

FILED
COLUMBIANA COUNTY
COURT OF COMMON PLEAS

SEP - 2 2015

ANTHONY J. DATTILIO
CLERK (CAP)

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO

Case No.: 2015 CV 00003

EAST LIVERPOOL CITY SCHOOL DISTRICT
BOARD OF EDUCATION
810 WEST 8TH STREET
EAST LIVERPOOL, OH 43920
Plaintiff-Appellant

Case Number: 2015 CV 00003

JUDGE C. ASHLEY PIKE

VS.

JUDGMENT ENTRY

DIRECTOR OHIO DEPARTMENT OF JOB AND FAMILY SERVICE
30 EAST BROAD STREET 32ND FLOOR
COLUMBUS, OH 43215
Defendant-Appellee

This matter is before the Court pursuant to the Employer East Liverpool School District Board of Education ("the Board of Education") appeal of the final decision issued by the Unemployment Compensation Review Commission ("the Commission") on December 17, 2014. In the Decision, the Commission concluded that Claimant, Jack Skidmore ("the Claimant") quit his employment as a teacher with the Board of Education with just cause, and as a result, awarded unemployment compensation benefits to the Claimant. The Board of Education requests this Court to reverse or modify the Decision, to deny the Claimant's unemployment compensation benefits in their entirety.

The Appellant submitted a Brief on April 29, 2015. The Appellee submitted a Brief on May 26, 2015. All of the foregoing was taken into consideration by the court in issuing this Judgment Entry.

STATEMENT OF THE CASE:

1. On or about August 4, 2014, the Claimant applied for unemployment compensation benefits.
2. On or about August 28, 2014, Appellee Director ODJFS issued an initial determination, holding that the Claimant quit his employment with just cause, and allowed Claimant's application for benefits.
3. The Employer filed a timely appeal. In a decision issued on October 1, 2014, the Director ODJFS reversed the initial determination and decision, holding that Claimant quit his employment without just cause under Section 4141.29(D)(2)(a), Ohio Revised Code, and disallowed Claimant's application for benefits.
4. Claimant filed a timely appeal of the Director's decision and, on October 8, 2014, the Director transferred jurisdiction to the Review Commission pursuant to O.R.C §4141.281(B).
5. On October 22, 2014 and November 6, 2014, Hearing Officer, Dina Toyzan, conducted telephonic evidentiary hearings.
6. Hearing Officer, Dina Toyzan, issued her decision on November 10, 2014. The Hearing Officer reversed the Director's determination and further held that Claimant had quit his employment with just cause, and was therefore eligible for unemployment compensation benefits.

7. The Employer Board of Education timely filed a request for Review of the Hearing Officer's decision. On December 17, 2014, the Commission denied the Board of Education's Request for Review.
8. The Board of Education timely filed an appeal to this court, seeking a reversal of the grant of unemployment compensation benefits. The Board of Education requests this Court to reverse or modify the Decision, to deny the Claimant's unemployment compensation benefits in their entirety.

FINDINGS OF FACT: The following facts of the case, as set forth by the Appellant and the Appellee in their respective briefs, are undisputed.

1. The Claimant was hired by the Board of Education as the Instrumental Music Instructor/Band Director and General Music Teacher in July/August 2012. The contract was for two academic school years: 2012-2013 and 2013-2014.
2. Principal Taylor advised the Claimant that he would be recommending to the superintendent that the Claimant's employment contract not be renewed for the 2014-2015 school year.
3. The Claimant submitted his written notice of resignation on April 15, 2014. The Claimant quit his employment, effective July 2014.

