

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

COLUMBUS FAIR AUTO, AUCTION, INC.,	:	CASE NO. 15 CVF 3008
Appellant,	:	JUDGE COLLEEN O'DONNELL
-vs-	:	
GREGORY STORMONT, et al.,	:	
Appellees.	:	

DECISION AND ENTRY

O'DONNELL, J.,

This matter comes before this Court upon an appeal pursuant to R.C. 4141.282(H) from a March 11, 2015 Decision of the Unemployment Compensation Review Commission ("Review Commission"). Appellee Gregory Stormont (claimant) filed an Application for Determination of Benefit rights for a benefit year beginning October 12, 2014.

As background, on December 8, 2014, Appellee, Director of the Ohio Department of Job and Family Services, issued a Redetermination, finding that claimant was discharged from employment with Columbus Fair Auto Auction, Inc., ("CFAA"), without just cause in connection with work.

On December 24, 2014, CFAA appealed from that Redetermination. On December 26, 2014, the Ohio Department of Job and Family Services ("ODJFS") transferred jurisdiction to the Review Commission. R.C. 4141.281. On January 29, 2015, Hearing Officer David T. Spencer conducted a hearing via telephone. Appellant appeared and was represented by Attorney Christina Corl. Appellant testified on his own behalf and presented the testimony of Annie Wheatley, Allied Financial Account Manager. CFAA was represented by Attorney Jennifer McDaniel. CFAA

presented the witness testimony of Harvey Varvel, CFAA's general manager, and Christine Zeek, human resources coordinator.

In his January 30, 2015 Decision, the Hearing Officer made the following findings of fact:

The claimant worked for Columbus Fair Auto Auction, Inc. as the body manager from February 11, 1991 to October 6, 2014. The claimant was discharged for allegedly submitting late and inaccurate payroll, failing to submit PTO requests timely, and for releasing protected healthcare information about a former employee.

The claimant managed approximately forty hourly employees in the body shop. The claimant created and submitted the payroll records to the main office for those employees from approximately 2003 until August 2014. For most of the claimant's employment hourly employees were guaranteed a minimum weekly payment. Beginning in May 2014, the company decided to change the pay calculation from a guaranteed minimum to a flat rate per job without a guaranteed minimum. The company brought in an outside consultant to create a flat rate pay structure and implement a new computer database to calculate employee pay.

Columbus Fair Auto Auction, Inc., alleged the claimant failed to implement the new system but continued to calculate employee pay under the old system of guaranteed payments. However, Columbus Fair Auto Auction, Inc. failed to provide any documentary evidence to establish this allegation. Furthermore, credible testimonial evidence was presented that the payroll duties were taken away from him in August 2014, by the consultant hired to implement the new pay structure.

Columbus Fair Auto Auction, Inc. also alleged the claimant was late turning in the payroll. Payroll was due September 29, 2014, but the payroll was not completed until October 1, 2014. However, the credible testimony presented shows the claimant was informed by his office manager on the morning of September 29, 2014, that she had been instructed by the human resources coordinator, Christine Zeek, to tell the claimant he was to create the payroll report that week. The claimant could not create the payroll report by the end of the day, given such short notice, and submitted the payroll late on Wednesday, October 1, 2014.

The claimant requested PTO for October 2, 2014. The claimant's past practice for the preceding 23 years had been to inform his office manager of the days he would be taking off and the office manager would then submit the PTO slips with the payroll records. The claimant provided credible testimony that he informed his office manager that he would be taking PTO for the days in question however she failed to submit the PTO slips with the payroll report on October 1, 2014.

Lastly, Columbus Fair Auto Auction, Inc. alleged that on September 12, 2014, the claimant informed other employees that a former coworker was discharged for failing a pre-employment drug test and this disclosure constituted a release of confidential information. However, the eyewitness testimony presented suggested that the claimant did not make such

a disclosure or any statement regarding the drug testing of a former employee. Columbus Fair Auto Auction, Inc. alleged that it has a written statement from another employee that corroborates its allegation however the witness was not presented to testify and the written statement was not presented as evidence for the hearing.

The hearing officer found that CFAA discharged the claimant without just cause in connection with work based on the following reasoning:

The claimant was discharged for a number of alleged infractions however the credible evidence presented fails to show fault or misconduct by the claimant. The claimant was not in charge of payroll consequently the onus of any improper calculations would not fall on the claimant. Furthermore, the employer failed to provide sufficient evidence to suggest the payroll was even improperly calculated as alleged. The claimant was late delivering the September 29, 2014, payroll because the task was given to him at the last minute and the evidence suggests he finished the task as quickly as was practical under the circumstances. The claimant requested his PTO pursuant to the past practice of 23 years and the fact the office manager failed to submit those request slips did not constitute fault by the claimant. Lastly, the credible evidence presented indicates the claimant did not make any statement regarding a former employee's drug test and did not reveal any confidential information. While there is not a burden of proof placed on any party in a UCRC hearing it is expected that a party will produce the best evidence. The company's hearsay testimony regarding the claimant's alleged statements on September 12, 2014, are insufficient to find the claimant acted inappropriately considering stronger first hand testimony and a first-hand written account was allegedly available. Absent evidence of fault or misconduct by the claimant his discharge was not reasonable. The Hearing Officer finds the claimant was discharged by Columbus Fair Auto Auction, Inc. without just cause in connection with work.

