IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

FILED
2015 NOV 23 PM 2 19
MAUREEN G. KELLY
LAKE CO.
CLERK OF COURT

CHRISTINE A. SKILES	)	**CASE NO. 15CV001241**
Appellant	)	**JUDGE EUGENE A. LUCCI**
vs.	)	**JUDGMENT ENTRY AFFIRMING DECISION OF UNEMPLOYMENT COMPENSATION REVIEW COMMISSION AND GRANTING MOTIONS FOR LEAVE**
WILLOUGHBY EASTLAKE CITY SCHOOL DISTRICT, *et al.*	)	
Appellees	)	

{¶1} The court has considered: (1) the transcript of the record, filed August 21, 2015; (2) the appellant's brief, filed September 18, 2015; (3) Appellee Director, Ohio Department of Job and Family Services' (ODJFS) brief, filed October 30, 2015; (4) Appellee Willoughby-Eastlake City School District Board of Education's (Board of Education) brief, filed November 5, 2015; (5) the appellant's reply brief, filed November 10, 2015; (6) Appellee Board of Education's motion for leave to file brief instanter, filed November 16, 2015; and (7) Appellee ODJFS's response to the appellant's reply brief, filed November 18, 2015.

MOTIONS FOR LEAVE

{¶2} The Board of Education's motion for leave is well-taken and is hereby granted. The appellate brief, filed November 5, 2015, is hereby deemed timely filed.

{¶3} The appellant's reply brief asks the court to strike the last four and one-half pages of ODJFS's appellate brief, as ODJFS's brief does not comply with the ten page limit imposed by Lake Co. C.P.R. 3.01(A). ODJFS's response to the reply brief argues that Lake Co. C.P.R. 3.01(A) applies to pleadings and motions and does not apply to administrative appeals. ODJFS argues that Lake Co. C.P.R. 3.05 is the only local rule that is applicable to this case. Lake Co. C.P.R. 3.05 relates to appeals to the Court of Common Pleas. Although Lake Co. C.P.R. 3.05 relates specifically to administrative appeals, addressing matters that are unique to these types of cases, it does not provide the sole and exclusive authority for the handling of administrative appeals. Lake Co. C.P.R. 3.01(A) states in relevant part, "[t]he body or text of **any document**, except complaints,

counterclaims, cross-claims, and third party complaints, shall not exceed ten pages in length without leave of court." Thus, Lake Co. C.P.R. 3.01(A) does not limit its application to "pleadings and motions" filed in cases that are not administrative appeals. Rather, it is applicable to any document except the pleadings specified in that rule. Therefore, the page limitation is applicable to briefs filed in an appeal of the decision of an administrative agency to the Court of Common Pleas.

{¶4} Alternatively, ODJFS asks for leave to exceed the page limitation. The motion for leave is well-taken and is hereby granted. The appellate brief, filed October 30, 2015, is hereby deemed properly filed.

PROCEDURAL POSTURE

{¶5} The appellant filed a claim for unemployment benefits with ODJFS on February 10, 2015. On March 2, 2015, ODJFS issued a determination of benefits disallowing benefits, finding that the appellant quit without just cause. The appellant appealed that decision, and on April 14, 2015, ODJFS issued a redetermination affirming the initial determination of benefits. The appellant again appealed. The appeal was transferred to the Unemployment Compensation Review Commission (UCRC). A hearing was held on May 19, 2015. On May 22, 2015, the hearing officer issued a decision affirming the redetermination of benefits, finding that the appellant had quit without just cause. On June 12, 2015, the appellant filed a request for review of the hearing officer's decision. On June 30, 2015, the UCRC disallowed the request for review. The appellant filed the within appeal on July 24, 2015. The issues have been fully briefed.

ISSUES

{¶6} The issue presented in this case is whether the UCRC's decision disallowing benefits finding that the appellant had quit her employment without just cause was unlawful, unreasonable, or against the manifest weight of the evidence.

LAW

Standard of Review

{¶7} R.C. 4141.282(H) limits the scope of review by the court on appeal from a Review Commission decision. The court "shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission." R.C. 4141.282(H).

{¶8} A decision supported by some competent, credible evidence going to all essential elements of the dispute will not be reversed on appeal as being against the manifest weight of the evidence. *Shavers v. Administrator, Ohio Bureau of Unemployment Services*, 11th Dist. Trumbull No. 3738, 1987WL26702 (Dec. 4, 1987). Accordingly, the duty of the reviewing court is to determine whether the decision is supported by the evidence in the record. *Fredon Corp v. Zelenek*, 124 Ohio App. 3d 103, 109, 705 N.E.2d 703 (11th Dist. 1997).

{¶9} The court must give deference to the UCRC in its role as the finder of fact. *Fisher v. Bill Lake Buick*, 8th Dist. Cuyahoga No. 86338, 2006-Ohio-457, 2006WL 250726, ¶ 24. The court is "not permitted to make factual findings or to determine the credibility of witnesses." *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). Nor can the court reverse a decision simply because "reasonable minds might reach different conclusions." *Id.*

Just Cause

{¶10} "Under R.C. 4141.29, a party is entitled to unemployment compensation benefits if he or she quits with just cause or is discharged without just cause." *Upton v. Rapid Mailing Services, Inc.*, 9th Dist. Summit No. 21714, 2004-Ohio-966, 2004WL384362, ¶ 13. Just cause means "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Id.* at ¶ 14, citing *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985). "Mere dissatisfaction with a work assignment does not constitute a quit with just cause." *Jobes v. Adm'r, O.B.E.S.*, 8th Dist. Cuyahoga No. 63702, 1992WL389090 (Dec. 17, 1992).