The Court additionally finds, based upon the Certified Transcript of the Record of the Proceedings, the Director's File, the U.C. Commission file, the briefs of the Appellant and Appellee, and their exhibits, the following facts:

1. On or about March 2013, the Claimant received his first annual evaluation from the High School Principal, Randy Taylor. In the evaluation, the Claimant received numerous ratings of "below expectations" and "unacceptable".
2. As a result of his poor evaluation ratings, the Claimant was placed on a Performance Improvement Plan. Claimant was advised that his future employment would be dependant upon meeting the goals outlined in the Performance Improvement Plan.
3. On or about May 28, 2013, Principal Taylor prepared a written memorandum documenting the Claimant's lack of progress.
4. On or about June 3, 2015, the Claimant was reprimanded in writing by Principal Taylor.
5. On or about November 4, 2013, the Claimant received two additional reprimands for two separate incidents. Principal Taylor noted that the Claimant's misconduct constituted "willful and persistent violations of the directives that have been issued to him with respect to student safety and supervision".
6. On or about January 31, 2014, the Claimant received another written reprimand.
7. On or about March 10, 2014, the Claimant received his final written reprimand.
8. On or about March 20, 2014, the Claimant received his second (and last) annual evaluation from Principal Taylor. On said evaluation, the Claimant received 13 ratings of below expectations, and 5 ratings of unacceptable. Additionally, the evaluation included a Recommendation to the Superintendent, "It is recommended that Mr. Skidmore's limited employment contract NOT be renewed for the school year 2014-2015".
9. The Claimant testified that he discussed the situation with the Assistant Principal and his union representative, and they advised him to resign, rather than be discharged or non-renewed.
10. The Claimant submitted his written notice of resignation on April 15, 2014. The Claimant quit his employment, effective July 2014.
11. The Superintendent did not formally make a recommendation to the Board of Education relative to the renewal or non-renewal of the Claimant's contract, due to Claimant's resignation.
12. The Board of Education did not have the opportunity to act on the renewal or non-renewal of the Claimant's contract, due to Claimant's resignation.

13. Following the conclusion of his contract, on or about August 4, 2014, the Claimant applied for unemployment compensation benefits.
14. The Ohio Department of Job and Family Services disallowed such benefits in its October 1, 2014 final determination. The ODJFS stated that "after a review of the facts, this agency finds that the Claimant quit without just cause under Section 4141.29(D)(2)(a), Ohio Revised Code".
15. On or about October 8, 2014, the Claimant appealed the ODJFS's decision to the Commission.
16. The Hearing Officer for the Commission held telephonic hearings on October 22, 2014 and November 6, 2014. The Hearing Officer issued her decision on or about November 10, 2014, reversing the ODJFS's determination. The Hearing Officer awarded the Claimant unemployment compensation benefits.
17. The Board of Education filed a Request for Review of the Hearing Officer's Decision. The Commission denied the Board of Educations' Request for Review.
18. The Board of Education then filed an appeal of the final Decision issued by the Unemployment Compensation Review Commission awarding the Claimant unemployment compensation benefits.

LAW AND DECISION:

O.R.C. §4141.282 sets forth that the Court of Common Pleas shall hear the appeals of decisions rendered by the Review Commission. It states, "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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission".

"The Court's role is to determine whether the decision of the Review Commission is supported by evidence in the certified record" *Roberts v. Hayes*, 2003-Ohio-5903, at 12.

O.R.C. §4141.29(D)(2)(a) states, in pertinent 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.

"The claimant has the burden of proving [his or] her entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work." *Irvine v. State Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17 (1985).

As the Appellant's brief highlights, several cases specifically discuss teachers and voluntary resignations: *Weir v. Lancaster City Bd. of Edn.*, 2003-Ohio-949 (Ohio Ct.App. 5th Dist.) holding that a teacher who voluntarily resigned from his position in light of his own misconduct was not entitled to unemployment benefits; *De LaTorre v. Cleveland Bd of Edn.*, 49112, 1985 WL 9004 (Ohio ct App. May 16, 1985) held that a teacher who resigned following parent complaints was not entitled to unemployment compensation benefits because the resignation was voluntary where he "resigned of his own volition and without pressure from his employers"; and *Noelker v. Great Oaks Joint Vocational Sch.Dist.*, 8 Ohio App. 3d 327, 457 (Ohio Ct. App. 1st Dist. 1982) held that when a teacher was informed that he would not be reemployed for the subsequent school year and he thereafter submitted his resignation, to be effective upon completion of his current contract, such resignation constituted a "quitting" without just cause, and he thus was not entitled to unemployment compensation benefits.

