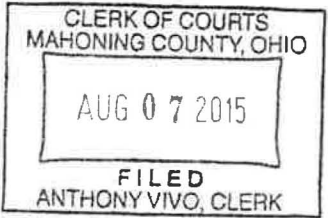


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IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

RICHARD ROWE

) CASE NO. 14 CV 3332  
) COURTROOM NO. 4

APPELLANT

) JUDGE JOHN M. DURKIN

VS.

) JUDGMENT ENTRY

DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES, ET AL

APPELLEES

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SS/HHS

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") pursuant to Ohio Revised Code Section 4141.282.

The record before the Review Commission establishes that Appellant, Richard Rowe ("Rowe") worked as a Deputy Sheriff for Mahoning County Auditor ("Employer") from May 1997 until he was discharged from employment on May 16, 2014 for violating various department rules. The first of these rules violations occurred between February 13, 2013 and July 2, 2013. During that time, Rowe violated sheriff's office rules and received adverse behavior reports. After a pre-disciplinary hearing was scheduled, Rowe settled the matter and was suspended for five days. Rowe received another adverse behavior report in March 2014 when he removed all of the food from the refrigerator and freezer at the Juvenile Justice Center and threw it in the trash. Rowe's pre-disciplinary hearing was waived through a settlement agreement where he was suspended for fifteen days, ordered to undergo anger management classes, and was removed from the Juvenile Justice Center at the insistence of the Juvenile Court Judge.

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In April 2014, Rowe violated other work rules. On April 21, 2014, a Municipal Court Bailiff reported that Rowe had difficulty staying awake while supervising inmates during video arraignments. On April 29, 2014, Rowe was late for roll call. As a result, he did not get the assignment he wanted as it was already given to someone else. Consequently, Rowe became argumentative and left work after telling his superiors that he did not feel well. A pre-disciplinary hearing was held concerning these matters and on May 16, 2014, Rowe was terminated from his employment.

After his termination, Rowe applied for unemployment compensation benefits. The Director, Ohio Department of Job and Family Services (“Director”) issued an initial determination on June 29, 2014 that Rowe was discharged from employment without just cause and allowed Rowe’s application for benefits.

The Employer timely appealed the Director’s determination and on July 7, 2014, the Director affirmed the initial determination allowing Rowe’s claim for benefits. Thereafter, the Employer filed a timely appeal and the matter was transferred to the Review Commission on July 24, 2014.

A telephonic evidentiary hearing was held before the Review Commission on August 12, 2014. Rowe did not appear for the hearing. The Review Commission issued a decision on August 18, 2014 affirming the redetermination by the Director allowing Rowe’s claim for benefits. The Review Commission found that Rowe was discharged from employment without just cause and was therefore eligible for unemployment benefits.

The Employer’s request for further review by the Review Commission was granted on October 8, 2014. On October 30, 2014, the Review Commission ordered that

In this case, Rowe was denied benefits because he was discharged from employment with just cause pursuant to R.C. 4141.29(D)(2)(a). That section concerns eligibility for employment benefits and provides in part as follows:

(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 quit work without just cause or has been discharged for just cause in connection with the individual's work...

“Traditionally, just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine v. Unemp. Comp. Bd.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985). The Seventh District Court of Appeals considered the “just cause” issue in *Kosky v. American Gen. Corp.*, 7<sup>th</sup> Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

In this case, the record before the Review Commission establishes that Rowe had been disciplined for numerous work rules violations. It was established that Rowe was aware of the work rules by his attendance at training sessions yet he violated them anyway.

The hearing officer determined, after considering the testimony of the parties, that Rowe was discharged with just cause. The hearing officer was responsible for weighing and considering the evidence to determine if Rowe was discharged with just cause. There is support in the record for the determination that Rowe was discharged from his

employment with just cause. This Court cannot substitute its judgment for that of the hearing officer nor assess credibility. *See Kilgore, supra; Brown-Brockmeyer, supra.*

Rowe argues that it was improper for the Review Commission to reverse the Hearing Officer's Decision and order that it be rewritten without further hearing. This argument is misplaced. The Review Commission is authorized to rewrite a hearing officer's decision pursuant to R.C. 4141.281(C)(4-6). The rewritten decision becomes the final administrative decision which is the case here.

This Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

DATE: \_\_\_\_\_

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JUDGE JOHN M. DURKIN

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