{¶11} In *Parks v. Health One*, 10th Dist. Franklin No. 88AP-982, 1989WL88887 (Aug. 8, 1989), the court held that employees who resign "in anticipation of being discharged must be judged by the same criteria as if the discharge had actually taken place." In that case, the appellant was employed for three years as a physical therapist. She was then placed on a 30-day probationary period due to job performance issues. During her probation, her employer's acting executive director told her attorney that she would be terminated when the 30 days were up. Instead of waiting for her probation to expire, she resigned her position.

The appellate court noted that the employee "quit her job **only** after her employer told her attorney that [her company] intended to terminate her employment irrespective of her job performance throughout the remainder of her probationary period." *Id.*

FINDINGS AND CONCLUSIONS

{¶12} The appellant began working for the Board of Education in April 2003 as an insurance coordinator. Certified Record, Transcript of Testimony, p. 7. In 2014, the insurance coordinator position was outsourced, and the appellant transferred to a position as a principal's secretary. *Id.* at 10. On February 3, 2015, the Board of Education sent the appellant a letter notifying her of a disciplinary hearing regarding allegations of fraudulent use of sick time. Certified Record, March 25, 2015 Notice of Appeal, Ex. H. The appellant resigned from the secretary position on February 9, 2015. Certified Record, Transcript of Testimony, p.11.

{¶13} The appellant argues that the hearing officer erred in not applying the standard set forth in *Parks v. Health One*, 10th Dist. Franklin No. 88AP-982, 1989WL88887 (Aug. 8, 1989). She argues that she quit to avoid being discharged, so that the UCRC should have looked at whether her discharge would have been with just cause and that the UCRC erred in finding that she was not facing imminent discharge. However, this case is distinguishable from *Parks.* In *Parks,* a decision to discharge the employee at the end of her probationary term had definitely been reached prior to her resignation. That decision was unequivocally relayed to her attorney by a person with the authority to implement the decision. Here, the hearing officer found that the appellant was not facing imminent discharge because she was facing a disciplinary hearing where she would have the opportunity to submit evidence and explain her actions before a decision would be made regarding her continued employment. The appellant argues that she was told that she would be fired. During the hearing, the appellant testified that the assistant superintendent, Charles Murphy, told her she was going to be fired. Certified Record, Transcript of Testimony, p. 12. However, when questioned further by the hearing officer, the appellant clarified that Mr. Murphy stated that the Board of Education was "looking at terminating me." *Id.* at 18. On cross-examination, she testified that she was told in the February 3, 2015 letter that she would be terminated. *Id.* She then clarified that the letter stated she was facing "possible termination." The appellant also points to testimony from Charles Murphy that the appellant resigned in lieu of discharge. *Id.* at 33. However, when questioned further, Mr. Murphy

clarified that no final decision had been made, but that the appellant "would have been discharged unless she could have presented documentation [at the disciplinary hearing] that would have refuted the evidence that we already had on her at that time." *Id.* at 34. Further, Mr. Murphy testified that while he told the appellant that there was a possibility she would be fired, he never told her that she was being fired. *Id.* at 34-35. Therefore, the record contains competent, credible evidence to support the finding that the appellant was not facing imminent discharge because she would have had an opportunity to present evidence and explain her actions at the disciplinary hearing. That the appellant believes her testimony and that of Mr. Murphy can be interpreted differently does not make the UCRC's decision unlawful, unreasonable, or against the manifest weight of the evidence. The court cannot reverse the UCRC's decision simply because "reasonable minds might reach different conclusions." *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18, 482 N.E.2d 587.

{¶14} The appellant also argues that even if the UCRC applied the appropriate standard, it erred in finding that she did not have just cause to quit. The appellant argues that she quit because the Board of Education was harassing her and treating her differently than other employees. The hearing officer found there was insufficient evidence to support the appellant's claims that she was harassed as the appellant was unable to present any specific evidence, and failed to take any appropriate steps to report the alleged harassment. This is a credibility determination, and the court must give deference to the Review Commission in its role as the finder of fact. *Fisher v. Bill Lake Buick*, 8th Dist. Cuyahoga No. 86338, 2006-Ohio-457, 2006WL 250726, ¶ 24. The court is "not permitted to make factual findings or to determine the credibility of witnesses." *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). The appellant additionally argues that she quit because the position of principal's secretary was not suitable work. The hearing officer found that the appellant was not required to take that position, that she was aware of the terms and conditions of the new position when she accepted it, and that nothing had changed regarding those terms and conditions in the interim between her decision to accept that position and her decision to resign. The plaintiff testified that after her position as insurance coordinator was outsourced, she was offered the secretary position and chose to accept that position, even

though it paid significantly less. Certified Record, Transcript of Testimony, p. 11. The appellant started the secretary position in August 2014. *Id.* 19. The appellant resigned from the secretary position on February 9, 2015. *Id.* 11. No evidence was presented that any condition of her employment changed between August 2014 and February 2015. "Mere dissatisfaction with a work assignment does not constitute a quit with just cause." *Jobes v. Adm'r, O.B.E.S.*, 8th Dist. Cuyahoga No. 63702, 1992WL389090 (Dec. 17, 1992).

{¶15} The record contains competent, credible evidence supporting each of the findings of the UCRC. Accordingly, the decision of the UCRC is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the UCRC is affirmed. Court costs are assessed to the appellant.

{¶16} IT IS SO ORDERED.

EUGENE A. LUCCI, JUDGE

c: David J Fiffick, Esq., Attorney for Appellant
Eric J. Johnson, Esq., Attorney for Appellee Board of Education
V. Patrick Macqueeney, Esq., Attorney for Appellee ODJFS

FINAL APPEALABLE ORDER
Clerk to serve pursuant
To Civ.R. 58(B)