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IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO  
GENERAL DIVISION

CINDY M. BOURELLE	:	CASE NO. 14-131
APPELLANT	:	JUDGE CHRISTOPHER GEE
VS.	:	DECISION/JUDGMENT ENTRY AFFIRMING THE DECISION OF THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
DAYTON METROPOLITAN HOUSING AUTHORITY, et al.,	:	
APPELLEES	:	

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Appellant, Cindy M. Bourelle, filed a timely notice of appeal of the decision of the Ohio Unemployment Compensation Review Commission (“the Commission”), which denied her unemployment benefits following her discharge from appellee, Dayton Metropolitan Housing Authority. (“MHA”). Bourelle filed a brief in support of her appeal, and appellee, Ohio Department of Jobs and Family Services (“ODJFS”) filed a brief seeking affirmance of the Commission decision. Bourelle has filed a reply brief.

The appellee, ODJFS, also filed a motion to strike the exhibits attached to the brief of appellant. The exhibits are a series of newspaper articles about MHA. However, there is no provision in the statute which would permit the court to

allow either party to supplement the record as certified by the board of review.<sup>1</sup> Since the copies of the newspaper articles are not a part of the record certified by the board, they cannot be considered by this court. The motion to strike is granted.

The Ohio Unemployment Compensation Act defines the scope of matters which can be considered by a court on appeal, and further specifies the standard of review to be applied by a court reviewing the record. R.C. 4141.282(H) states in pertinent part as follows:

The court shall hear the appeal upon receipt of the certified record provided by the commission. If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision, or remand the matter to the commission. Otherwise, such court shall affirm the decision of the commission.

The statutory standards set forth in the Revised Code do not contemplate proceedings de novo. Thus, it is not a trial to the court. In addition, this court is prohibited by law from considering any evidence other than that adduced before the administrative agency.<sup>2</sup>

The Hearing Officer and the Ohio Unemployment Review Commission serve as trier of fact. When a party appeals from the Review Commission's final action, the scope of review of the Common Pleas Court is limited to a determination of whether the Commission's decision was unlawful,

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<sup>1</sup> Hall v. American Brake Shoe Company, 13 Ohio St. 2d 11, (1968); Gen. Motors Corp. v. Sanders, No. CA84-02-022, Butler Co., (12th Dist., 1985)

<sup>2</sup> id

unreasonable, or against the manifest weight of the evidence.<sup>3</sup> The determination of factual questions is primarily a matter for the agency.<sup>4</sup> This court should defer to the agency's determination of purely factual issues which concern the credibility of witnesses and the weight of conflicting evidence.<sup>5</sup> Where the agency might reasonably act either way, the courts have no authority to upset the agency's decision.<sup>6</sup> A reviewing court may not reverse an otherwise lawful administrative order when reasonable minds might reach different conclusions based on the same evidence.<sup>7</sup>

The Commission determined that claimant Bourelle was discharged for just cause in connection with her work as required in 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."<sup>8</sup>

"The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case."<sup>9</sup> The question of fault cannot be rigidly defined, and can only be evaluated upon consideration of the particular facts of each case. "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with

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<sup>3</sup> Id

<sup>4</sup> Brown-Brockmeyer Co. v. Roach, 148 Ohio St. 511, (1947)

<sup>5</sup> Angelkovski v. Buckeye Potato Chips, 11 Ohio App. 3d 159 (1983).

<sup>6</sup> Irvine v. Unemployment Compensation Board of Review, 19 Ohio St. 3d 15, 18, (1985)

<sup>7</sup> Riley v. The Ohio Bureau of Employment Services 82 Ohio App. 3d 137, (1992)

<sup>8</sup> Irvine v. Unemp. Comp. Bd. of Review, 19 Ohio St.3d 15, 17-18, (1985), citing Peyton v. Sun T.V., 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, (1975).

<sup>9</sup> Id

just cause. Fault on behalf of the employee remains an essential component of a just cause termination.”<sup>10</sup>

The decision from the Review Commission found that Bourelle was terminated by MHA for just cause in connection with her work. As a manager for MHA, Bourelle made a series of errors which resulted in her being placed on a performance improvement plan. When the errors continued, she was terminated by MHA on February 19, 2010. This court finds that the decision of the Review Commission is supported by some credible evidence in the record, and concludes that reasonable minds might reach different conclusions based on the same evidence. For the foregoing reasons the decision of the Ohio Unemployment Compensation Review Commission is affirmed. Costs to be paid by appellant.

IT IS SO ORDERED.

  
CHRISTOPHER GEE, JUDGE

To the Clerk:

The clerk is directed 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 upon 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.

Cindy M. Bourelle, Appellant, Pro Se  
Robin A. Jarvis, Assistant Attorney General, Attorney for Appellee Ohio Dept.  
Job and Family Services  
Dayton Metropolitan Housing Authority, Appellee  
Director Ohio Department of Job and Family Services, Appellee  
Unemployment Compensation Review Commission, Appellee

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<sup>10</sup> Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv., 73 Ohio St.3d 694, 698, 1995-Ohio-206, (1995)