



was discharged for fighting with, and hitting, another employee, Ms. Ivery, a line cook. (T. 10). Ms. Ivery, crying, told Ms. Bitew that Mr. Thompson had slapped her in the face. (T. 11). Ms. Bitew stated that she questioned Mr. Thompson, who said that Ms. Ivery had pushed him and argued with him. (*Id.*). Ms. Ivery denied pushing Mr. Thompson. (*Id.*). Ms. Bitew testified that another employee witnessed the altercation, and said that there was an argument, and Mr. Thompson slapped Ms. Ivery in the face. (T. 12). After the altercation, Ms. Ivery received a suspension and Mr. Thompson was discharged. (*Id.*).

Mr. Thompson testified that he did nothing to provoke Ms. Ivery, and that she rammed him with her shoulder. (T. 15). He stated that she shoved him and grabbed his wrist, and that “I caught a palm or a forearm to the side of the jaw and then that’s when I responded with a slap.” (*Id.*). He admitted striking Ms. Ivery in the face. (*Id.*).

Mr. Thompson was questioned about the description of the incident he initially gave to the Employer. The record reflects that Mr. Thompson initially reported that Ms. Ivery pushed him and that he slapped her in the face. (R. 33). At the hearing, Mr. Thompson stated that he did not fully describe the incident to the Employer and that “I was very limited to what ... I would say to them.” (T. 16). He stated that he did this out of concern about a criminal case. (*Id.*).

On May 12, 2015, the Hearing Officer issued a Decision finding as follows:

Claimant was discharged by Host International, Inc. because he struck a coworker in the face. While claimant maintained at the hearing on this matter that his contact with claimant’s face occurred only after extensive physical contact initiated by the coworker, claimant’s initial statements to the employer regarding the matter noted only that he had struck a coworker’s face after she pushed him. Claimant’s response to the physical contact that occurred shows a clear and inappropriate escalation as the evidence and testimony presented establishes that claimant struck a

coworker in the face after she pushed him. Claimant knew or should have known that his escalated physical response was inappropriate and would not be tolerated by the employer.

...

Claimant was discharged by Host International, Inc. for just cause in connection with work.

On June 30, 2015, the Commission disallowed a request for further review. (R. 221-223).

On August 3, 2015, Mr. Thompson filed this appeal from the Commission's Decision.

## **II. STANDARD OF REVIEW**

This Court must affirm the Commission's decision unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). The Court's scope of review in this appeal is limited, and the Court is not to make factual findings or substitute its judgment for that of the Commission. *Irvine v. Unemployment Compensation Review Commission*, 19 Ohio St.3d 15, 18 (1985); *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982).

## **III. THE COURT'S FINDINGS AND CONCLUSIONS**

R.C. 4141.29(D)(2)(a) provides that an individual discharged with just cause in connection with work is not eligible for unemployment compensation benefits. Just cause is conduct which an ordinarily intelligent person would regard as a justifiable reason for discharging an employee. *Irvine, supra*, 19 Ohio St.3d at 17.

Mr. Thompson argues that his termination was not for just cause. He asserts that he fought solely in self defense after he had been assaulted by Ms. Ivery.

As established by the above authority, the Court is not to make factual findings or substitute its judgment for that of the Commission. The Employer presented evidence at the hearing that Mr. Thompson engaged in an inappropriate escalation of the altercation with Ms. Ivery. (T. 12). Ms. Bitew testified that another employee witnessed the altercation, and said that Mr. Thompson slapped Ms. Ivery in the face after an argument. Ms. Bitew testified that Ms. Ivery denied pushing Mr. Thompson. (T. 11). The evidence also included Mr. Thompson's initial description of the incident, in which he reported that Ms. Ivery pushed him and he slapped her in the face. (R. 33).

The evidence in the record is sufficient that the Hearing Officer, as the finder of fact, was entitled to find that Mr. Thompson struck a coworker in the face after she pushed him, that this escalated physical response was inappropriate and would not be tolerated by the Employer, and that Mr. Thompson was discharged for just cause in connection with work.

In its Motion to Dismiss, the Appellee argued that Mr. Thompson failed to timely file this appeal. Appellee argues that Mr. Thompson failed to file the appeal within thirty days as required by R.C. 4141.282(I). In response, Mr. Thompson presented in his October 8, 2015 filing a certified mail receipt and USPS tracking document supporting his statement that he timely delivered the notice of appeal to the Clerk's office on July 29, 2015, even though the appeal was not docketed until August 3, 2015. A document is "filed" when it is delivered to the proper office, irrespective of when it is docketed. *Kloos v. Ohio Dept. of Rehabilitation and Correction*, 10<sup>th</sup> Dist. No. 87AP-1215, 1988 Ohio App. LEXIS 1744; *Insurance Co. of N. Am. v. Reese Refrigeration*, 89 Ohio App.3d 787 (3<sup>rd</sup> Dist. 1993); *State v. Short*, 12<sup>th</sup> Dist. No. CA2010-12-322, 2011-Ohio-5744;

*Maddox v. Astro Inv.*, 45 Ohio App.2d 203 (12<sup>th</sup> Dist. 1975). The available evidence does not show that this appeal was untimely.

After reviewing the record, the Court finds that the Commission's Decision is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Commission's Decision is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant.

Copies to:

Gary Thompson  
1854 Langham Road  
Upper Arlington, Ohio 43221

Alan Schwepe, Counsel for Appellee (by efileing)

Franklin County Court of Common Pleas

**Date:** 02-16-2016

**Case Title:** GARY THOMPSON -VS- UNEMPLOYMENT REVIEW  
COMMISSION ADMIN

**Case Number:** 15CV006675

**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "J. A. French", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" in the middle, and "ALL THINGS ARE" at the bottom.

/s/ Judge Jenifer A. French

Court Disposition

Case Number: 15CV006675

Case Style: GARY THOMPSON -VS- UNEMPLOYMENT REVIEW  
COMMISSION ADMIN

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes