

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

KATHLEEN A. PETERSON,

Appellant,

-vs-

MACY'S RETAIL HOLDING, INC., et
al.,

Appellees.

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396-405

Case No. 15 CV F 05 0314

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COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED

JUDGMENT ENTRY

This case is before the Court upon the Brief of Plaintiff/Appellant Kathleen A. Peterson, filed on August 19, 2015. Defendant/Appellee Ohio Department of Job and Family Services responded with a brief on September 2, 2015. Appellant filed a reply brief on September 14, 2015. Macy's Retail Holding, Inc. is also an Appellee in this case (Macy's and the Ohio Department of Job and Family Services are collectively "Appellees").

This is an appeal under R.C. Chapter 4141 from a decision issued by the Ohio Unemployment Compensation Review Commission ("Review Commission") on March 5, 2015. Appellant filed for unemployment compensation benefits with the Ohio Department of Job and Family Services on June 11, 2014. The Ohio Department of Job and Family Services approved the Appellant's application on July 8, 2014. The decision outlined the appeal rights for all parties involved. Macy's filed for an appeal on July 29, 2014. The Ohio Department of Job and Family Services affirmed its original decision in a redetermination decision issued on August 15, 2014, again outlining the appeal rights for each party. Macy's appealed the redetermination on September 5, 2014. The Ohio



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Department of Job and Family Services again affirmed its original decision in the Appellant's favor on February 9, 2015. The decision outlined the appeal rights for each party. Macy's filed an appeal on February 12, 2015.

The case was then transferred to the Review Commission on February 17, 2015. The Review Commission mailed to both Appellees and the Appellant a notice that the Review Commission had received Macy's February 12, 2015 appeal on February 18, 2015. Instructions regarding scheduling the new hearing were included in the notice. The new hearing was scheduled for March 4, 2015, and a notice of the hearing date was mailed to the parties on February 20, 2015. Appellant claims that she did not receive notice of that hearing because she had stopped checking the email address on file with the Ohio Department of Job and Family Services and the Review Commission.

The hearing was held on March 4, 2015 and Appellant was not present. On March 5, 2015 the Review Commission overturned the previous decision and ruled in the Appellees' favor. On March 26, 2015, the Appellant requested further review by the Review Commission because she did not believe she had appropriate notice that the appeal hearing was scheduled. The Review Commission denied the Appellant's request on April 15, 2015.

Appellant urges the Court to hold that the March 5, 2015 decision should be overturned because she was not given proper notice that a hearing was scheduled. Appellee Ohio Department of Job and Family Services claims that the Appellant should have continued to check her email or notify the Ohio Department of Job and Family Services that she would no longer be checking that email account. Further, Appellee asserts that the Review Commission's March 5, 2015 decision is supported by the facts and that vacating that decision would be beyond the scope of this court's authority.

R.C. 4141.282(H) provides that “[i]f the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it [will] reverse, vacate or modify the decision, or remand the matter to the commission. Otherwise, the court [will] affirm the decision of the commission.” I cannot reverse the commission’s decision simply because I find that reasonable minds could reach different conclusions on the same case. *Lang v. Dir., Ohio Dept. of Job & Family Servs.*, 134 Ohio St.3d 296, 299, 2012-Ohio-5366, ¶ 11 (2012).

In an administrative appeal, the court is limited to the agency record and cannot consider additional evidence unless it appears on the face of the transcript that “[t]he transcript does not contain a report of all evidence admitted or proffered by the appellant.” R.C. 2506.03(A)(1).

The Appellant was fired from Macy’s on May 28, 2014 for allegedly violating a company rule. Appellees claim that the Appellant misrepresented the hours she worked in order to receive compensation for time not worked. The Appellant denied these allegations and argued that any misrepresentation of the hours she worked was unintentional and a result of miscommunication with her supervisor.

An individual may receive benefits as compensation for loss of employment unless “the individual quit work without just cause or [was] discharged for just cause in connection with the individual’s work” R.C. 4141.29(D)(2)(a). “[J]ust cause . . . is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 1995-Ohio-206 (1995) (quotations and citations omitted). In the unemployment context, the court should also consider the underlying purpose of the Unemployment Compensation Act, which exists “to provide financial assistance to an

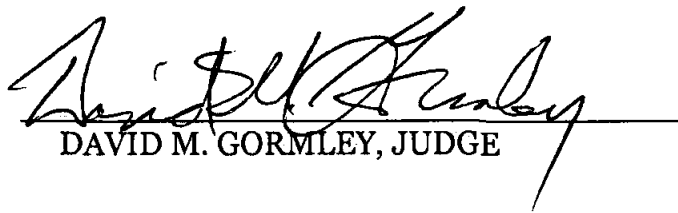
individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.” *Id.* (quotations and citations omitted). The Act protects employees from situations in which they have no control over the direction of their employment. *Id.*

I have considered the full record from the March 4, 2015 hearing and the applicable law. The record supports the Review Commission’s findings that the Appellant was fired for cause, and I agree that it was the Appellant’s responsibility to maintain communication with the Ohio Department of Job and Family Services and the Review Commission. Macy’s consistently appealed all previous decisions. Until she received notice that appeals were no longer allowed, the Appellant should have been prepared for the possibility of an appeal and a new hearing date. Furthermore, the Review Commission and the Ohio Department of Job and Family Services took all necessary steps to notify the Appellant of both the final appeal from the Appellees and the new hearing date.

In the end, then, I find that the Review Commission’s decision is supported by a preponderance of substantial, reliable, and probative evidence on the whole record, and I am not convinced that that decision was unlawful, unreasonable, or against the manifest weight of the evidence.

For the reasons explained above, the March 5, 2015 decision of the Review Commission is affirmed.

Dated: November 30, 2015.


DAVID M. GORMLEY, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by Regular Mail, Mailbox at the Delaware County Courthouse, Facsimile transmission

Louis Jay Chodosh, *Counsel for Appellant*, Chodosh & Chodosh, 2392 East Main St., Columbus, OH 43209

David E. Lefton, *Counsel For Appellee Ohio Department Of Job And Family Services*, Senior Assistant Attorney General, 30 E. Broad St., 26th Floor, Columbus, Oh 43215

Macy's Retail Holdings, Inc., c/o UC Express, P.O. Box 182366, Columbus, Oh 43218

This document sent to each attorney/party by:

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