See January 30, 2015 Decision.

Thereafter, Appellant filed a request for review. On March 11, 2015 the Review Commission issued a Decision Disallowing Request for Review. On April 8, 2015, CFFA filed the notice of appeal herein. R.C. 4141.282.

Standard of Review

This Court must uphold the decision of the Review Commission unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St. 3d 694 (1995). While a reviewing court is not permitted to make factual findings or

determine the credibility of witnesses, it does have a duty to determine whether the decision of the Review Commission is supported by the evidence in the record.

The Unemployment Compensation 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 or she is no longer the victim of fortune's whims but instead is directly responsible for his/her own predicament. Fault on the employee's part separates him/her from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination. Thus, if the employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. See R. C. 4141.29(D)(2)(a). Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699. In the facts before the Court, the record supports the finding that Appellant was terminated with just cause and that the Review Commission's November 19, 2014 Decision is supported by the evidence.

Appellant's Assignments of Error

Appellant did not set forth specific assignments of error in its brief. Thus, this Court will review the Review Commission's decision pursuant to R.C. 4141.282(H).

Law and Analysis

Appellant asserts that Mr. Stormont failed to follow a company policy regarding paid time off (PTO), failed to turn in a payroll in a timely manner, and disclosed confidential information regarding a former employee.

A. Paid Time Off (PTO) Issue.

Appellant asserts that Mr. Stormont did not turn in PTO slips pursuant to company policy. The evidence shows that Mr. Stormont requested PTO for October 2 and 3, 2014. A review of the

record demonstrates that past practice for the preceding 23 years was for Mr. Stormont to inform his office manager of the days he would be using PTO, and the office manager would complete and submit the PTO slips with the payroll records on his behalf. Tr. 36-38. Mr. Stormont provided credible evidence that he informed his office manager that he would be using PTO on the days in question. However, the office manager failed to submit the PTO slips with the October 1, 2014 payroll report. Thus, there is evidence in the record that supports the hearing officer's findings of fact on this issue.

B. Payroll Issue.

As to the allegation that Mr. Stormont failed to turn in payroll in a timely manner, a review of the record supports the hearing officer's findings of fact as to this issue. Tr. 30-31, 35-36, 45-46, 55. Mr. Stormont created and submitted the body shop employees' payroll records to the main office from approximately 2003 until August 2014. Before August 2014, CFAA hired an outside consulting firm, CARS, to create a flat rate pay structure, and implement a new computer database to calculate employee pay, among other things. As of August 2014, the body shop payroll duties were taken away from Mr. Stormont by the consultant and assigned to the office manager. Someone other than Mr. Stormont completed the payroll up until September 29, 2014. On September 29, 2014, the office manager, as instructed by Christine Zeek, the human resources coordinator, gave Mr. Stormont all the payroll documents and was told to complete the task within a few hours, which Mr. Stormont stated was impossible. Given the short notice, Mr. Stormont submitted the payroll report late in the day on Wednesday, October 1, 2014. In her testimony during the hearing, Christine Zeek, the human resources coordinator for Appellant, could not answer the question when asked who was responsible for processing the body shop payroll between August and October 2014. Tr. 30-31.

C. Disclosure Issue

Appellant also asserts that Mr. Stormont disclosed confidential information to other CFAA employees regarding a former employee and a failed drug test. Tr. 40, 58. However, the eyewitness testimony does not substantiate this allegation. The eyewitness substantiated that Mr. Stormont did not make such a disclosure or any statement regarding the drug testing of a former employee. Appellant did not present any evidence in support of this allegation.

The Review Commission's decision is lawful and reasonable, and the decision is supported by the manifest weight of the evidence. The hearing officer, as the trier of fact, was presented with two different versions of the facts in this case. The hearing officer found Mr. Stormant to be credible and chose to believe the version of the facts in his favor. See *Todd v. Admr. Ohio Dept. of Job & Family Services*, 2004-Ohio-2185.

DECISION

Appellant's legal arguments are not well-taken and are hereby **OVERRULED**. This Court concludes as a matter of law that the Review Commission's March 11, 2015 Decision is supported by the evidence in the record. Moreover, this Court concludes that the Review Commission's March 11, 2015 Decision is lawful, reasonable and not against the manifest weight of the evidence. Accordingly, the Review Commission's March 11, 2015 Decision, is hereby **AFFIRMED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk 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 on 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. Upon serving the notice and notation of the service in the appearance docket, the service is

complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS

A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

Date: 08-26-2015
Case Title: COLUMBUS FAIR AUTO AUCTION INC -VS- GREGORY STORMONT ET AL
Case Number: 15CV003008
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, "Colleen O'Donnell", is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE TRUE" around the bottom. The year "2003" is also visible within the seal.

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 15CV003008

Case Style: COLUMBUS FAIR AUTO AUCTION INC -VS-
GREGORY STORMONT ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes