

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

Mary K. Davis,		Case No. 15CV-09908
Appellant,		Judge Sheeran
vs.		
Director, Ohio Department of Job and Family Services, et al.,		
Appellees.		

**Decision and Judgment Entry Affirming Decision of Ohio
Unemployment Compensation Review Commission**

and

Notice of Final Appealable Order

Sheeran, J.

This case is a Revised Code 4141.282 administrative appeal, by Mary K. Davis (Appellant), from a “Decision Disallowing Request for Review” that the Ohio Unemployment Compensation Review Commission issued on October 21, 2015. In that Decision, the Commission denied Appellant’s request for further review of a Hearing Officer’s decision disallowing Appellant’s application for unemployment compensation benefits. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Facts and Procedural History

Appellant was employed by Nationwide Children’s Hospital, in Columbus, Ohio, as an Information Desk Clerk in the Outpatient Care Center (OCC), from August 1977 to June 29, 2015. *Transcript of Testimony, Sept. 10, 2010 (T.) 5-6.* In that position, Appellant was

responsible for welcoming and directing visitors, answering the telephone, and receiving donations, such as money, toys, and gifts for the patients, from the community. *T. 6.*

On June 22, 2015 at approximately 6:30 a.m., one of the hospital's security officers, Paul Higgins, left his personal cell phone on the information desk in the OCC, and then went to another area in the hospital, having forgotten his cell phone. *T. 6.* At approximately 6:50 a.m., Appellant arrived at the information desk to begin her work day at 7:00 a.m. *T. 12, 18-19.* When Appellant arrived at the information desk, she found Mr. Higgins's cell phone, an umbrella, and a jacket on the information desk. *T. 6-7.* She immediately threw the umbrella and the jacket in a trash can near the information desk. *T. 7.* She then walked down the hall and threw the cell phone in a trash can near Clementine's Café. *T. 12-13, 19.* Mr. Higgins had personal information stored in the cell phone. *T. 12.*

By 10:00 a.m. Mr. Higgins realized that he did not have his cell phone, and he returned to the information desk to retrieve it. *T. 6, 13.* Appellant was working at the information desk but the cell phone was not there. *T. 6-7.* Mr. Higgins asked Appellant if she had seen a cell phone at the information desk and she said no. *T. 6-7, 13.* If Appellant had told Mr. Higgins that she threw his cell phone in the trash can, he might have been able to retrieve it. *T. 13.*

On June 22, 2015, Mr. Higgins reported his missing cell phone to his supervisor, Security Manager Rex Hughes. *T. 6.* Mr. Hughes retrieved the video from the security camera in the OCC lobby. *T. 7.* The video revealed that, when Appellant opened the information desk that morning, she immediately picked up a jacket and an umbrella left on the desk and placed them in a trash can near the information desk. *T. 7.* The video revealed that Appellant then walked behind the information desk, picked up the cell phone, walked down the hall towards Clementine's Café, and placed the cell phone in a trash can near the café. *T. 7, 11.*

The next day, June 23, 2015, Appellant called Cliff Townsend, another security officer, and told Mr. Townsend what she had done with Mr. Higgins's cell phone. *T. 11.* She asked Mr. Townsend if he thought she would be terminated for her actions. *T. 11.* Mr. Townsend asked Appellant why she threw away Mr. Higgins's cell phone, and she said she did not know. *T. 11.*

On June 23, 2015, the Security Manager, Mr. Hughes, reported the incident to Appellant's supervisor, Jeanette Thomas, and played the video for Ms. Thomas. *T. 6-7, 11.*

On June 23, 2015, Ms. Thomas met with Appellant. *T. 7, 11.* Ms. Thomas asked Appellant if she knew anything about a cell phone that had been left on the information desk on the morning of June 22, 2015. *T. 7.* Appellant said no. *T. 7.* Ms. Thomas asked Appellant, a second time, if she knew anything about a cell phone that had been left on the information desk. *T. 7.* Appellant again said no. *T. 7.*

