

FILED IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

2015 NOV -2 P 1:55

MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

JACQUILIN M. STRUMBLY
Appellant,

vs.

DIRECTOR, OHIO DEPARTMENT OF
JOB & FAMILY SERVICES, et al.
Appellees.

)
)
) CASE NO. 15 CV 000975
)
) **OPINION & JUDGMENT ENTRY**
)
) November 2, 2015
)
)

This matter is before the court on appellant Jacquilin M. Strumbly’s appeal from the decision of the Ohio Unemployment Compensation Review Commission (Commission) pursuant to R.C. 4141.28(O). The Commission determined Strumbly quit her employment as a substitute custodian with the Perry Local Board of Education (Perry Local) without just cause and thus was ineligible for unemployment compensation. In addition, it found she was overpaid benefits totaling \$5,070 for the weeks ending September 27, 2014 through December 27, 2014. Strumbly contends that the Commission’s decision is unlawful, unreasonable and against the manifest weight of the evidence.

Strumbly began her employment with Perry Local on September 22, 2014. Eight days of training were to be provided to her. On the fourth day of training, Strumbly went to the superintendent of Perry Local and told him that she physically could not do the job, i.e., complete all the tasks required each evening due to a lack of time. After a discussion, she advised him that she quit. Prior to this conversation, Strumbly had not discussed her concerns with her superior, the Supervisor of Maintenance and Operations, Jim Smith. Strumbly only discussed her fear of not finishing the required tasks with the evening custodians who trained her.

Strumbly filed an application for a determination of benefit rights with the Director of the Ohio Department of Jobs and Family Services (Director). On January 5, 2015 on an appeal from Perry Local, the Director issued a redetermination on Strumbly’s eligibility for unemployment benefits. That redetermination reversed the prior finding of eligibility and found that Strumbly

quit her employment without just cause, that she was not entitled to unemployment benefits and that she was overpaid benefits in the amount of \$5,070. On January 7, 2015, Strombly filed an appeal from the Redetermination of Benefits. Thereafter, the Ohio Department of Jobs and Family Services transferred jurisdiction to the Commission pursuant to R.C. 4141.281.

A telephonic evidentiary hearing was conducted on March 13, 2015 attended by Strumbly, among others. Only the testimony of Strumbly and Smith was presented. On April 2, 2015, the hearing officer issued a decision that found Strumbly failed to advise Perry Local of her work concerns prior to quitting and foreclosed Perry Local from addressing her concerns. The hearing officer further found that Strombly failed to explore where alternatives to quitting existed prior to informing Perry Local of her decision to quit on the spot. Based on this, the hearing officer concluded Strombly quit without just cause and had been overpaid benefits in the amount of \$5,070.

After a request for further review was disallowed on May 13, 2015, Strombly filed a timely appeal to this court pursuant to R.C. 4141.282 seeking a reversal of the final decision of the Commission. Strombly raises two issues on appeal. First, that the decision is erroneous because it is unlawful, unreasonable and against the manifest weight of the evidence. Second, that the record does not support the factual findings made by the Commission and the hearing officer.

An appeal court may reverse the Commission's just cause determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Reddick v. Sheet Metal prods. Co., Inc.*, 11th Dist No. 2009-L-092, 2010-Ohio-1160, at ¶16 citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 653 N.E.2d 1207, syllabus. Every reasonable presumption must be made in favor of the decision and findings of fact of the Commission. *Reddick* at ¶17. Trial courts are not permitted to make factual findings or to determine the credibility of witnesses. They do have the duty to determine whether the commission's decision is supported by the evidence in the record. *Reddick* at ¶19; *Tzangas* at 696. The fact that reasonable minds might reach different conclusions is not a basis for reversal of a decision of the commission. *Reddick* at ¶18; *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 482 N.E.2d 587. The Commission must not be reversed on the weight of the evidence if reasonable minds could weigh the evidence and come

to contrary conclusions. *Reddick* at ¶20. In such cases, the Commission's decision should remain undisturbed on close calls. *Id.*

R.C. 4141.29(D)(2)(a) prohibits the payment of benefits to an individual if the individual "has been discharged for just cause in connection with the individual's work." Just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act. *Irvine*. What constitutes just cause is a question of fact, and the determination of purely factual questions is primarily within the province of the review commission. *Id.*

An employer may justifiably discharge an employee without incurring liability for wrongful discharge, but that same employee may be entitled to unemployment compensation benefits. *Dugan v. Ohio Bur. of Emp. Serv.* (1996), 110 Ohio app.3d 545, 549, 674 N.E.2d 1208. This is because the determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act, which the Ohio Supreme Court has declared to be that of providing "financial assistance to an individual who has worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Irvine* at 17 citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76. Thus a consideration of the employee's fault or responsibility for his own predicament is necessary to a just cause determination. An employee has the burden of proving that he was discharged without just cause thus entitling him to unemployment compensation. *Baird v. Southern Ohio Med. Ctr.*, 4th Dist. No. 04CA2939, 2004-Ohio-5888, at ¶22.

The determination of whether just cause exists depends upon the factual circumstances of each case. Purely factual determinations are primarily within the province of the hearing officer and commission. *Reddick* at ¶22. The conduct need not constitute misconduct, but there must be a showing of some fault on the part of the employee. *Id.* If an employer has been reasonable in finding fault on behalf of an employee, the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination.

Strombly's assignments are interrelated and shall be discussed in tandem. Strombly argues both that the factual findings are not supported by the evidence and that improper

weight was given by the hearing officer and Commission to certain evidence over evidence Strombly views more favorably.

A review of the seventeen page transcript shows that Strombly admitted she resigned and that she never talked to her supervisor about her concerns about being unable to physically complete the required tasks in the time allotted by her shift. She stated she never inquired with her supervisor whether job duties could be eliminated or done in a different manner than as shown by the person training her. She was informed of the job requirements before being hired. Lastly, Strombly felt overwhelmed by what was required compared to her prior custodial position. She believed that if she could not do a good job in completing the required work, that her self imposed pressure to do so was not worth leaving a job feeling exhausted.

These facts in the record support the administrative findings that Strombly “abruptly ended her employment,” that she “failed to share the concerns” with her employer before she quit and that she did not explore available alternatives with Perry Local before quitting.

Ohio courts have generally held that a claimant who quits without giving the employer sufficient timely notice of a work related problem so that the employer may make suitable alternative arrangements quits or resigns in most circumstances without just cause. *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 19 OBR 12, 14, 482 N.E.2d 587, 589 (1985); *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 306-307 (10th Dist.1996); *Marietta Coal Co., Inc. v. Kirkbride*, 7th Dist. No. 14BE10, 2014-Ohio-5677, 26 N.E.3d 852, ¶ 20.

Generally employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request that it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job. Those employees who do not provide such notice ordinarily will be deemed to have quit without just cause and will not be entitled to unemployment benefits. *Id.* This is so because an “ordinarily intelligent employee would not quit his or her job over a problem with working conditions without first bringing that problem to his or her employer's attention, requesting that it be solved, and thus giving the employer an opportunity to correct it.

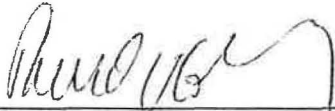
[citations omitted]" *Id.* at 308. When this does not happen, the employee cannot claim that he or she quit through no fault of their own.

This is precisely the situation confronting the court. Strombly decided that she did not like the degree of work required per shift, she never discussed these issues with her immediate superior and only brought the issue to the superintendent's attention when she walked into his office and announced she was quitting. She did not afford Perry Local time to try and solve or remedy the work problem. For that reason, the law finds that she quit her job without just cause.

Reviewing the above, the court finds that the two assignments of error are without merit. The decision of the Commission that Strombly quit without just cause is not unlawful, unreasonable nor against the manifest weight of the evidence. Strombly's application for unemployment benefits for the week ending September 27, 2014 through December 27, 2014 were properly denied. Further the finding that \$5,070 in benefits were overpaid to Strombly is affirmed.

Costs are assessed against Strombly.

IT IS SO ORDERED.



RICHARD L. COLLINS, JR.
Judge of the Court of Common Pleas

Copies:
Mary Jo Hanson, Esq.
Susan M. Sheffield, Senior Assistant Attorney General
Emily R. Grannis, Esq.

Final Appealable Order
Clerk to serve
pursuant to
Div.R. 53(B)