

IN THE LICKING COUNTY COMMON PLEAS COURT

Arthur J. Greenwood, II,

LICKING COUNTY
COMMON PLEAS COURT

Appellant,

2015 DEC 16 P:2:07

Case No. 15 CV 00484

vs.

FILED :
GARY R. WALTERS
CLERK :

Ohio Unemployment Compensation
Review Commission, et al.,

Judge W. David Branstool

Appellees.

JUDGMENT ENTRY

I. NATURE OF THE PROCEEDINGS

This matter is before the Court on appeal pursuant to R.C. 4141.282 from a decision of the Ohio Unemployment Compensation Review Commission. For the reasons set forth below the decision of the commission is affirmed.

II. STANDARD OF REVIEW

R.C. 4141.282(H) states:

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.

“[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696 (1995). However, “[t]he board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is unlawful,

unreasonable, or against the manifest weight of the evidence.” *Id.* at 697. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision.” *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

III. CONCLUSIONS OF LAW

Appellant was employed by appellee Auto Direct as an auto technician from February 18, 2014 to September 3, 2014. Appellant applied for unemployment compensation December 28, 2014 and was granted benefits. The employer appealed, and a telephone hearing was held before the Hearing Officer March 19, 2015. The Hearing Officer issued a decision April 2, 2014 reversing the determination that appellant was entitled to benefits. The Commission affirmed the decision and denied appellant's request for review May 6, 2015.

Appellant contends that the decision of the commission was against the manifest weight of the evidence. He argues that he quit work September 3, 2014 because of safety issues. He believed he was in danger of injury or death, so he resigned. Appellant contends he made his employer aware of several safety issues including a safety latch issue with a vehicle lift and missing safety shields on a brake lathe and grinding wheels. Appellant stated he turned in a resignation letter he drafted on his lunch September 3, 2014 citing the safety issues.

Appellant contends he resigned, and appellee claims appellant stopped showing up for work. As stated by the Hearing Officer, the appellant quit work, so the question before the commission was whether appellant quit work with just cause. (Decision at 4).

"The claimant has the burden of proving [his] entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work." *Irvine* at 17. "Traditionally, 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." *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12 (1975).

The Hearing Officer found that appellant "failed to establish that the employer was aware of his concerns and was given a chance to fix the problems and refused. The employer provided credible testimony that they were not aware of claimant's concerns or that he intended to quit because of them." (Decision at 4.) The Hearing Officer further found that appellant did not establish that he was unable to continue working under the conditions he was in and that the employer was not provided notice of the problem prior to appellant quitting. *Id.*

There was evidence in the record to support these findings and to support the conclusion that appellant did not meet his burden to demonstrate just cause. Appellant stated he informed his supervisor of the issue with the vehicle lift on August 4, 2014 when he discovered the problem. (Transcript at 9). He similarly stated he discovered the issue with a grinder on August 8, 2014 and reported it. *Id.* He did not inform his supervisors he would have to quit if the issues were not remedied. *Id.* at 10. He did not tell human resources or any outside agency about the safety issues prior to quitting. *Id.* at 9.

The Hearing Officer found that appellant did notify the employer about the vehicle lift and that the employer had the lift fixed. (Decision at 3). However, the Hearing Officer also found that appellant did not notify his supervisor about any other

safety issues. These conclusions were supported by the testimony of appellant's supervisor. He testified that he did not recall appellant notifying him about a problem with a lift but he recalled there being a problem with one of the lifts. (Transcript at 14). He stated that when there is a problem with a lift appellee calls the vendor right away and the vendor makes repairs. *Id.* at 15. He further stated that if there was a problem with a lift there were several others appellant could have used. *Id.* at 13. He stated there were four technicians and about ten lifts. *Id.* Appellant's supervisor also testified that he never received a resignation letter from appellant and that appellant never told him why appellant quit. *Id.* at 12. Appellee's general manager also testified that appellant did not submit a letter of resignation. *Id.* at 5.

There is competent and credible evidence in the record to support the decision of the Hearing Officer. Appellee's witnesses provided testimony that contradicted appellant's claims. Based upon the evidence at the hearing, the Hearing Officer could reasonably conclude that appellant did not meet his burden of proof to demonstrate that he could not safely continue in his employment. Appellant is simply arguing that the Hearing Officer should have found him to be more credible or given more weight to his testimony. Reviewing "courts are not permitted to make factual findings or to determine the credibility of witnesses. The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision." (Citations omitted.) *Irvine* at 18.

IV. CONCLUSION

For the reasons set forth above, the decision of the commission is AFFIRMED.

It is so ORDERED. There is no just cause for delay. This is a final appealable order.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



W. David Branstool, Judge

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