Ms. Thomas then asked Appellant to describe what had happened when Appellant arrived at work on the morning of June 22, 2015. *T. 7.* Appellant told Ms. Thomas that Appellant found a jacket and an umbrella on the information desk, which she threw in a nearby trash can. *T. 7, 10.* Ms. Thomas asked Appellant, a third time, about the cell phone, and Appellant said she had not seen a cell phone. *T. 7.*

Ms. Thomas asked Appellant to describe, again, what Appellant did with the jacket and the umbrella. *T. 7.* Appellant said that she threw the jacket and the umbrella in a trash can, and then she saw a cell phone. *T. 7.* Ms. Thomas asked Appellant what happened to the cell phone. *T. 7.* Appellant said that she did not know. *T. 7.*

Ms. Thomas then reminded Appellant that there were security cameras all over the hospital. *T. 7.* At that time, Appellant admitted that she picked up the cell phone and threw it away, in a trash can further down the hall near one of the hospital's cafeterias. *T. 7, 10.* Ms.

Thomas asked Appellant why she threw away the cell phone, and Appellant said that she did not know. *T. 7.*

Nationwide Children's Hospital has a written "Lost and Found Property" administrative policy, No. V-20, which has been in effect since 1987. *T. 8.* The policy provides:

*** The Security Department will be responsible for the control and disposition of lost and found personal items. *** Valuable lost and found items will be reported to and collected by Security. The valuable lost and found items will be held for safekeeping by Security. The recovered Property Tag will be completed, recorded and filed by the security officer. *** All valuable lost and found property will be returned to its owner following the owner providing an accurate description of the lost property and proper identification. *** Found items will be held in safekeeping for 7 days. If the owner is not found after that period, serviceable items will be donated to an appropriate organization. Items which have no apparent value will be destroyed. *T. 8-9.*

Appellant knew the policy and had previously followed the policy. *T. 8, 16.* Ms. Thomas had observed Appellant, in the past, call the Security Department to turn in a cell phone that had been found. *T. 7-8, 20-21.* Ms. Thomas had seen people come to the information desk to ask about their lost their cell phones, and she had seen Appellant direct them to the Security Department. *T. 8, 20-21.*

On June 23, 2015, Ms. Thomas asked Appellant if she understood that it was the hospital's policy that, when an employee found a cell phone, the employee was required to turn the cell phone in to the Security Department. *T. 7-8.* Appellant admitted to Ms. Thomas that Appellant knew the hospital's policy, and she said she did not know why she threw away Mr. Higgins's cell phone. *T. 8, 18.*

On June 23, 2015, Appellant sent the following email to Ms. Thomas:

On June 22th, 2015 I Mary K. Davis came in to work about 6:50 a.m. came to the OCC desk where there were items there *** on the desk. Sometime when I come in to work people will leave discarded cloths and shoe or *** sometime even cell phones.

When I got to the desk there was a cell phone and Officer Paul Higgins was not at the desk. So I unintentional throw away the items that were on my desk. Officer Higgins came back from his *** walk about and he was looking for his cell phone. Yes he did ask me if I had seen is [*sic*] phone and I said no and which I was embarrass to admitted *** I had threw away his phone, there was no malicious act on my part.

Nationwide Children’s Hospital has a progressive discipline policy. *T. 14.* The suggested steps for progressive discipline include verbal counseling, written corrective action, suspension, and termination of employment. *T. 14; Personnel Policy Guidelines, Corrective Action/Work Improvement, Employee Relations, ER-2.* Certain conduct, such as theft, can result in the termination of employment without prior discipline. *T. 9, 14.* Termination of employment may result “when the improper conduct is of such a serious nature that the employment relationship should not be continued[.]” *Personnel Policy Guidelines, Corrective Action/Work Improvement, Employee Relations, ER-2.* Ms. Thomas received approval from her manager to terminate Appellant’s employment. *T. 23.*

On June 29, 2015, Ms. Thomas notified Appellant that she was being discharged from her employment for theft and dishonesty. *T. 6, 8-9, 14-15, 22, 24-25.*

Nationwide Children’s Hospital has a grievance procedure, and Ms. Thomas provided Appellant with instructions for filing a grievance. *T. 22-23.* Appellant did not file a grievance regarding her discharge. *T. 22.*

On June 30, 2015, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning June 28, 2015. Nationwide Children’s Hospital thereafter provided separation information to ODJFS.