The Claimant made a decision to voluntarily resign his position before the Superintendent or the Board of Education had the opportunity to review or take any action relative to the Claimant's employment contract. The Claimant presumed the outcome of the process. He failed to avail himself of, or exhaust, all of the administrative remedies at his disposal. His resignation was voluntary and premature.

The Claimant contends that he resigned his position, upon the advice of the Assistant Principal and his union representative, because a non-renewal of his contract by the Board of Education would ruin his career. The Claimant's decision to resign was based upon his desire to mitigate any potential damages to his future teaching career. The Claimant fails to address the fact that the Principal was recommending his non-renewal due to his inability to effectively do the job for which he was hired. The Hearing Officer reasoned that, "There is no evidence that the Claimant did not work to the best of his ability for his students and the school district". However, the Claimant was not hired to work to the best of his ability. He was hired to competently perform the functions and duties of his position. He failed to do so, over and over again. Based upon the entirety of the record in this matter, the evidence clearly establishes that the Board of Education had just cause to not renew the Claimant's contract. However, the Board of Education's just cause to not renew the Claimant's contract does not then automatically translate into the Claimant's just cause for quitting.

Again as the Appellant's brief highlights, several cases specifically discuss the issue of quitting work in lieu of being discharged. "Quitting work to avoid being discharged for just cause constitutes quitting work without just cause since an employee cannot avoid the inevitable consequences of his own wrongdoing by resigning. Conversely, however, an employee quits his work with just cause if he quits at the urging of his employer who suggests that otherwise the employee will be unjustifiably discharged". *Stallings v. VanGuard Joint Vocational School and Administrator*, Wood App. No. WD-94-114, 1995 WL 428462 (Ohio Ct. App. 6th Dist. July 21, 1995), quoting *Watters v. City of Upper Arlington*, Franklin App. No. 81AP-778, 1982 WL 4039 (Ohio Ct. App. 1st Dist. Mar. 16, 1982), "Quitting in anticipation of discharge for poor performance is not a justifiable reason to quit for unemployment compensation purposes".

The Hearing Officer reasoned that, "There is no evidence that the Claimant did not work to the best of his ability for his students and the school district". Unfortunately, "working to the best of his ability" is not measure of work-place competency, nor can it be used to determine "just cause". When the Review Commission, or the courts, are charged with determining whether an employee was non-renewed for just cause, or whether an employee quit for just cause, the standard used to determine same is not whether the employee tried really hard. This court cannot find any evidence to support the Commission's finding that the Claimant quit with just cause.

In the current case, it is overwhelmingly clear that the Claimant failed to competently perform the functions and duties for which he was hired. He was repeatedly reprimanded by the principal. He received substandard evaluations. The Board of Education would have had just cause to non-renew the Claimant's employment contract due to his poor performance under the prior contract. Since the Board of Education had just cause to non-renew Claimant's contract, the Claimant did not have just cause to quit thereby avoiding the inevitable consequences of his own wrongdoing by resigning.

The Decision of the Commission was unreasonable and against the manifest weight of the evidence. This Court finds that the decision of the Review Commission is not supported by evidence in the certified record. Based upon the foregoing, the Court herein reverses the decision of the Review Commission and hereby denies the Claimant's application for unemployment compensation benefits.

Costs taxed to deposit, balance to the parties equally.



JUDGE C. ASHLEY PIKE

THE CLERK OF COURTS SHALL SERVE UPON:

PLAINTIFF

DEFENDANT

ATTORNEY DONNA ANDREW

ATTORNEY MEGAN MAURER

ATTORNEY SUSAN SHEFFIELD

UNEMPLOYMENT COMPENSATION REVIEW COMMISSION

ALL COUNSEL ARE HEREBY NOTIFIED THAT EXHIBITS SHALL BE DISPOSED OF IN ACCORDANCE WITH LOCAL COURT RULE 15.1 ADOPTED ON THE AUTHORITY OF RULE 26(G) OF THE RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO.