

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION –
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2015 CV 01640

**REBEL L BRETT
APPELLANT**

VS.

JUDGE PETER J KONTOS

**ADMIN OF THE UNEMPLOYMENT
REVIEW COMMISSION
APPELLEE**

JUDGMENT ENTRY

This matter, which is an Administrative Appeal from a decision of the Ohio Unemployment Compensation Review Commission, comes before this Court on the Briefs of the parties. The Court has reviewed the record, all affidavits, exhibits, and all memoranda of law and fact.

Rebel L. Brett (“Claimant”) appeals the determination that he was ineligible for unemployment benefits. The Review Commission determined that he was not eligible for benefits because he quit employment without just cause and did not requalify for benefits.

Claimant was employed as a cable technician with Broadband Express beginning February 9, 2015. Claimant became dissatisfied working for Broadband Express and sought new employment with a previous employer, Baker Communications, at a higher rate of pay. To that end, Claimant quit work with Broadband Express on May 7, 2015. Both Broadband Express and Baker Communications are installers for Time Warner Cable. Claimant turned in all his equipment to Broadband Express on that date, but was scheduled to install for Broadband Express the next day. Claimant asserts that he did not know that he was scheduled the next day, and that in any case he could not have done any installations because he had returned all of his

tools to Broadband. Broadband Express reported to Time Warner Cable that Claimant had not completed a job assigned to him.

According to Claimant, Time Warner will not hire a cable technician who has a complaint on his record that he failed to complete an installation job. Because Claimant had not completed a job assigned to him, he was disqualified from working for Baker Communications on Time Warner installations, and the offer from Baker was withdrawn. Claimant never began to work for Baker.

Claimant was denied benefits because the Claimant had quit employment without just cause and failed to meet requalification requirements. Claimant exhausted all administrative reviews and thereafter appealed to this Court, seeking reversal of the denial of unemployment compensation benefits.

This Court is required to observe the standard of review set forth in R.C. 4141.282(H), when considering appeals of decisions rendered by the Review Commission. That section states:

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 remand the matter to the commission. Otherwise the court shall affirm the decision of the commission.

This strict standard of review was reiterated by the Ohio Supreme Court. See *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Services*, 73 Ohio St.3d 694, 697 (1995). As the review commission is in the best position to weigh evidence and assess the credibility of the witnesses, a reviewing court may not infringe on that primary jurisdiction and replace its judgment with that of the review commission. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41 (1982). See *Whaley v. Ohio Dept. of Job & Family Servs.* 2006 WL 3833869 (Ohio App. 11 Dist.). The

determination of factual issues is primarily a matter for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947).

R.C. §4141.29(D)(2)(a) was the basis of the denial and provides, in pertinent part, that no individual may be paid benefits if the director finds that “the individual quit work without just cause or has been discharged for just cause in connection with the individual’s work.”

“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. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), quoting *Peyton v. Sun T. V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (1975). Just cause is a factual determination, and therefore within the purview of the hearing officer. *Reddick v. Sheet Metal Products*, 11th Dist. Lake No. 2009-L-0092, 2010-Ohio-1160.

The Supreme Court has definitively established, and the hearing officer here rightly concluded, that quitting employment to accept other employment, is a quit without just cause under R.C. 4141.29(D)(2)(a). *Radcliffe v. Artromick Intern., Inc.* 31 Ohio St. 3d 40, 508 N.E.2d 953 (1987). Here, Claimant has admitted that he quit his job to accept employment with Baker Communications because Baker offered him a higher salary.

However, this does not end the inquiry. The General Assembly has provided a mechanism by which an individual, who has quit employment in order to take new employment, or to return to a past employer, can requalify for benefits. This mechanism is set forth in R.C. 4141.291(A):

Notwithstanding section 4141.29 of the Revised Code, an individual who voluntarily quits work:

(1) To accept a recall from a prior employer and establishes that the refusal or failure to accept the recall would have resulted in a substantial loss of employment rights, benefits,

or pension, under a labor-management agreement or company policy;

(2) To accept a recall to employment from a prior employer and cannot establish that a substantial loss of employment rights, benefits, or pension was involved in the recall, or to accept other employment subject to this chapter, or the unemployment compensation act of another state, or of the United States, where the individual obtains such employment while still employed or commences such employment within seven calendar days after the last day of employment with the prior employer, and subsequent to the last day of the employment with the prior employer, works three weeks in the new employment and earns wages equal to one and one-half times the individual's average weekly wage or one hundred eighty dollars, whichever is less;

(3) Shall, under the conditions specified in either division (A)(1) or (2) of this section, remove the disqualification imposed by division (D)(2)(a) of section 4141.29 of the Revised Code and shall be deemed to have fully complied with division (G) of such section.

In the instant case, Claimant was offered and accepted a new job with a prior employer, Baker, while he was still employed with Broadband Express. Therefore, the first requirement has been met. However, Claimant cannot meet the requirement that “subsequent to the last day of the employment with the prior employer, [claimant] works three weeks in the new employment...” Claimant never began to work for the new employer, Baker. Claimant suggests that he did not begin employment with Baker as a result of the actions of his former employer. However, R.C. 4141.291 does not permit the Review Commission to consider the reasons why Claimant did not work at least three weeks with the new employer, or to determine whether or not the Claimant was at fault for his failure to begin the new job.

Claimant cites to *Huth v. Director, ODJFS*, 5th Dist . Tust. No. AP 03 0011, 2014-Ohio-5408 for the proposition that the employer’s actions in this case were not reasonable as applied to

a “just cause” standard, by notifying Time Warner that Claimant had not completed assigned cable jobs. However, *Huth* is distinguishable in this case in that the employer’s actions occurred prior to the Claimant’s decision to quit and were the cause of the decision to quit. In *Huth*, the claimant resigned because the employer cut claimant’s position from full-time to part-time and eliminated health benefits. Here, Claimant voluntarily decided to quit before Broadband’s actions. The quit was without just cause.

Based on the foregoing, the Court finds that the decision of the Ohio Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Ohio Unemployment Compensation Review Commission denying Plaintiff-Appellant unemployment benefits for the relevant period of time, is AFFIRMED. This appeal is hereby dismissed at Plaintiff-Appellant’s cost.

Case Concluded. This is a final appealable order and there is no just cause for delay.



JUDGE PETER J KONTOS

FILED
COURT OF COMMON PLEAS
APR 8 2016
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

Date: 4/8/16
Copies to:
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