In an initial Determination issued on July 21, 2015, ODJFS disallowed Appellant’s application for unemployment compensation benefits, having determined that she was

discharged for just cause in connection with her work. Appellant appealed the initial Determination to the Director of ODJFS.

On July 28, 2015, Nationwide Children's Hospital provided the following statement from Jeanette Thomas in response to Appellant's appeal of the initial Determination:

Mary K. Davis was terminated from Nationwide Children's Hospital for theft of a cell phone and dishonesty. Ms. Davis did not follow protocol for reporting lost property by not reporting the lost cell phone to Security as directed in the NCH Administrative Policy V-20 - Lost and Found. Hospital video showed Ms. Davis picking up the phone and going down the hall and throwing it in the trash can. The person who inadvertently left the phone at Ms. Davis's work station asked her about the phone and she stated that she never saw the phone. So when presented initially with the opportunity to admit that she had seen the phone and had thrown it away, Ms. Davis was not truthful. Had Ms. Davis told where the phone was at that time, it may have been able to be retrieved from the trash.

Ms. Davis, after initially denying knowledge of the phone, subsequently acknowledged that she knew the policy for reporting lost items such as cell phones to Security and was given several opportunities to tell what happened to the cell phone when she met with me after I was notified of the situation. When I asked if she had seen the phone she continued to say "no." In refusing to be truthful until she was told of the hospital cameras, trust was broken between Ms. Davis and Nationwide Children's Hospital. Ms. Davis also later provided a written statement via e-mail in which she indicated she unintentionally threw the cell phone away. This was also inconsistent with Ms. Davis's verbal statements and the security video, which clearly shows that she purposefully took the cell phone from her work area, walked down a hallway, and threw it away in a trash can in another location. Ms. Davis's actions were in violation of the Campus Conduct Policy, HR-ER-1.

In a Director's Redetermination issued on August 5, 2015, the Director affirmed the initial Determination and disallowed Appellant's application for unemployment compensation benefits, having determined that Appellant was discharged for just cause in connection with her work. Appellant appealed the Director's Redetermination to the Ohio Unemployment Compensation Review Commission.

On September 10, 2015, a Hearing Officer conducted a hearing on Appellant's appeal. Nationwide Children's Hospital presented the testimony of Jeanette Thomas, which is reflected

in the recitation of facts, above. Appellant, who was represented by an attorney, testified that she intentionally threw away Mr. Higgins's cell phone, that she did not know why she threw it away, and that she lied to Mr. Higgins and Ms. Thomas about her actions.

On September 14, 2015, the Hearing Officer issued a Decision on Appellant's appeal.

The Hearing Officer rendered the following findings of fact:

Claimant was employed as an information desk/patient relations clerk from August 28, 1977 until June 29, 2015. Claimant's job duties included, among other things, responsibility for receiving donations to the employer.

The employer has a lost and found policy that requires all valuable lost and found items to be reported to and collected by security. The policy also provides that found items will be held for 7 days, and then donated or destroyed. This policy has been in effect since 1987.

On June 22, 2015, security officer Paul Higgins unintentionally left his cell phone at the information desk around 6:30 a.m. Claimant arrived at work at approximately 6:50 a.m. She arrived at her work station and discovered some items on her desk. She discovered a jacket, an umbrella, and the cell phone. Claimant immediately placed the jacket and umbrella in the trash can in front of the information desk. She then picked up the cell phone and put it in her pocket. She walked toward the café and then deposited the cell phone in the trash can by the café.

At approximately 10:00 a.m., Officer Higgins approached the information desk and asked the claimant if she had seen a cell phone. Claimant said "no."

