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SHEILA LESTER
CRAWFORD COUNTY

IN THE COMMON PLEAS COURT OF CRAWFORD COUNTY, OHIO

SEAN CASSARO, :
 :
Plaintiff-Appellant, : Case No.: 15-CV-0136
 :
- vs. - :
 :
OHIO DEPARTMENT OF JOB AND FAMILY :
SERVICES, et al., :
Defendants-Appellees. :
* * * *

DECISION DENYING THE APPEAL

This matter comes to this Court upon an appeal from the State of Ohio Unemployment Review Commission ("Commission") pursuant to R.C. 4141.282(H) of the March 5, 2015 decision of the Commission denying Claimant's request for unemployment benefits.

The Claimant was employed by the City of Bucyrus from April 6, 1998 to October 6, 2014. At the time of his termination Claimant was employed as an Engineering Technician.

The Findings of Fact set forth in the Commission's Decision found that Claimant was dispatched to inspect a sidewalk being installed in front of a building by a local contractor. When Claimant arrived at the site the contractor told Claimant there was a manhole under the sidewalk that needed repair. Without further inspection Claimant advised the contractor that the manhole was an old coal bin and advised the contractor to fill the manhole with concrete. After a rain, sewage backed up into the basement where the sidewalk was being installed. It was later determined that the manhole was an active sewer manhole and the filling with concrete caused the sewage to back up. Eventually the concrete had to be removed from the manhole at a cost of \$5000.00.

In addition, while the manhole incident was ongoing, Claimant appeared in front of the City Zoning Administrator and accused a local business owner of receiving stolen property. As a result of the two incidents the City discharged Claimant.

Claimant asserts that he advised the Contractor to call the Ohio Underground Protection service before he dug. Claimant does not deny that he did not do his own inspection but asserts that he only advised the contract that the City usually fills these manholes. The hearing officer found that Claimant was not truthful when he testified that he did not advise the contractor to fill the manhole. The hearing officer further found that Claimant was not truthful when he denied he accused a local businessman of receiving stolen property. Claimant was first given a ten day suspension by the City Service Director. The suspension was changed to termination because it was determined that Appellant was not truthful with the Service Director. Appellant was terminated by the City of Bucyrus for cause. Appellant applied for unemployment benefits. Appellant's application for benefits was initially approved by the Director on October 27, 2014 and again on redetermination on December 5, 2014. The City of Bucyrus appealed the determination to the Review Commission which held a hearing on January 13 and February 9, 2015. The hearing officer reversed the Director's redetermination finding that Appellant wrongfully advised a contractor to pour concrete into a working sewer and Appellant defamed a local businessman on City property. Appellant filed a request for administrative review which the Review Commission disallowed on April 15, 2015. This matter is before the Court on Appellant's Rev C. 4141282 administrative appeal.

Standard of Review

R.C. 4141.26(D) provides, in relevant part:
"The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or 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 determination or order or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law."

R.C. 4141.282(H) provides:

"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."

"Reliable evidence" is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. "Probative Evidence" is evidence that tends to prove the issue in question; it must have importance and value. *Our Place v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, (1992). In reviewing the decision of the Review Commission, the Court may not weigh or judge the credibility of the witnesses. This Court must give due deference to the administrative resolution of evidentiary conflicts. *All Star Personnel v. State of Ohio*, 2006-Ohio-1302, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980); see also 1999 Ohio App. LEXIS 4499. Additionally, a reviewing Court must give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility. ([Resources Title National Agency v. Ohio Dept. of Job & Family Services](#), 2014-Ohio-3427 (CA 10th, 2014).

This Court must uphold the decision of the Review Commission unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St. 3d 694 (1995) and *Bernard v. Unemp. Comp. Rev. Comm.*, (2013) 136 Ohio St. 264. While a reviewing court is not permitted to make factual findings or determine the credibility of witnesses, it does have a duty to determine whether the decision of the Review Commission is supported by the evidence in the record.

The Unemployment Compensation Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he or she is no longer the victim of fortune's whims but instead is directly responsible for his/her own predicament. Fault on the employee's part separates him/her from the Act's intent and the Act's

protection. Thus, fault is essential to the unique chemistry of a just cause termination. Thus, if the employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. See R.C. 4141.29(D)(2)(a). Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

In the April 26, 2012 "Decision" the hearing officer found:

"The available, credible evidence presented in this matter establishes that claimant advised a local contractor to fill a manhole with concrete without first conducting an inspection and reviewing city records. If claimant had exercised the due diligence required, he would have realized that the manhole was actually used for drainage and not an old coal bin. Claimant was not truthful when the employer questioned him about what he told the contractor. His failure to conduct the necessary inspection and untruthfulness cost the employer \$5,000.00. The available, credible evidence presented in this matter further establishes that claimant accused a local business person of receiving stolen property. Claimant made the accusation in front of another employee. His actions were highly inappropriate. If claimant believed that the business person was guilty of theft, he should have privately communicated his concerns to his supervisor. Under the available, credible evidence presented, the hearing officer finds that claimant's conduct constitutes cause sufficient to justify his discharge. Therefore, the City of Bucyrus discharged claimant for just cause in connection with work. Based upon this finding, claimant received benefits to which he was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services."

The Court has reviewed the entire record and transcript of the proceedings and has determined that the findings by the hearing officer, and ultimately the Review Commission, finding that Appellant (1) was not truthful to his employer; failed to conduct a necessary inspection costing the employer \$5,000.00; and, falsely accused a local business person of receiving stolen property, is supported by reliable, probative and substantial law. The Court has determined that the findings were purely factual matters that hinge upon the credibility of the witnesses and the weight of the evidence. The Court has given due deference to the administration resolution of these evidentiary issues. Appellant's claim of double jeopardy regarding the suspension turning into a discharge is not relevant. Double jeopardy

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claims have no place in the civil law. In addition claims of civil service violations have no application to this proceeding.

The decision of the Review Commission is affirmed. Costs to Appellant. Appellee shall prepare an entry reflecting this decision by June 1, 2016.

IT IS SO ORDERED.



Judge Dale A. Crawford
Visiting on Assignment #15JA1706
of the Supreme Court of Ohio

Copies to:

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