

AUG 2015

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

15 AUG 11 PM 1:44

JAMES L. SPAETH
CLERK OF COURTS

jk 8.11.15
FAO
CT

**IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO**

DEBBIE BEAN,

Appellant,

-vs-

**PROFESSIONAL PSYCHIATRIC
SERVICES, LLC, et al.,**

Appellees.

CASE NO. 15CV86781

**ENTRY GRANTING
PERMANENT JUDGMENT ON
MAGISTRATE'S DECISION**

A Magistrate's Decision having been filed herein on **July 21, 2015** and no objections to the Decision having been filed within fourteen (14) days from that date, the Court **ORDERS** the Decision adopted as a permanent judgment of this Court.



JUDGE MICHAEL E. GILB

C: Robin Jarvis, Esq.
Debbie Bean, pro se

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

2015 JUL 21 AM 9:15

JAMES L. SPAETH
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO

DEBBIE BEAN,

Appellant,

-vs-

PROFESSIONAL PSYCHIATRIC
SERVICES, LLC, et al.,

Appellees.

CASE NO. 15CV86781

MAGISTRATE'S DECISION

Debbie Bean brings the above-referenced administrative appeal of a decision of the Ohio Unemployment Compensation Review Commission which denied her unemployment compensation benefits. For the reasons which follow, the decision is *affirmed*.

I. PROCEDURAL POSTURE

Bean was terminated from her employment with Professional Psychiatric Services, LLC, on September 30, 2014. She applied for unemployment compensation benefits on October 6, 2014, which were denied by an Ohio Department of Job and Family Services determination issued October 17, 2014. Bean appealed that determination on October 23, 2014. On November 6, 2014, ODJFS issued a redetermination affirming its original denial of benefits.

Bean appealed to the UCRC. On November 25, 2014 a telephonic hearing was held before an UCRC hearing officer who issued a written decision on November 26, 2014, denying Bean unemployment compensation benefits.

On December 12, 2014, Bean filed a request for further review by the UCRC, which was disallowed by decision dated January 8, 2015. On February 2, 2015 Bean filed a timely notice of appeal to this Court.

II. THE RECORD ON APPEAL

At the telephonic hearing, Sherry Harbin, business and operations manager for Professional Psychiatric Services, LLC, testified, as did Bean. Harbin testified that Bean was

employed from May 12, 2014 to September 30, 2014, as a front office coordinator.¹ Bean had previously worked for Professional Psychiatric Services, LLC as an extern. Bean's duties included answering the telephone, scheduling appointments, pulling charts, and collecting co-payments. According to Harbin, Bean's duties were explained to her at the time she was hired; her duties did not change over time, and other employees were able to perform these duties adequately.

Harbin testified to numerous instances of Bean's poor performance. Bean scheduled patients with the wrong doctors, did not properly collect co-payments, took all day to pull patient's charts, and refused to answer the telephone. On one occasion, according to Harbin, Bean turned all the lights off in the building when a doctor was still there. Bean was heard cursing behind the front desk. She left a patient's chart in the drug screening room. She left one patient waiting several hours. She failed to lock the cash box and medication drawers at the end of the day.

Harbin noted several instances of deficient performance with regard to scheduling. Cancelled appointments were not removed from the schedule. Patients were "squeezed" into doctor's schedules. Patients who had been discharged from the program were allowed appointments. All of this led to complaints from both patients and doctors.

Bean was given three written warnings about her deficient performance, on August 13, 2014, September 5, 2014 and September 12, 2014, all of which Bean signed.²

Bean testified that the practice was extremely busy and it was not possible to get charts pulled in less than two hours as her employer demanded. Bean claims she did not make scheduling errors, as other employees used the same computer and Bean could not log out every time she left the front desk. Bean denied she ever refused to answer the telephone, and also denied cursing at work, but, "if I did," it would have been because of a paper jam in the copier, and under her breath. Bean maintains she did the best she could.

In her decision, the hearing officer made the following findings of fact:

Claimant was employed by Professional Psychiatric Services, LLC from May 12, 2014, until September 30, 2014. At the time of her separation, she was employed as a Front Office Coordinator.

¹ Although not expressly stated in the record, this Magistrate infers that Professional Psychiatric Services LLC's practice consists, in large part, of treating individuals with drug addictions.

² These warning letters are included in the record.

Claimant's job duties included answering the phone, scheduling appointments, pulling patient charts, and taking co-payments from patients. She was advised of these duties when she was hired, and had previously done an externship with the employer. These duties did not significantly change during the course of claimant's employment. Other employees were able to perform these duties correctly.

On August 13, claimant was given a written warning for issues including scheduling patients when no staff was available, turning off lights when a doctor was still seeing a patient, taking all day to pull patient charts, not removing patients who had cancelled their appointments from the schedule, not answering phone, leaving a chart in a room with a patient, and squeezing patients into the schedule against the policies and procedures of the office. Claimant signed this warning and wrote that she should would be more careful. On September 5, claimant was issued another written warning for issues including not locking the cash box and medication sample drawers at the end of the day, taking too long to pull charts, squeezing patients into the schedule against policies and procedures of the employer, not checking the charts for the last date of service for suboxene patients, not changing the system to reflect the correct payment owed by the patient, and not removing patients from the schedule when they canceled their appointment. On September 12, claimant received another written warning for incorrectly scheduling patients who had been released from the substance abuse practice, not entering important information into the system, taking all day to pull charts, and incorrectly scheduling patients. When claimant was given these warnings, she was advised that her job was in jeopardy based on her performance. Claimant signed each of these warnings.

When claimant's performance did not improve, and she continued to make the same errors that she had previously been warned about, she was discharged on September 30, 2014.

III. SCOPE OF THE COURT'S REVIEW

Pursuant to R.C.4141.282 (H), 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, the court shall affirm the decision of the Commission.”

The scope of the Court’s review of a decision of the Unemployment Compensation Review Commission is extremely narrow. Factual determinations are the exclusive province of the Commission. *Lombardo v. Ohio Bur. of Employment Svcs.*, 119 Ohio App.3d 217, 220, 695 N.E.2d 11 (6th Dist. 1997). The Court is not permitted to make factual findings or to determine the credibility of witnesses, but the Court does have the duty to determine whether the Commission’s decision is supported by the evidence in the record. *Huth v. Ohio Dep’t. of Job and Family Svcs.*, 5th Dist. No. 2014 AP03001, 2014 Ohio 5408, ¶20; *Stapleton v. Ohio Dep’t. of Job and Family Svcs.*, 163 Ohio App.3d 14, 2005 Ohio 4473, 836 N.E.2d 10, ¶18 (7th Dist.); *Vinson v. AARP Foundation*, 134 Ohio App.3d 176, 178, 730 N.E.2d 479 (10th Dist. 1999). This Court may not usurp the function of the Commission as the trier of fact by substituting the Court’s judgment for that of the hearing officer or the Commission. *Abrams-Rodkey v. Summit Cty. Children Svcs.*, 163 Ohio App.3d 1, 2005 Ohio 4359, 836 N.E.2d 1, ¶7 (9th Dist.); *Stapleton*, 163 Ohio App.3d 14, ¶17. A Court may not reverse a decision of the Commission as being against the manifest weight of the evidence when there is some evidence in the record to support the Commission’s decision. *Coles v. United Postal Svcs.*, 7th Dist. No. 12MA22, 2013 Ohio 1428, ¶14; *Stapleton*, 163 Ohio App.3d 14, ¶20. Where the Commission might reasonably decide either way on a claim for benefits, the Court has no authority to upset the Commission’s decision. *Huth*, 2014 Ohio 5408, ¶20; *Coles*, 2013 Ohio 1428, ¶14; *Guy v. City of Steubenville*, 147 Ohio App.3d 142, 2002 Ohio 849, 768 N.E.2d 1243, ¶23 (7th Dist.).

In an unemployment compensation appeal, the Court’s review is limited to the record as certified by the Commission, *Abrams-Rodkey*, 163 Ohio App.3d 1, ¶7, and every reasonable presumption must be made in favor of the decision of the Commission. *Huth*, 2014 Ohio 5408, ¶20. The burden of persuasion remains always upon the discharged employee to prove she is entitled to unemployment compensation. *Bates v. Airborne Express, Inc.*, 186 Ohio App.3d 506, 2010 Ohio 741, 928 N.E.2d 1168, ¶20 (2d Dist.); *Vinson*, 134 Ohio App.3d, at 178.

IV. ANALYSIS

The sole issue presented by this administrative appeal is whether Bean was discharged from her employment for just cause. An individual who is discharged by her employer for just cause is ineligible for unemployment compensation benefits. R.C.4141.29 (D)(2)(a).

What constitutes just cause for termination supporting a denial of unemployment benefits is a question of fact primarily within the province of the Commission; judicial review is therefore limited to determining whether the Commission’s decision is supported by the evidence in the

record. *Maldonado v. Ohio Dep't. of Job & Family Svcs.*, 7th Dist. No. 10MA190, 2012 Ohio 4555, ¶17; *Guy*, 147 Ohio App.3d 142, ¶23.

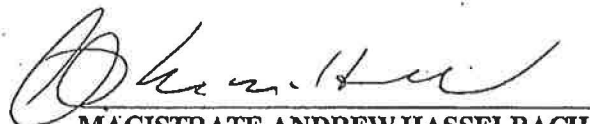
For purposes of the unemployment compensation statute providing that a claimant is ineligible for benefits if she was discharged for just cause, "just cause" is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Bates*, 186 Ohio App.3d 506, ¶9. In determining whether an employer had just cause to terminate an employee, the critical issue is not whether the employee violated some company rule, but whether the employee, by her actions, has demonstrated an unreasonable disregard for her employer's best interests. *Brown v. Bob Evans Farms, Inc.*, 190 Ohio App.3d 837, 2010 Ohio 6011, 944 N.E.2d 716, ¶17 (7th Dist.). Fault on an employee's part is an essential component of a just cause termination. *Williams v. Ohio Dep't. of Job & Family Svcs.*, 129 Ohio St.3d 332, 2011 Ohio 2897, 951 N.E.2d 1031, ¶24. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer's instructions. *Id.* Unsuitability for a position constitutes fault sufficient to support a just cause discharge. *Id.*

An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when 1.) the employee does not perform the required work, 2.) the employer made known its expectations of the employee at the time of hiring, 3.) the expectations were reasonable, and 4.) the requirements of the job did not change substantially since the date of the original hiring for that particular position. *Id.*; *Tzangos, Plakas & Mannos v. Ohio Bur. of Employment Svcs.*, 73 Ohio St.3d 694, 1995 Ohio 206, 653 N.E.2d 1207, ¶4 of the syllabus.

Sherry Harbin's testimony at the telephonic hearing was sufficient to meet the four part test set forth above, and the hearing officer obviously found Harbin's testimony credible. Accordingly, there is sufficient evidence in the record to support the Commission's decision.

V. MAGISTRATE'S DECISION

The decision of the Ohio Unemployment Review Commission denying Appellant Debbie Bean unemployment compensation benefits is *affirmed*.


MAGISTRATE ANDREW HASSELBACH

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

2015 JUL 21 AM 9:15

JAMES L. SPAETH
CLERK OF COURTS

WARREN COUNTY, OHIO
COURT OF COMMON PLEAS

Debbie Bean

CASE NO. 15CU86781

Plaintiff/Petitioner

PROFESSIONAL PSYCHIATRIC
SERVICES, LLC, et al.

Defendant/Respondent.

INSTRUCTIONS TO THE CLERK FOR SERVICE OF MAGISTRATE'S DECISION
PURSUANT TO CIVIL RULE 5

Serve the following attorney(s) Robin Jarvis

Serve _____, unrepresented by counsel,
at the above address shown on the caption.

Serve Debbie Bean


MAGISTRATE ANDREW HASSELBACH

RM
7.21.15
JK