Claimant's supervisor, Jeanette Thomas, was notified on June 23, 2015 by security that a review of security footage showed the claimant taking Officer Higgins's cell phone and throwing it away. Ms. Thomas asked claimant if she knew about a cell phone that had been left at the information desk. Claimant denied any knowledge of a cell phone. Claimant then, when asked again, said that she had seen a cell phone when she threw away the jacket and umbrella. She said, however, that she did not know what happened to it. Ms. Thomas reminded the claimant that the employer has security cameras, at which point the claimant stated that she had seen the phone and thrown it in the trash. Claimant stated to Ms. Thomas that she did not know why she had not followed protocol and notified security about the phone. Claimant admitted knowing the proper protocol.

Claimant was discharged for theft and dishonesty.

The Hearing Officer found that Appellant was discharged for just cause in connection with her work. The Hearing Officer provided the following reasoning for the decision:

Claimant admits that she threw away Officer Higgins's cell phone. Claimant failed to offer any reasonable or credible explanation for her actions. She repeatedly stated she did not know why she threw it away. She stated in an email to the employer that she unintentionally threw the items on her desk away, a statement that was directly contradicted by her testimony that she purposely threw all the items away. She also stated, in her testimony in the hearing, that the phone was "old" that that she believed it was trash - - this explanation was not offered to the employer regarding the incident, and was offered only after repeatedly saying she did not know why she threw it away.

Likewise, claimant failed to offer any reasonable or credible explanation for her failure to disclose to Officer Higgins that she had thrown his phone away. Claimant again repeatedly stated that she did not know why she did not tell him, then repeatedly stated she was "embarrassed." Claimant failed to offer a reasonable explanation as to why "embarrassment" would prevent her from telling Mr. Higgins where his property was or what she had done with it. Claimant alleges that she was "scared" of Ms. Thomas and her fear of Ms. Thomas was the reason she did not initially disclose her actions. Claimant alleges that her fear of Ms. Thomas resulted from Ms. Thomas's "retaliation" against her for a 2009 complaint by claimant to corporate compliance about Ms. Thomas. Claimant failed to demonstrate how Ms. Thomas could or would "retaliate" against her in this circumstance, or why the claimant admitting to her actions would result in any form of "retaliation" from Ms. Thomas. As with her explanation about her "embarrassment," claimant's explanation about her "fear" of Ms. Thomas fails to reasonably explain why she was not forthcoming with information about her actions.

Claimant's inconsistent and contradictory statements undermine the credibility of her testimony. The employer's evidence outweighs the claimant's testimony.

Claimant argues that she was unaware of the employer's lost and found policy or any of the employer's policies. The employer's credible testimony demonstrates that claimant had, on previous occasions, turned over cell phones and other electronic items to security. Claimant admits that she had done this before and denies that she threw away other cell phones. Despite her assertion that she was unfamiliar with the policy, claimant's previous actions as well as her testimony, demonstrate that she was aware that valuable items and electronics were supposed to be turned over to security. The only explanation offered by the claimant regarding why this particular phone was not turned over was that it was left on the desk, rather than brought to her by a person who had found it. This is an arbitrary and unreasonable distinction, and it does not justify the claimant's actions.

The claimant argues that even if her actions were unreasonable, her position required her to exercise her judgment when keeping her work area clear of clutter, as required by the employer. She argues that she exercised her judgment, and should not be punished for what turned out to be bad judgment. This argument fails. The claimant intentionally threw away a cell phone left on the information desk. This is, on its face, unreasonable behavior, outside of what would normally be protected within the realm of discretionary judgment. Claimant then lied to both Officer Higgins and Ms. Thomas about her actions. This demonstrates that claimant was aware, at that time, that her actions were inappropriate. If claimant had believed that she was appropriately exercising her judgment in clearing her work area, there would have been no reason for her to be dishonest about her actions.

In order to support a finding of a discharge for just cause, the discharge must be the result of sufficient fault or misconduct on the part of claimant to reasonably justify the discharge. "Just cause" means conduct which a person of ordinary intelligence would consider 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. [Citation omitted.]

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 an employer's best interests. [Citation omitted.]

In this case, claimant's actions were unreasonable and demonstrated a disregard for the interests of her co-workers and employer. Claimant's job required her to receive donations to the employer, and her actions in this incident demonstrate that she had a disregard for the employer's policies as well as for the property of others.

