

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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VICTORIA L. RUSSELL

Case No. 2015CV00398

Appellant,

Judge Taryn L. Heath

vs.

JUDGMENT ENTRY
(Denying Motion to Dismiss
and Affirming Order of the
State of Ohio Unemployment
Compensation Review
Commission)

ADMR., UNEMPLOYMENT
REVIEW COMMISSION, et. al.

Appellees.

This matter is before the Court upon Appellant, Victoria L. Russell's ("Appellant") administrative appeal of the State of Ohio Unemployment Compensation Review Commission's ("Review Commission") decision denying unemployment compensation benefits to Appellant. Appellee, Director, Ohio Department of Job and Family Services ("ODJFS") filed a Motion to Dismiss, or in the Alternative, to Request a Proper Brief be Filed ("Motion to Dismiss"). Appellant filed what has been captioned as "Proper Appellants' Brief".

I. Factual Background

Appellant was employed as an inbound call center sales representative for VXI Global Solutions, LLC ("employer") from November 25, 2013 until June 18, 2014. The employer handles calls from new and existing First Energy Solutions customers who are interested in lowering their electric rates. The calls are monitored and scored on quality.

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Employees who fail to meet the performance expectations are subject to progressive disciplinary action. Appellant was discharged for alleged poor quality performance, and failing to meet the quality expectations on June 18, 2014.

After being discharged, Appellant filed an Application for Determination of Benefit Rights (“Application”) for a benefit year beginning June 15, 2014. On August 19, 2014, the Director issued a Redetermination Decision disallowing Appellant’s Application based upon the finding that Appellant was discharged from employment with employer for just cause in connection with work. Appellant filed a timely appeal of the Redetermination on September 9, 2014. On September 9, 2014, ODJFS transferred jurisdiction to the Unemployment Review Commission.

On September 29, 2014, Review Commission Hearing Officer Nadine S. Pettiford (“Hearing Officer Pettiford”) conducted a telephonic evidentiary hearing. Appellant appeared for the aforementioned hearing and offered testimony. Although 20 minutes late calling in for the aforementioned hearing, Marsha Mills, human resources generalist appeared for the employer. The hearing was reassigned for further hearing on November 3, 2014. On November 3, 2014 Appellant appeared and Marsha Mills appeared for the employer. No testimony was taken, and the matter was set for further hearing so that requested documentation could be provided to Appellant. On November 17, 2014, an evidentiary telephonic hearing was held before Hearing Officer Pettiford. Appellant appeared and offered testimony. Marsha Mills appeared representing the employer with Melinda Broyles, supervisor, and Vicki Moore, senior supervisor/operations manager, appearing as witnesses.

In a decision mailed on December 5, 2014, the Review Commission issued Findings of Fact and a Decision affirming ODJFS’ redetermination decision and found

that the employer discharged Appellant for just cause in connection with work. HEARING OFFICER ADMINISTRATIVE DECISION, December 5, 2014. Appellant appealed the decision to the Review Commission and her request for review was denied on January 21, 2015.

Appellant, pro se, then filed the present action on February 20, 2015, seeking reversal of the finding and decision issued by the Review Commission. Upon filing the present action, Appellant filled out a Stark County Common Pleas Court Civil Designation Form and designated the present action as a Workers Compensation action rather than an Administrative Appeal¹. It eventually came to the Court's attention that the present action was an Administrative Appeal rather than a Workers Compensation action. Appellant was notified by the Court during a telephonic status conference held on July 29, 2015 as well as a Judgment Entry, filed July 31, 2015 that an 'Amended Designation Form' had to be filed with the Clerk of Courts designating the present action as an 'Administrative Appeal' on or before August 10, 2015. Further, in the Court's July 31, 2015 Judgment Entry a briefing schedule was established setting forth the dates upon which the Appellant and Appellees were to file their respective briefs with the Clerk of Courts.

Appellant timely filed an 'Amended Designation Form' on August 3, 2015 and timely filed a brief on August 20, 2015. Appellee, ODJFS filed a Motion to Dismiss on September 14, 2015. This Court then issued a briefing schedule setting forth a date for the Appellant to respond to the Motion to Dismiss and a date for ODJFS to file a Reply. On the date Appellant was to respond to the Motion to Dismiss, October 1, 2015, Appellant

¹ Because the Appellant initially designated the present action as a Workers Compensation action, this Court did not set a briefing schedule setting forth deadlines for the transcript of proceedings and briefs to be filed as is typically done immediately upon the Court receiving an Administrative Appeal.

filed what has been captioned as “Proper Appellant’s Brief”, which this Court shall consider a Response to the Motion to Dismiss.

