

**IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO**

COMMON PLEAS COURT  
2016 MAY -5 AM 11:56

RCJ PETROLEUM 6, LLC	)	CASE NO.: 15CIV1050
	)	
Appellant,	)	
	)	
vs.	)	JUDGE CHRISTOPHER J. COLLIER
	)	
DIRECTOR, OHIO DEPARTMENT OF	)	<b><u>JOURNAL ENTRY WITH</u></b>
JOB AND FAMILY SERVICES, et al.	)	<b><u>INSTRUCTIONS FOR SERVICE</u></b>
	)	
Appellees.	)	

FILED  
DAVID B. WADSWORTH  
MEDINA COUNTY  
CLERK OF COURTS

This matter is before the Court on the Appellant RCJ Petroleum 6, LLC's (hereinafter, "RCJ") appeal of the decision of the Ohio Unemployment Compensation Review Commission (hereinafter, the "UCRC"), wherein the UCRC found that the claimant and Appellee in this matter, Kathy E. Cameron (hereinafter, "Cameron"), was discharged by her employer RCJ without just cause.

RCJ argues the decision of the UCRC, finding Cameron was discharged from her employment with RCJ without just cause, was unlawful, unreasonable and against the weight of the evidence. The matter before the Court is an administrative appeal pursuant to R.C 4141.282. By agreement of RCJ and the Appellee Director, Ohio Department of Job and Family Services (hereinafter, "ODJFS"), the matter was scheduled for non-oral decision on May 3, 2016. RCJ filed its brief on March 18, 2016, the ODJFS filed its brief on April 11, 2016 and RCJ filed its reply brief on May 2, 2016. Upon consideration of the pleadings, briefs, and upon careful independent review of the complete record of proceedings provided to the Court in this matter, the Court finds as follows:

Cameron filed an application for unemployment benefits with the ODJFS on April 29, 2015. The application was approved on May 21, 2015, with a benefit year beginning April 26,

C

2015. On June 16, 2015, a Redetermination was issued finding that Cameron was discharged by RCJ without just cause in connection with her work. Thereafter, on July 7, 2015, RCJ filed an appeal from the Redetermination. On August 6, 2015, a hearing was held before a UCRC Hearing Officer. On August 7, 2015, the UCRC issued a Decision making the following findings of fact:

[Cameron] worked for [RCJ] as a manager from January 8, 2014 to April 23, 2015. On April 23, 2015, the president of [RCJ], Pascal Jarjoura, discovered five, \$20.00 scratch off tickets in [Cameron's] desk in the office. The scratch off tickets came from a new roll of tickets that had not yet been scanned and placed on the rack for sale to the public. New rolls of tickets were kept in an unlocked drawer in the office. The office is supposed to be closed and locked during the day however it is not always locked. Manager, Stephanie Kufchak, also had a key to the office.

The issue before the UCRC Hearing Officer was whether Cameron was discharged by RCJ without just cause in connection with work. The UCRC found as follows:

[Cameron] was discharged for theft. However, the evidence presented does not support such a finding. Scratch off tickets that had not been paid for were found in a desk in the office. The office was not always locked, the tickets were kept in an unlocked drawer, and another manager had a key to the office.

In regards to the theft of over \$25,000.00, [RCJ] failed to provide any documentary evidence to show that on a specific date, [Cameron] received a specific amount of money, and that money was never deposited into the company account. Absent some evidence of misconduct [RCJ's] unsupported allegations are insufficient to find [Cameron] was discharged for just cause. The Hearing Officer finds [Cameron] was discharged by [RCJ] without just cause in connection with work.

On September 16, 2015, the UCRC denied RCJ's request for review. On October 16, 2015, RCJ timely appealed the decision of the UCRC to this Court.

