



COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
AUG 28 2015

ROBERT L. BUFFETT,

Appellant,

v.

DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES,
et al.,

Appellees.

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CASE NO. A1102138

Judge John Andrew West

ENTRY OVERRULING
OBJECTION TO THE
MAGISTRATE'S
DECISION

This matter came before the Court on Robert L. Buffett ("Appellant's") Objection to the Magistrate's Decision. After reviewing the written memoranda presented by the parties, and being otherwise fully informed of the premises, the Court hereby finds that Appellant's Objection is not well taken.

Accordingly, IT IS THE ORDER OF THE COURT that Appellant's Objection to the Magistrate's Decision is hereby overruled and the Magistrate's Decision is hereby adopted in its entirety.

Be it so Ordered.

DATE: _____

FOR COURT USE ONLY
S.C. Line #: 10

COURT OF COMMON PLEAS
ENTERED
J. Andrew West
JUDGE JOHN ANDREW WEST
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ROBERT F. BUFFET,

Appellant,

vs.

OHIO DEPARTMENT OF JOB
AND FAMILY SERVICES, et al.

Appellees.

Case No. A1102138

Magistrate Michael L. Bachman

MAGISTRATE'S DECISION



D94654329

RENDERED THIS 19TH DAY OF SEPTEMBER, 2011

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") February 11, 2011 Decision Disallowing Request for Review of the January 11, 2011 Review Commission hearing officer's Decision finding that Appellant Robert F. Buffet ("Appellant") quit employment at Spherion Staffing, LLC ("Spherion") without just cause.¹ This appeal, filed pursuant to R.C. § 4141.282, was taken under submission after filing of briefs and oral arguments.

BACKGROUND

The Appellant filed for unemployment compensation benefits on December 27, 2009. Appellee Director, Ohio Department of Job and Family Services ("Director"), issued an initial determination that allowed benefits. Spherion filed a timely appeal from the initial determination. The Director issued a Redetermination that affirmed the initial determination. Spherion filed an appeal from the Redetermination. The Director transferred jurisdiction of the claim to the Review Commission.

¹ Decision of the Review Commission mailed January 11, 2011.

The Review Commission's hearing officer reversed the Director's decision. The hearing officer held that the Appellant quit employment without just cause. The Appellant's request for further review by the Review Commission was disallowed. The Appellant appealed to this Court.

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.² Otherwise, the court shall affirm the decision.³ The reviewing court must follow this same standard in assessing just cause determinations.⁴ The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.⁵

DISCUSSION

The Ohio Revised Code states:

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[.]⁶

² Ohio Rev. Code § 4141.282(H).

³ *Id.*

⁴ *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15, 17-18.

⁵ *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (App. 10 Dist., 1983), 11 Ohio App. 3d 159, 161-162 (overruled in *Tzangas* for other reasons).

⁶ Ohio Rev. Code § 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. The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose is to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonable decent level and is in keeping with the humanitarian and enlightened concepts of this modern day. Likewise, the act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.⁷

ODJFS approved the Appellant for benefits after he was laid off by an employer who is not a party to this case. After obtaining benefits, the Appellant decided to work for Spherion, a temporary staffing agency, on May 10, 2010.⁸ Spherion placed the Appellant into a dock worker position with Conway Freight making \$11.54 per hour.⁹ Spherion told the Appellant that the position with Conway would be a full-time assignment and that a commercial driver's license would not be required to be hired on permanently with Conway.¹⁰

The Appellant testified he initially worked 40 hours a week for Conway.¹¹ The Appellant testified that, after a couple of weeks, Conway began sending him home after only 6 to 7 hours of work.¹² He also stated that Conway employees told him he would need a CDL if he wanted to be hired on in a more permanent capacity with Conway.¹³ The Appellant testified that he felt Spherion gave him inaccurate information regarding

⁷ *Irvine*, supra, at 17 (citations omitted)(emphasis in original).

⁸ Tr. pp. 5-6. All references to the record in this brief shall refer to specific pages of the transcript of the evidentiary hearing held before the Review Commission hearing office on January 5, 2011.

⁹ *Id.*

¹⁰ Tr. p. 6.

¹¹ Tr. p. 7.

¹² Tr. p. 7.

¹³ *Id.* at 9.

the Conway position and that this, along with the reduction in hours, led to his decision to quit Spherion.¹⁴

Spherion was represented by Stuart Baker. Mr. Baker testified he knew for a fact that a CDL was not required because he had numerous employees hired at Conway as dock workers and a CDL was not needed.¹⁵ Mr. Baker understood the Conway position to be a full-time assignment.¹⁶ Mr. Baker testified the Conway assignment was supposed to provide the Appellant with 40 hours of work per week.¹⁷ The Appellant worked for Spherion for less than a month.

The hearing officer found that the Appellant quit work without just cause.¹⁸ The hearing officer found that the Appellant's reduction in hours was not dramatic and was a day-to-day issue.¹⁹ The hearing officer also found that the CDL was not needed to continue employment with Spherion.²⁰ The hearing officer noted that the Appellant earned more than his weekly benefit amount for a 40-hour week and if he would have dropped below the amount, he could have filed for partial unemployment compensation.²¹

The Appellant contends that Spherion misled him about the job at Conway as he thought he would earn more money than his prior job before he became unemployed and therefore he had just cause to quit employment. The hearing office and ODJFS cited legal authority indicating that a claimant only quits work for just cause if he has a drastic reduction in salary. In this case, the Appellant did not have a drastic cut in

¹⁴ *Id.* at 10, 12.

¹⁵ Tr. pp. 12-13.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Decision of the Review Commission, January 11, 2011.

¹⁹ *Id.*

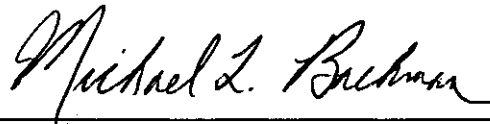
²⁰ *Id.*

salary. The determination of whether a decrease in earnings is just cause to quit is a question of fact.²²

This Court is required to defer to the Commission's determination of purely factual issues which concern the credibility of witnesses and the weight of conflicting evidence.²³ The Court finds that the Appellant quit work without just cause. The decision of the hearing officer is not unlawful, unreasonable or against the manifest weight of the evidence.

DECISION

The Decision of the Unemployment Compensation Review Commission is hereby AFFIRMED.



MAGISTRATE MICHAEL L. BACHMAN

²¹ *Id.*

²² *Stapleton v. Director, ODJFS*, (2005), 163 Ohio App. 3d 14.

²³ *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159, 162.

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 9/20

Deputy Clerk: 