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COURT OF COMMON PLEAS, GUERNSEY COUNTY, OHIO

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DEPT. OF
JOB & FAMILY SERVICES
DIRECTORS OFFICE

MARK J. WALSH, :
 :
 Appellant, :
 :
 vs. :
 :
 OGLETHORP OF CAMBRIDGE, :
 LLC, et al. :
 :
 Appellee. :

Case No: 15-CV-345

FILED
COMMON PLEAS COURT
MAR 18 2016
GUERNSEY COUNTY, OHIO
TERESA A. BARKMICH, CLERK OF COURTS

OPINION

Rendered on March 18, 2016

Mark J. Walsh, pro se, for Appellant

Patria V. Hoskins, Assistant Attorney General, for Appellee Director, Cynthia Dungey, Ohio Department of Job and Family Services

Brant K. Rhoad and Matthew S. Goff of Scherner, Sybert and Rhoad, LLC for Appellee Oglethorpe of Cambridge, LLC

APPEAL from the order of the State of Ohio, Unemployment Compensation Review Commission.

Ellwood, J.

Appellant Mark J. Walsh is appealing to the Court of Common Pleas, Guernsey County, Ohio from the order of the Unemployment Compensation Review Commission mailed July 30, 2015 affirming the Hearing Officer's decision. Appellant Walsh appeals seeking unemployment benefits due to him by the Ohio Department of Job and Family Services that he alleges he was wrongfully denied.

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The Court finds that “an appeal from an administrative agency in Ohio is governed by R.C. 119.12, which states in pertinent part: ‘The Court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order to make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.’ The court of common pleas is restricted to determining whether the order is so supported.” *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570.

“The evidence required by R.C. 119.12 can be defined as follows: (1) ‘Reliable’ evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonably probability that the evidence is true. (2) ‘Probative’ evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) ‘Substantial’ evidence is evidence with some weight; it must have importance and value.”

The Court finds, here, Appellant Walsh was employed by Oglethorpe of Cambridge, LLC from August 13, 2012 until March 2, 2015 as a mental health technician. Oglethorpe of Cambridge, LLC is a psychiatric facility.

Prior to the incident, Appellant Walsh had received prior discipline for attendance related problems, refusing overtime and for telling a patient that he may be placed in restraints contrary to company policy.

Appellant Walsh was discharged for an incident that occurred on or about January 21, 2015 during a fresh air break. Residents are able to smoke a cigarette provided by the facility. In this case, the resident reached in the basket and took more than his allotted cigarettes. Appellant Walsh admonished him telling him that he was aware of the rules. The patient screamed at Appellant Walsh that he was a “cock-sucking faggot” and called him an “asshole.” Words were exchanged between Appellant Walsh and the patient. A co-worker asked the two to separate. Appellant Walsh told the patient that he was the one acting like an “asshole.” The patient made a complaint. Appellant Walsh was discharged for failing to de-escalate the incident. Pursuant to the policy, workers are not to use profanity when speaking to any resident.

The Court finds R.C. 4141.29(D)(2)(a) provides in pertinent part, “... no individual may serve a waiting period or be paid benefits under the following conditions: (2) For the duration of the individual’s unemployment if the director finds that: (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual’s work...”

In this case, Appellant Walsh filed an Application for Determination of Benefit Rights for a benefit year beginning February 1, 2015. On March 27, 2015, the Director issued a Redetermination disallowing Appellant Walsh’s application based upon the finding that Appellant Walsh was discharged for employment with Oglethorpe of Cambridge LLC for just cause in connection with work. It was further held that no benefits will be paid until Appellant Walsh obtains covered employment, works six weeks, earns wages of \$1,422.00 or more, and is otherwise eligible. Other matters may

have been addressed by the Redetermination, which are not relevant to this case. On April 1, 2015, Appellant Walsh filed an appeal from the Redetermination. On April 3, 2015, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission. On May 12, 2015, a hearing was held before Hearing Officer Jennifer Hanysh, in Columbus, Ohio. Appellant Walsh offered testimony. Appellant Walsh issued subpoenas to two former co-workers: Lesleigh Berg and Samantha Hardy. Oglethorpe of Cambridge LLC was represented by Nicolas Davis with Pamela Braden offering testimony. Hearing Officer Jennifer Hanysh affirmed the Director's Redetermination issued March 27, 2015 with respect to Appellant Walsh's separation from Oglethorpe of Cambridge LLC. Appellant Walsh's Application for Determination of Benefit Rights is disallowed as Appellant Walsh was separated from employment under disqualifying condition. Specifically, claimant was discharged by Oglethorpe of Cambridge LLC for just cause in connection with work. No benefits will be payable until Appellant Walsh works in six weeks of covered employment and earns at least \$1,422.00 and is otherwise eligible.

The Court finds, upon consideration of the entire record and such additional evidence as the Court has admitted, that the Unemployment Compensation Review Commission's Order is supported by reliable, probative, and substantial evidence and is in accordance with law. Therefore, the decision of the Unemployment Compensation Review Commission that their findings of fact establish by a preponderance of evidence that Appellant Walsh committed misconduct in violation of the company policy. As such, Appellant Walsh was sufficiently at fault to reasonably justify his discharge at that time.

Therefore, it is found that Appellant Walsh was discharged for just cause in connection with work. This is a disqualifying separation.

The Court further finds that Appellant Walsh's allegations that he was terminated for being an "OSHA whistle-blower" is not supported by the record. The Court further finds that Appellant Walsh's allegations that other employers were not terminated for more egregious acts is not well-taken as there was no evidence presented outside of Appellant Walsh's allegations.

Costs are assessed to the Appellant, Mark J. Walsh.

IT IS SO ORDERED.



JUDGE OF THE COMMON PLEAS COURT
GUERNSEY COUNTY, OHIO

cc: Mark J. Walsh, 68927 8th St. Road, Cambridge, OH 43725 (Appellant *Pro Se*)
Patria V. Hoskins, Assistant Attorney General, Health & Human Services Section,
30 East Broad Street, 26th Floor, Columbus, OH 43215-3400 (Attorney for
Ohio Dept. of Job & Family Services)
Brant K. Rhoad and Matthew S. Goff of Scherner, Sybert and Rhoad, LLC, 153
South Liberty Street, Powell, OH 43065 (Attorney for Appellee
Oglethorpe of Cambridge, LLC)