II. Law and Analysis

A. Standard of Review

In considering this appeal, this Court applies Ohio Revised Code § 4141.282(H) which requires this Court to affirm the decision of the Review Commission disallowing Appellant’s claim for unemployment compensation benefits unless that decision is “unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694 (1995). If “some evidence in the record” supports the Review Commission’s decision it must be affirmed. *See Binger v. Whirlpool Corp.*, 110 Ohio App. 3d 583, 589(1996); *Durgan v. Ohio Bur. Of Emp. Serv.*, 110 Ohio App. 3d 545, 551. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission’s] decision.” *Irvine v. State Unemployment Comp. Bd.*, 19 Ohio St. 3d 15, 17 (1985). A reviewing court cannot usurp the function of the trier of fact by substituting its judgment for theirs. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982). The reviewing court must give deference to the Review Commission’s credibility determination regarding witness testimony. *Durgan v. Ohio Bur. Of Emp. Serv.*, 110 Ohio App. 3d at 552.

The burden of proof is on the employee to prove his entitlement to unemployment benefits. *Id.* at 550; *citing Irvine*, 19 Ohio St. 3d at 18, 19. R.C. § 4141.29(D)(2)(a) provides that an individual is not eligible for unemployment compensation benefits for the duration of the individual’s unemployment if he was discharged by his employer for just cause. In the unemployment context, just cause is defined as that which “an

ordinarily intelligent person” would find to be a “justified reason” for terminating an employee. *Tzangas, Plakas & Manno*, 73 Ohio St. 3d at 697. The justifiable reason should be based on some fault of the employee. *Id.* However, “the critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interests.” *Binger*, 110 Ohio App. 3d at 589 quoting *Kiikka v. Ohio Bur. Of Emp. Serv.* (1985). Fault on the employee’s part must be evaluated based on the specific facts of the case, and “if an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause.” *Tzangas, Plakas & Mannos*, 73 Ohio St. 3d at 697. Therefore, Appellant must establish that she was terminated without just cause, or without fault; and that the Review Commission’s decision is “unlawful, unreasonable, or against the manifest weight of the evidence.”

B. Finding

Based upon the testimony considered by Hearing Officer Pettiford, and upon all the exhibits that have been made a part of the official record, the Review Commission arrived at its findings of fact and its decision that Appellant was discharged with just cause in connection with work. Specifically, the Review Commission found that

The evidence demonstrates that claimant was progressively disciplined in accordance with company policy. After claimant received her final disciplinary action on May 24, 2014, claimant should have been aware that her job was in jeopardy. Thereafter, claimant had another deficient score. The Hearing Officer finds that sufficient evidence has been presented to demonstrate that claimant’s continued failure to meet the performance expectations justified her discharge. It is held that claimant was discharged by Vxi Global Solutions, LLC for just cause in connection with work.

HEARING OFFICER ADMINISTRATIVE DECISION, December 5, 2014, P. 5.

“The purpose of the Act is 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.’” *Autozone, Inc.*, 2006-Ohio-1039 at *3 quoting *Irvine*, 19 Ohio St. 3d at 17. The Ohio Supreme Court has clearly explained the standard, “[w]hen 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. “Nowhere in our precedent or that of the Ohio Supreme Court is it indicated that an employee is unjustly terminated because his misconduct is less egregious than another employee’s.” *Autozone, Inc.*, 2006-Ohio-1039 at *3.

ODJFS has asserted in their Motion to Dismiss that this administrative appeal should be dismissed based upon Appellant’s failure “to file a brief that would permit a reasonable reply by the Director” and thereby failing to prosecute her appeal. Appellant filed a response to the Motion to Dismiss² in which she asserted that “[t]he Unemployment Review Commission decision was unlawful, unreasonable or against the weight of the evidence” and in which she requested this Court to allow her to receive unemployment benefits based upon the fact that she was terminated without just cause. Based upon Appellant’s Response to the Motion to Dismiss this Court finds ODJFS’ Motion to Dismiss not well taken and hereby **DENIES** same.

² Appellant’s “Proper Appellants’ Brief” does contain a certificate of service which states “Senior Assistant Attorney General; Susan M Sheffield; copies sent to Ohio Attorney General Mike DeWine; Youngstown Regional Office 20 West Federal Street 3rd Floor, Youngstown, Ohio 44503.”

Based upon a review of the pleadings in the present action as well as the certified 'Record of Proceedings' filed by the Review Commission, and in applying the applicable standard of review, this Court finds that the decision of the Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. Based upon the testimony provided, and upon all the exhibits that have been made a part of the official record, the Review Commission arrived at its findings of fact and its decision that Appellant was discharged with just cause in connection with work.

III. Conclusion

The Court finds that the decision of the Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence and therefore, **AFFIRMS** the decision of the Review Commission.

IT IS SO ORDERED.



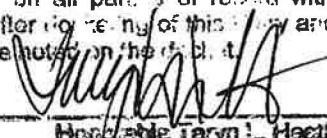
HON. TARYN L. HEATH

c: Victoria L. Russell- via regular mail: PO Box 80302, Canton, OH 44708
Atty. Susan Sheffield- via facsimile (330.884.7551)

NOTICE TO CLERK

FINAL APPEALABLE ORDER

IT IS HEREBY ORDERED that notice shall be served on all parties of record within three (3) days after docketing of this Order and the service shall be noted on the docket.



Honorable Taryn L. Heath