Claimant's actions constitute fault sufficient to reasonably justify her discharge. Based on the above, the Hearing Officer finds that claimant was discharged for just cause in connection with work.

The Hearing Officer affirmed the Director's Redetermination and disallowed Appellant's application for unemployment compensation benefits.

On September 22, 2015, Appellant requested that the Commission review the Hearing Officer's decision.

On October 21, 2015, the Commission disallowed Appellant's request for further review of the Hearing Officer's decision.

On November 5, 2015, Appellant appealed the Commission's decision to this Court.

Analysis

The purpose of Ohio's Unemployment Compensation Act is to provide financial assistance to persons who are without employment through no fault of their own. *Kohl v. Health Mgt. Solutions, Inc.*, 10th Dist. No. 15AP-17, 2015-Ohio-4999, ¶ 17. A claimant who has been discharged for just cause in connection with his or her work is disqualified from receiving unemployment compensation benefits. R.C. 4141.29(D)(2)(a). 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. *Kohl, supra*, ¶ 18. The critical issue is not whether an employee has technically violated some company rule, but rather, whether the employee, by his or her actions, demonstrated an unreasonable disregard for his or her employer's best interests. *Kiika v. Adm., Ohio Bur. of Emp. Servs.*, 8th Dist. No. 48531, 21 Ohio App. 3d 168, 169 (1985).

Revised Code 4141.282(H), which governs this appeal, provides:

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.

In reviewing a Commission decision, a court is not permitted to make findings of fact or determine the credibility of the witnesses. *Houser v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶ 7. Similarly, a court may not substitute its judgment on such issues for the judgment of the Commission. *Id.* Instead, a court must determine whether the Commission's decision is supported by the evidence in the record. *Id.* Judgments supported by some competent, credible evidence on the essential elements of the controversy may not be reversed as being against the manifest weight of the evidence. *Id.*

The issue in this appeal, then, is whether the Commission's determination, that Appellant was discharged for just cause in connection with her work, is supported by evidence in the record. The Court concludes that the Commission's determination is so supported, specifically, by the testimony of Jeanette Thomas.

Ms. Thomas testified that:

- On June 22, 2015, Appellant threw Mr. Higgins's personal cell phone in a trash can.
- On June 22, 2015, Appellant lied to Mr. Higgins when Appellant told Mr. Higgins that Appellant had not seen Mr. Higgins's cell phone.
- On June 23, 2015, Appellant lied to Ms. Thomas when Appellant told Ms. Thomas that Appellant did not know anything about a cell phone having been left on the information desk.
- On June 23, 2015, Appellant then admitted to Ms. Thomas that Appellant had seen the cell phone, but Appellant lied when she said she did not know what happened to the cell phone.
- On June 23, 2015, Appellant finally admitted that she threw the cell phone in a trash can, but only after she was informed, by Ms. Thomas, that her actions had been recorded on the security video.

Accordingly, there is evidence in the record that Appellant, through her dishonesty and her treatment of her co-worker's personal property, demonstrated an unreasonable disregard for her employer's best interests. Appellant occupied a position of trust, one in which she accepted donations, on behalf of her employer, from the community. Appellant's dishonest conduct on June 22 and 23, 2015, unfortunately, breached the trust that her employer had placed in her.

The record supports the Commission's determination that Appellant was discharged for just cause in connection with her work, and that she was therefore disqualified from receiving unemployment compensation benefits. R.C. 4141.29(D)(2)(a).

Conclusion

Having reviewed the record certified to the Court by the Ohio Unemployment Compensation Review Commission, the Court concludes that the Commission's October 21, 2015 "Decision Disallowing Request for Review" was not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 03-11-2016

Case Title: MARY K DAVIS -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICE

Case Number: 15CV009908

Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Patrick E. Sheeran". The signature is written over a blue circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top edge and "THINGS ARE" at the bottom. In the center of the seal is a smaller emblem.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 15CV009908

Case Style: MARY K DAVIS -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes