

DANIEL M. HORRIGAN  
IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO  
2015 OCT -6 PM 2: 02

SUMMIT COUNTY  
CLERK OF COURTS

LISA A. PORTER-WADE	)	CASE NO.: CV2014-12-5594
	)	
Appellant,	)	JUDGE PAUL J. GALLAGHER
	)	
vs.	)	
	)	
UNEMPLOYMENT COMPENSATION	)	
REVIEW COMMISSION, <i>et al.</i> ,	)	
	)	<b><u>JUDGMENT ENTRY</u></b>
Appellees.	)	

This matter is before the Court as an Administrative Appeal of an Unemployment Compensation Review Commission (UCRC) decision denying unemployment compensation benefits to Lisa A. Porter-Wade.

**FACTUAL & PROCEDURAL HISTORY**

Ms. Porter-Wade was employed by Walgreen Co. from 2005 through 2014. Her employment was terminated on June 24, 2014 for violation of an employee standards policy. Shortly thereafter, Ms. Porter-Wade applied to the Ohio Department of Job & Family Services (ODJFS) for unemployment compensation benefits.

On August 20, 2014, the Director of ODJFS issued an initial determination holding Ms. Porter-Wade was discharged from employment without just cause and allowed Ms. Porter-Wade's application for unemployment compensation benefits. Ms. Porter-Wade's former employer, Walgreen Co., appealed the decision. In a September 19, 2014, Redetermination Decision, the ODJFS held that Ms. Porter-Wade's employment with Walgreen Co. was terminated with just cause so Ms. Porter-Wade is ineligible to receive unemployment compensation benefits.

Ms. Porter-Wade appealed the decision and ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission (UCRC). On October 21, 2014, UCRC Hearing Officer Nadine S. Pettiford conducted a telephonic hearing during which Ms. Porter-

Wade and Walgreen Co. representatives discussed the circumstances leading to the termination of Ms. Porter-Wade's employment. On October 22, 2014, the Hearing Officer issued a written decision finding Ms. Porter-Wade's employment with Walgreen Co. was terminated for just cause and therefore Ms. Porter Wade was ineligible to receive unemployment compensation benefits.

Ms. Porter-Wade timely appealed the UCRC decision to this Court.

### STANDARD OF REVIEW

A Common Pleas Court reviewing a determination by the UCRC may only reverse an unemployment compensation eligibility decision if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008 Ohio 301 at ¶16, 891 N.E.2d 348 (2008) (citation omitted).

Every reasonable presumption must be made in favor of the decision and the findings of facts of the UCRC. *Id.* at ¶17, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). The resolution of factual questions is chiefly within the UCRC's scope of review. *Id.* at ¶18, citing *Tsangas, Plakas, & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). The Court's role is to determine whether the decision of the UCRC is supported by evidence in the certified record. *Id.* (citations omitted).<sup>1</sup> If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the UCRC. *Id.* The fact that reasonable minds might reach different conclusions is not a basis for reversal of the UCRC's decision. *Id.*, citing *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with his work."

Courts have defined just cause and the role it plays in R.C. 4141.29 determinations as follows:

"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."  
(emphasis added) *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207 (1995),

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<sup>1</sup> "As to factual matters, the common pleas court is limited to determining whether the board's decision is supported by some competent, credible evidence going to all the elements of the controversy; if it is, it cannot be reversed as being against the manifest weight of the evidence." *DiGiannantoni v. Wedgewater Animal Hospital, Inc.*, 109 Ohio App.3d 300, 305, 671 N.E.2d 1378 (1996).

quoting *Irvine v. State, Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). It is important to distinguish between just cause for discharge in the context of unemployment compensation and in other contexts. An employer may justifiably discharge an employee without incurring liability for wrongful discharge, but that same employee may be entitled to unemployment compensation benefits. See *Adams v. Harding Machine Co.*, 56 Ohio App.3d 150, 155, 565 N.E.2d 858 (1989). This is so because just cause, under the Unemployment Compensation Act, is predicated on employee fault. *Tzangas*, 73 Ohio St.3d at 698; *Adams*, 56 Ohio App.3d at 155. We are, therefore, unconcerned with the motivation or correctness of the decision to discharge. *Friedman v. Physicians and Surgeons Ambulance Serv.*, Summit App. No. 10287, 1982 Ohio App. LEXIS 12291, unreported at 6 (Jan. 6, 1982). The Act protects those employees who cannot control the situation that leads to their separation from employment. See *Tzangas*, 73 Ohio Std at 697.” *Durgan v. Ohio Bur. of Emp. Servs.*, 110 Ohio App.3d 545, 549-550, 674 N.E.2d 1208 (1996).

Consistent with that purpose, courts have repeatedly held that a discharge is considered for just cause where an employee’s conduct demonstrates some degree of fault, such as behavior that displays an unreasonable disregard for his employer’s best interests. *Tzangas*, 73 Ohio St.3d 694 at paragraph two of the syllabus; *Kiikka v. Admr., Ohio Bur. of Emp. Servs.*, 21 Ohio App.3d 168, 486 N.E.2d 1233, paragraph two of the syllabus (1985); *Sellers v. Bd. of Rev.*, 1 Ohio App.3d 161, 440 N.E.2d 550, paragraph two of the syllabus (1981). The Ohio Supreme Court has specifically held:

When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination. *Tzangas*, 73 Ohio St.3d at 697-698.

*Markovich v. Employers Unity, Inc.*, 9th Dist. App. No. 21826, 2004 Ohio 4193 at ¶¶7-8, 2004 Ohio App. LEXIS 3825 (Summit Co. Aug. 11, 2004).

## LAW & ANALYSIS

The certified record of the proceedings below (in ODJFS and the UCRC) include internal Walgreen Co. documents concerning the termination of Ms. Porter-Wade’s employment, the procedural progress of the matter through ODJFS, and the certified transcript of the telephonic hearing before the UCRC.

According to the record, Ms. Porter-Wade was a shift floor lead with Walgreen Co. Walgreen Co. has a policy that employees are not permitted to ring out their own purchases. On June 15, 2014, Ms. Porter-Wade removed a display item and its price tag and purchased the item at a modified and reduced price. Ms. Porter-Wade did not have management approval to discount the item. On June 18, 2014, Ms. Porter-Wade purchased two other items at discounted prices. A separate employee was ringing up her purchase but Ms. Porter-Wade turned the cash register screen towards her and entered the discounts herself. Again, Ms. Porter-Wade did not have management approval to discount the item. The employee ringing up the purchase brought the incident to the attention of the store manager. The store manager and a loss prevention officer conducted an investigation and reviewed internal video footage of the incidents and determined that Ms. Porter-Wade had twice violated Walgreen Co. policy by modifying prices on items for her own purchases without management approval. The store manager and loss prevention officer interviewed Ms. Porter-Wade about the incidents and she admitted to modifying prices on her own purchases on the dates at issue without management approval but she denied committing any theft or fraud. Thereafter, Walgreen Co. terminated Ms. Porter-Wade's employment for violating the Employee Standards of Conduct Policy.

During the UCRC hearing on the matter, Walgreen Co. store manager Dewayne Cummings testified about the above-related circumstances and his investigation. Mr. Cummings reiterated that Walgreen Co. employees are not permitted to ring out their own purchases or to modify prices on items for their own purchases without management approval. Also, the Walgreen Co. loss prevention officer, Sam Dean, testified about the circumstances and his investigation of the matter. He testified that Ms. Porter-Wade violated a Walgreen Co. policy by modifying prices on items that were not on sale and giving herself a discount on the items without management approval.

Ms. Porter-Wade testified at the hearing and disputed the facts concerning the price tag on the item she purchased on June 15, 2014. Ms. Porter-Wade did admit to modifying the price of the item but she claimed the item was legitimately on sale and that her act in modifying the price was well within her assigned job duties. She further stated she did not ring the purchase up herself but she admitted to telling the employee who rang her out to modify the price of the item to reflect 80-90% off. Concerning the June 18, 2014 purchase, Ms. Porter-Wade testified the items she purchased were legitimately on sale and she asserted her act of modifying the price to

indicate the sale price was part of her assigned job duties. Ms. Porter-Wade did admit to turning the screen of the cash register towards herself but only as an effort to assist the employee who was ringing up the purchase. Ms. Porter-Wade admitted to entering the price modification into the register. Ms. Porter-Wade asserted that she did not intend to violate company policy and she thought progressive discipline would have been more appropriate rather than termination of her employment under the circumstances.

After the telephonic hearing, the UCRC Hearing Officer issued a written decision and found, in part:

The employer's policies prohibit employees from ringing their own purchase during regular store hours, while on break, or off duty. Furthermore, employees are prohibited from receiving unauthorized discounts. An employee who violates these policies is subject to disciplinary action, up to and including termination. While the employer does discount certain items, these discounts are at management discretion.

The Hearing Officer reasoned, in part:

The credible evidence of record establishes that the claimant was prohibited from handling her own transactions and from modifying prices for her own purchases. Claimant needed to seek higher management approval for her personal price modifications. Moreover, claimant needed to have another employee ring up her purchases. Claimant should have been aware of these policies. These policies are reasonable. On June 15, 2014 and June 18, 2014, claimant violated these standards and policies by ringing her own purchase and for making price modifications on her own purchases without management approval. It is held that claimant's violations of company policies and standards constitute sufficient fault and wrongdoing to justify her discharge. It is held that claimant was discharged by Walgreen Co. for just cause in connection with work.

On appeal to this Court, Ms. Porter-Wade states she was wrongly terminated based on incorrect information related to the items' price tags. She also asserts she was treated unfairly and should have been given progressive discipline for her violation of the company policy.

R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with his work." As set forth above, "just cause" is predicated on employee fault. The Walgreen Co. policies prohibit employees from ringing out their own purchases and modifying the prices on such purchases. Some of the testimony was conflicting concerning the original prices and the tags on the items Ms. Porter-Wade purchased. However, it is the UCRC Hearing Officer's prerogative to resolve the conflicts

in the evidence and to determine the credibility of the witnesses. In this case, the Hearing Officer made a credibility determination in favor of Walgreen Co.'s testimony and evidence and this Court may not disturb such finding. This Court has reviewed all the evidence and testimony in the certified record, and must conclude the UCRC's decision is supported by some competent and credible evidence. Further, the conclusion that Ms. Porter-Wade was terminated for just cause in connection with work is not unlawful, nor unreasonable.

The Walgreen Co. policies provide for progressive discipline but also state that immediate termination may occur for theft of company property by receiving unauthorized discounts. The UCRC Hearing Officer specifically found the Walgreen Co. policies are reasonable. As set forth above in the Standard of Review, this Court's focus on appeal is not the employer's motivation or the correctness of the decision to discharge – the focus is on the fault of the employee. Having thoroughly reviewed the certified record, there is nothing in the UCRC's decision that Ms. Porter-Wade was discharged for just cause in connection with work that is unlawful, unreasonable or against the manifest weight of the evidence.

CONCLUSION

The UCRC decision that Ms. Porter-Wade's employment was terminated for just cause in connection with work is supported by the evidence and testimony in the certified record and the UCRC decision that Ms. Porter-Wade is not eligible to receive unemployment compensation benefits is not unlawful, unreasonable, or against the manifest weight of the evidence.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the UCRC decision is AFFIRMED. This is a final and appealable order; there is no just cause for delay.

IT IS SO ORDERED.

  
JUDGE PAUL J. GALLAGHER

cc: Attorney Susan M. Sheffield  
Lisa Porter-Wade, *pro se*, at 772 Mistletoe Rd., Akron, OH 44307

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CLERK OF COURTS

# The Supreme Court of Ohio

## CERTIFICATE OF ASSIGNMENT

The Honorable Patricia Ann Cosgrove, a retired judge of the Summit County Court of Common Pleas, General Division, is assigned effective August 14, 2015 to preside in the Summit County Court of Common Pleas, General Division for the period of September 1, 2015 through November 30, 2015 and to conclude any proceedings in which she participated that are pending at the end of that period.



Maureen O'Connor  
Chief Justice

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