

COMMON PLEAS COURT  
WARREN COUNTY, OHIO  
FILED

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IN THE COURT OF COMMON PLEAS  
STATE OF OHIO, COUNTY OF WARREN  
GENERAL DIVISION

JAMES L. SPAETH  
CLERK OF COURTS

**WARREN COUNTY AUDITOR, :** **CASE NO. 15CV86794**  
**Appellant, :** **JUDGE ODA**  
**v. :** **DECISION AFFIRMING**  
**JENNIFER A. HARPUR, et al., :** **THE DECISION OF THE**  
**Appellee. :** **MAGISTRATE AND**  
**REVERSING THE DECISION**  
**OF THE UNEMPLOYMENT**  
**COMMISSION**

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This is an administrative appeal of the decision of the Unemployment Compensation Review Commission ("Commission") which held that the plaintiff was not entitled to an award of unemployment compensation, finding she quit her employment without just cause.

The plaintiff in this matter worked for the Warren County Auditor ("Auditor") from February 2012 until April 30, 2014 when she was placed on administrative leave. The plaintiff in this matter entered her resignation with the Auditor ("Auditor") on May 16, 2014, and subsequently applied for determination of benefit rights on August 16, 2014, with the Ohio Department of Jobs and Family Services ("ODJFS"). On October 7, 2014, the Director issued a Redetermination disallowing the claimant's application finding the Appellee had quit Warren County Auditor without just cause. On October 17, 2014, the claimant filed an appeal from the Redetermination. The disallowance was affirmed, finding that the "claimant quit because she had been notified of an impending discharge or layoff." The Director went on to find "the claimant has not established any of the following: the work was no longer suitable; or she quit

for compelling circumstances, or the anticipated discharge would have been without just cause.” On October 20, 2014, ODJFS transferred jurisdiction to the Commission. On October 30, 2014, a hearing was held before Hearing Officer Jessica Harmon and the hearing officer found the Appellee had resigned her employment with just cause and reversed the Director’s Redetermination.

The Auditor appealed that decision with this Court and the matter was reviewed and considered by the Magistrate. On July 8, 2015, the Magistrate entered her decision recommending the decision of the Review Commission be reversed and the matter be remanded to the Commission for further proceedings. Jennifer Harpur and ODJFS have both filed objections to that decision and those objections are the issues to be decided before this Court.

### **The Legal Standard**

Civ.R. 53 governs objections to Magistrate decisions and states that if a party files a written objection within fourteen days from the date of the Magistrate’s decision, the Court shall conduct an independent review of the decision of the Magistrate. *Koeppen v. Swank*, 12th Dist. Butler No. CA2008–09–234, 2009–Ohio–3675, ¶ 26.

The objections of ODJFS include two specific objections: 1. The Magistrate erred by substituting her judgment for that of the Hearing Officer, and 2. The Magistrate erred by giving unsworn testimony more weight than the testimony given at the telephonic hearing.

First, the Court must note, that a reviewing court (whether the review is conducted by a Magistrate or a Judge) is required to defer to the findings of the Commission. *Struthers v. Morell*, 164 Ohio App.3d 709, 714-15, 2005-Ohio-6594, 843 N.E.2d 1231, 1235, ¶¶ 13-14 (7th Dist.). As this Court must conduct an independent review of this matter, the issue before this Court is whether the unemployment commission’s decision was unlawful, unreasonable or against the manifest weight of the evidence.

### **Unemployment Benefits**

“R.C. 4141.29(D)(2)(a) establishes that a claimant who quits his or her work without just cause or has been discharged for just cause in connection with his or her work is not entitled to unemployment compensation benefits.” *Rubin v. Ohio Dept. of Job & Family Servs.*, 2012-Ohio-1318, ¶ 7 (10th Dist. Franklin).

The term “just cause” has not been clearly defined through case law. “[t]here is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. 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.” *Irvine v. State Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587, 589, 19 O.B.R. 12 (1985).

In the case at hand, in making its determination on the objections to the Magistrate’s decision, the Court has reviewed the pleadings, the Commission file, the Magistrate’s Decision, and the applicable law.

There is no dispute that Ms. Harpur quit work as there is a signed resignation letter and testimony that Ms. Harpur resigned from her employment to avoid a disciplinary hearing (See transcript at page 13). Therefore, the issue before this Court is whether Ms. Harpur had just cause to resign her employment or whether the Auditor would have had “just cause” to terminate Ms. Harpur had she not resigned.

In her decision, the Commission’s Hearing Officer found that Harpur worked for the Auditor as a case worker from February 27, 2012 until her resignation on May 14, 2014. The following is a summary of the hearing officer’s findings of fact.

Harpur had worked with a young man while he was in their system and had the youth over to her house on numerous occasions. On or about April 28, 2014 there was an incident with the young man and his mother which led to the young man calling Harpur. Harpur then called her supervisor and asked if he could be placed with her, to which the supervisor told her she could not do it that

night. Harpur then asked if she could go check on the young man and her supervisor agreed. Upon arrival the young man jumped in Harpur's car and indicated he did not want to stay there and he would hurt himself if he had to stay there. Harpur then returned the child to her home and sent her supervisor a text that informed her they were at Harpur's house and they were okay. Harpur asked what she wanted her to do now and after consultation with the supervisors, they all agreed to have the child stay there for the night. When Harpur returned to work the next day she was told how it was so nice that she went out of her way for this kid and how most people wouldn't do that.

On April 30, 2014 Harpur was placed on administrative leave and an investigation was conducted. Harpur was charged with insubordination which is a dischargeable offense. On May 14, 2014 Harpur was told she was going to have a disciplinary hearing and claimant was made to feel it would result in her discharge.

The Hearing Officer then set forth in her reasoning that "just cause" means conduct which a person of ordinary intelligence would consider to be a justifiable reason for the discharge of an employee; there must be some fault on the part of the employee, although the conduct need not reach the level of misconduct. The critical issue is not whether the employee has violated a company rule. Rather, just cause for discharge exists when an employee's actions demonstrate an unreasonable disregard for employer's best interests.

She then went on to reason that Harpur had admitted to taking the child to her home, explaining she had done this on numerous other occasions and it was not against company policy. In addition, the hearing officer reasoned that Ms. Harpur had not been given a specific directive nor told that if she did not follow an order she would be discharged. The hearing officer also recognized that the supervisor had told her that she should not place the child with her that night and advised she should find a placement for him that night. However, the Hearing Officer found Harpur made her supervisor aware of all of her actions and the

supervisor could have sent the on call caseworker to Harpur's house to pick up the child but chose not to. She further found that Harpur was not aware that her conduct that evening would result in immediate discharge. As such, she found Harpur would not have been sufficiently at fault to justify her termination had the employer discharged her. Finally finding the employer would not have had just cause in terminating her.

However, in a letter from Ms. Barger that accompanied the agency's request for a review of the hearing officer's decision, Ms. Barger states that she had no knowledge of the youth going to Harpur's home until the day of the incident. ODJFS questions the weighing by the Magistrate of an unsworn statement but this statement is supported by the text messages that were part of the record. The first text message states "Hey, Derek came to our home this past weekend to hang out. He was amazing!" The text message then goes on to say "Can he stay with us for a little while? I know its not ideal...but at least I know he won't try to hurt himself or someone else." Text message number 6 states that she is asking to be the transitional non relative placement for Derek, to which her supervisor responds "I would love to say yes but I just can't do that tonight." The supervisor then suggests they can still refer for placement that night or they could refer to psych consult. Additionally, the letter from Ms. Barger then indicates she called Harpur and advised her she could not take the child to her home and Ms. Harpur acknowledged that it could put her job in jeopardy. Ms. Harpur was given options for placement and she declined the options stating that Derek had already refused alternative placement earlier in the day. While the letter was not presented to the Hearing Officer, it is appropriate to be considered in this appeal of the Commission's decision. See *Shepherd Color Co. v. Dir., Ohio Dept. of Job & Family Servs.*, 2013-Ohio-2393, ¶¶ 27-28 (12th Dist. Butler).

R.C. § 4141.29(D)(2)(a) provides that an individual is not entitled to receive unemployment benefits if that individual has been discharged for just cause in connection with the individual's work. The Supreme Court of Ohio in

*Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17–18, 19 OBR 12, 15, 482 N.E.2d 587, 590, “held that reviewing courts may reverse ‘just cause’ determinations ‘if they are unlawful, unreasonable, or against the manifest weight of the evidence.’” That Court noted “that while 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. This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in this court.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207, 1210 (1995).

Traditionally, just cause is that which is a justifiable reason for doing or not doing a particular act. In the context of the unemployment case, just cause must also be consistent with the legislative purposes of the Unemployment Act which is to provide financial assistance to individuals who are involuntarily unemployed through no fault or agreement of their own. *Shepherd Color Co. v. Dir., Ohio Dept. of Job & Family Servs.*, 2013-Ohio-2393, ¶¶ 16-17 (12th Dist. Butler).

“When 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.” *Shepherd Color Co. v. Dir., Ohio Dept. of Job & Family Servs.*, 2013-Ohio-2393, ¶¶ 16-17 (12th Dist. Butler). “A claimant is ineligible for unemployment compensation where she is discharged from her employment with just cause. R.C. 4141.29(D)(2)(a). Just cause for termination exists when an employee demonstrates by her actions “an unreasonable disregard for [her] employer’s best interests.” *Kiika v. Ohio Bur. Of Emp. Services* (1985), 21 Ohio App.3d 168, 169, 486 N.E.2d 1233; see, also, *Hansman v. Ohio Dept. of Job & Family Services*, Butler App. No. CA2003-09-224, 2004-Ohio-505, ¶ 20. “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*, 73 Ohio St.3d 694 at 698, 653 N.E.2d 1207. *Bruce v. Hayes*, 2004-Ohio-2903, ¶ 19 (12th Dist. Madison).

The evidence in this case overwhelmingly shows that Ms. Harpur was insubordinate in taking a youth in the care of the ODJFS to her private home after asking to be the temporary placement for the child and being told no and after arriving at the young man’s home without law enforcement as directed by her supervisor. Just cause for termination exists when an employee demonstrates by her actions “an unreasonable disregard for [her] employer's best interests.” *Kiika v. Ohio Bur. Of Emp. Services* (1985), 21 Ohio App.3d 168, 169, 486 N.E.2d 1233. Placement with a child under the jurisdiction of the Juvenile Court with a nonrelative, requires a court order. That did not happen in this case and as such is a disregard for the best interests of the employer, which is sufficient just cause for termination.

Based upon the record before the Court, the Hearing Officer did not have sufficient evidence in the record to support her finding, nor did she review the explanation provided by Ms. Barger to show error in the findings of fact made by the officer. Therefore, that decision is both unreasonable and against the manifest weight of the evidence. Appellee quit without just cause and the decision of the Magistrate is affirmed in this respect. The objections to the Magistrate’s decision are overruled.

Appellee’s application for unemployment compensation is disallowed.