If the Court finds the UCRC's decision was "unlawful, unreasonable, or against the manifest weight of the evidence," then the Court is required to reverse, vacate, modify, or remand such decision. *Westphal v. Cracker Barrel Old Country Store, Inc.*, 9th Dist. Lorain No. 09CA009602, 2010-Ohio-190, ¶12. Absent such a finding, the reviewing court must affirm the

UCRC's decision. *Id.* It is the UCRC's function to make factual findings and determine the credibility of witnesses in unemployment compensation cases. *Id.*

Under R.C. 4141.29(D)(2)(a), an employee may not be eligible for unemployment benefits under certain circumstances, including “if the employee has quit without just cause, or if the employer discharged the employee for just cause in connection with the employee’s work.” *Lorain Cty. Aud. v. Ohio Unemp. Rev. Comm.*, 113 Ohio St. 3d 124; 2007-Ohio-1247; 863 N.E.2d 133, ¶15. The Ohio Supreme Court defined “just cause” as “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, 17-18, 482 N.E.2d 587 (1985). A reviewing Court “must defer to the findings of the UCRC with respect to purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence.” *Lafayette Twp. v. Sheppard*, 9<sup>th</sup> Dist. No. 10CA0124-M, 2011-Ohio-6199, ¶11, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995). In other words, if the record contains evidence to support the UCRC’s findings, a reviewing court cannot substitute its own findings of fact for those findings made by the UCRC.

The UCRC in this matter considered testimony from Cameron in support of her application for unemployment benefits and objections from RCJ to Cameron receiving unemployment benefits. The UCRC then weighed the evidence before ultimately coming to the decision to allow Cameron’s application for unemployment benefits based on a finding that RCJ failed to provide sufficient evidence that Cameron was terminated for just cause. While RCJ alleged Cameron was terminated for theft, there was evidence that the alleged theft of the lottery tickets occurred from an unlocked drawer – from an office that was sometimes left unlocked and multiple persons had access to the office even when the office was locked. In addition, the

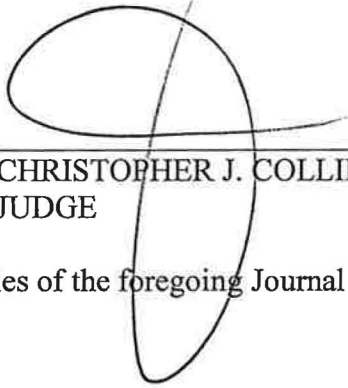
UCRC was justified in its determination that RCJ failed to provide sufficient documentary evidence linking Cameron to the theft of any specific funds. RCJ provided only unsubstantiated allegations of theft of over \$25,000.00 and simply directed the Hearing Officer to portions of the police report in an attempt to substantiate the theft allegations. In other words, rather than presenting evidence that on a certain date Cameron was supposed to deposit a specific amount of money and failed to do so, RCJ simply presented an unsubstantiated allegation of theft of a total amount of funds that allegedly occurred over a period of multiple months. While it certainly would have been more difficult and burdensome for RCJ to go day-by-day to show that specific deposits were not made by Cameron and those deposits then totaled the aggregate amount of the alleged theft, RCJ's failure to do so resulted in the UCRC's determination that RCJ failed to provide sufficient documentary evidence linking Cameron to the theft of any specific funds.

The UCRC was not required under the law to reach a particular decision with regard to this particular application for unemployment benefits. The UCRC was only required to support its decision with competent, credible evidence going to all the essential elements of the case. The entire record and content of the UCRC hearing transcript establishes that the UCRC's decision was not unlawful, unreasonable or against the weight of the evidence and there was sufficient evidence to support a finding that RCJ discharged Cameron without just cause pursuant to R.C. 4141.29(D)(2)(a). The UCRC considered the testimony of the parties and thereafter came to a decision applying the appropriate law that was based on the facts and evidence presented.

Accordingly, the decision of the UCRC to allow Cameron's claim for unemployment benefits based on a finding that RCJ discharged Cameron without just cause is affirmed in full.

Costs are hereby assessed to the Appellant, RCJ.

IT IS SO ORDERED.

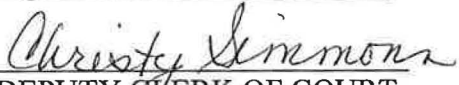


CHRISTOPHER J. COLLIER  
JUDGE

The Clerk of Courts is instructed to send copies of the foregoing Journal Entry to the following parties or their counsel of record.

Atty. Cuturic  
Atty. Sheffield  
Kathy E. Cameron

Copies of this Entry were mailed by the Clerk of Courts on 5-5-16.

  
DEPUTY CLERK OF COURT