision of the Review Commission denying her unemployment compensation after she was discharged from employment by Appellee, Startek Inc. (“Employer”). For the foregoing reasons, the decision of the Review Commission is affirmed.

Appellant was employed by the Employer from September 10, 2012 to March 4, 2014 as a tier one technical support help desk representative. Appellant worked from home using her own internet and phone service to answer calls. Appellant had the option to work on site if her internet was not available. Employer had a call monitoring system that would monitor Appellant’s calls. If Appellant was inactive for a period of time the system would log her out and she would begin to accrue attendance points. Attendance points also

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accrued if Appellant was absent, late to work or late returning from lunch. Points were assessed on a rolling twelve month basis. Appellant's rolling year began March 4, 2013.

Appellant was late for work on March 26, 2013, late for work and on inactive status on May 2, 2013, on inactive status during a portion of her work day on May 3 and 10, 2013, late for work on May 13, 16, 17, 22, 23, 2013, on inactive status during a portion of her work day on May 28, 2013, late for work on June 3, 2013, on inactive status during portions of her work day on June 6 and 10, 2013, late for work on June 11, 2013, on inactive status during a portion of her work day on June 13, 14, 17, 18, 19, 20, 26, 27, 28, 2013, July 5, 8, 9, 10, 12, 17, 23, 30, and 31, 2013 and August 2 and 19, 2013, and on inactive status during a portion of her work day on January 29, 2014. Appellant requested personal time off from February 24, 2014 through February 28, 2014 so she could move. Employer approved personal time off for February 24 and 25, 2014. Appellant called in sick on February 26, 2014. Appellant admitted she was not sick, but was moving to her new residence. Appellant was a no call no show on March 3, 2014. Appellant was given a verbal warning regarding her attendance on August 22, 2013, a written warning on September 10, 2013 and a final written warning on January 1, 2014. Employer discharged Appellant under its attendance policy on March 3, 2014.

Appellant filed for unemployment benefits with Appellee, Director, Ohio Department of Jobs and Family Services ("ODJFS") on March 10, 2014. On April 9, 2014, the ODJFS issued Appellant's Determination of Unemployment Compensation benefits, allowing Appellant's application for benefits. Employer appealed the initial determination. Subsequently, on May 20, 2014, the ODJFS issued a Redetermination,

finding Appellant was discharged without just cause. Employer filed an appeal from the Redetermination on June 16, 2014. On June 16, 2014, the ODJFS transferred jurisdiction to the Review Commission. A hearing was held before a hearing officer on June 30, 2014. On July 8, 2014, the Review Commission issued a decision reversing the Redetermination. The hearing officer concluded that Appellant's separation from employment was a discharge from employment for just cause.

Appellant filed her appeal to this Court on August 29, 2014. Appellant's brief in support of her appeal was filed on January 12, 2015. The ODJFS filed its brief on February 6, 2015. Appellant was given an opportunity to but did not file a reply brief in support of her appeal.

This Court is required to utilize the standard of review set forth in R.C. 4141.282(H) when considering appeals of decisions rendered by the Review Commission. R.C. 4141.282(H) states:

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, such court shall affirm the decision of the commission.

The Hearing Officer and the Review Commission are responsible for the determination of factual questions. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511, 518. The role of this Court upon appeal from the Review Commission based upon factual grounds is limited to determining whether the board's decision is supported by evidence in the record. *Angelkovski v. Buckeye Potato Chips Company, Inc.* (1983), 11 Ohio App.3d 159, syllabus at ¶ 2, overruled on other grounds. A decision supported by

some competent, credible evidence going to all the essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. *Id.*

Pursuant to R.C. 4141.29(D)(2)(a), a claimant may be denied unemployment benefits if the claimant quits his or her job without just cause or was discharged with just cause. This section states:

(D) Notwithstanding division (A) of this section, no 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 * * * has been discharged for just cause in connection with the individual's work.

The Ohio Supreme Court defines just cause as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995) quoting *Irvine v. Unemp. Comp. Bd.*, 19 Ohio St.3d 15, 17 (1985). An employer may terminate an employee for just cause if the employer had been reasonable in finding fault on behalf of an employee. *Id.* at 698. Whether just cause exists is dependent on the particular facts of each case. *Irvine*, 19 Ohio St.3d at 17. Moreover, "[t]he critical issue is not whether the employee has violated some company rule, but whether the employee by his actions demonstrated an unreasonable disregard for his employer's interests." *Kikka v. Ohio Bur. of Emp. Serv.* (1985), 21 Ohio App.3d 168, 169.

According to Ohio law, excessive absenteeism or tardiness may constitute just cause for discharge where the employee, by his actions, demonstrates an unreasonable

disregard for his employer's best interests... ." *Kikka v. Ohio Bur. of Emp. Serv.* (1985), 21 Ohio App.3d 168, 169.

Appellant argues she was not terminated for just cause because problems with the employer's computer system caused accrual of some of her attendance points and employer was unfair in only giving her two days off work to move residences.

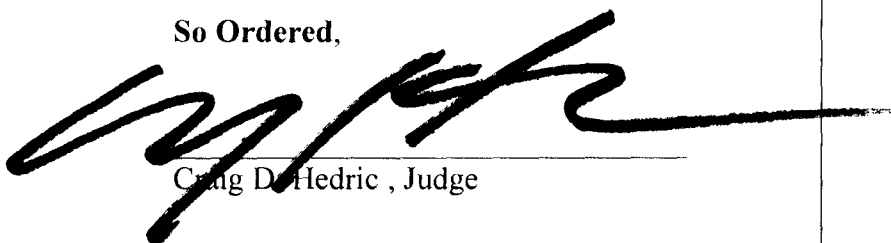
The hearing officer in this case determined Appellant was discharged for attendance concerns; thus she was discharged for just cause in connection with her work. Employer testified regarding numerous instances the Appellant was late to work, missed work, or missed portions of her work day. Employer testified that while Appellant was required to have a quiet work environment she would miss portions of her work day because she was caring for her young son. Employer also testified Appellant had been instructed to keep a written and digital record of her attendance and system issues. Appellant did neither. The hearing officer, as the trier of fact, determined Appellant was frequently late to work and missed portions of her work day without providing any reason. The hearing officer also found that Appellant was given warnings regarding her attendance thus she knew or should have known that attendance concerns would not be tolerated by the employer.

The evidence demonstrates that Appellant demonstrated an unreasonable disregard for the Employer's interest. The record demonstrates that Appellant acted against the best interest of her employer when she frequently missed portions of her work day and called in sick to work when she was actually moving residences.

Appellant also appeals the hearing officer's decision on the basis that the hearing officer asked closed ended questions and the hearing length was too short. The record does not support Appellant's arguments.

After careful consideration, this Court finds that the decision of the Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The decision of the Review Commission is hereby **AFFIRMED**.

So Ordered,



Craig D. Hedric, Judge

cc:

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