

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

Joshua S. Gawain

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO

Claimant-Appellant

: Case No. 15-CV-43174

JUL 25 2016

-vs-

Allcaring Home Health Services, LLC, et al.

By: M. Belbrith
CLERK

: JUDGMENT ENTRY

Appellees

:

:

This cause came on for consideration of an Administrative Appeal, filed pursuant to §4141.282 of the Ohio Revised Code, from the decision of the Ohio Unemployment Compensation Review Commission disallowing unemployment benefits to the Claimant-Appellant, Joshua Gawain. The Appellant's initial application for unemployment benefits was disallowed by the Ohio Department of Job & Family Services on November 5, 2014, and, on redetermination, on December 5, 2014. Thereafter, the decision was appealed and jurisdiction was transferred to the Review Commission which held hearings on January 13 and February 4, 2015. On February 18th, the Review Commission affirmed the denial of disallowance of benefits. On March 25, 2015, the Review Commission denied a request for further review. This appeal timely followed.

The fundamental issue is whether the Claimant-Appellant was discharged for just cause from his employment at Allcaring Home Health Services LLC. After conducting extensive evidentiary hearings, the Review Commission concluded that the Defendant was, in fact, discharged for just cause.

The court is bound by the standard of review set forth in R.C. §4141.282(H), which provides the court shall affirm the decision of the Commission unless the court determines that the decision of the Commission was "unlawful, unreasonable, or against the manifest weight of the evidence." The standard of review has repeatedly been addressed and acknowledged by the courts. As stated differently, the Review Commission's decision must be affirmed if the record provides some competent, credible evidence in support of the decision. *Cent. Ohio Vocational School Dist. Bd. of Edn. v. Admr., Ohio Bur. of Emp. Srvs.*, 21 Ohio St.3d 5 (1986), *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Servs.*, 73 Ohio St.3d 694 (1995). It is similarly well settled that the hearing officer of the Review Commission is the trier of fact and credibility determinations are properly the prerogative of the administrative agency. The reviewing court is required to defer to the determination of purely factual issues relating to credibility of witnesses and the weight of conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159 (10th Dist. 1983), *Yuhasz v. Mrdenovich*, 82 Ohio App. 3d 490 (9th Dist. 1992).

The record on appeal clearly contains competent credible evidence supporting the determination that the Claimant-Appellant was discharged for just cause. While some minimal conflict appears in the evidence, it is apparent that the trier of fact properly exercised its prerogative in determining matters of credibility and resolved those credibility issues against the Claimant-Appellant. The record supports the just cause for discharge determination based upon

clear evidence of disruptive behavior in the work place and insubordination. On either basis, just cause discharge is proper.

Each of the various contentions raised by the Claimant-Appellant are without merit. As noted above, certain credibility and evidentiary issues were resolved contrary of the Appellant; however, none of those determinations were contrary to the manifest weight of the evidence. Further, the Appellant's complaints that he was not warned prior to discharge is immaterial to the issues on appeal. No warning is required prior to a discharge for just cause. *Buck v. Admr. Ohio Bur. Of Emp. Servs.*, 4th Dist. No.14412 (April 9, 1990).

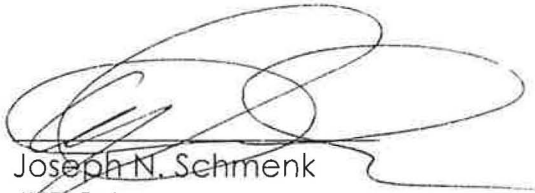
Appellant's next assertion that no harm to his employer resulted from his conduct is clearly contradicted by evidence in the record demonstrating disruption in the work place contrary to any employer's interest. An argument raised by the Appellant that he was denied a fair hearing because a particular witness failed to appear is also contradicted by the record. It is clear that the Appellant rejected a proffered continuance to secure the attendance of the witness, expressly telling the hearing officer to proceed with closing arguments and a decision. TR II p.8. The Appellee also correctly asserts that no indication in the record suggests any prejudice to the Appellant resulted from the absence of the purported witness.

Appellant's next argument that he was denied a fair hearing, apparently on the theory that the hearing officer "failed to investigate certain matters," is also unsubstantiated. While hearing officers have a statutory duty to question

parties and witnesses in order to ascertain relevant facts to fully and fairly develop the record, R.C. §4141.281(C)(2), it is clear from the materials before the court that the hearing officer fulfilled that duty. It is beyond the scope of the hearing officer's duty to "present or establish" a party's case. *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103 (11th Dist. 1997). *Butalko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07 MA 124, 2008-Ohio-1061. The Appellant's additional claim regarding the quality of evidence relied upon by the hearing officer is likewise not well taken. Under §4141.281(C)(2), hearing officers are not bound by the formal rules of evidence or procedure and, in any event, such evidentiary claim is clearly waived by the conduct and subsequent behavior of the Appellant at the hearing.

The Appellant's final volley of arguments relates to a claim that his conduct was protected by a federal statute or the United States Constitution. Clearly any claim that the employer's action amounted to an unfair labor practice is not properly before this court in an Administrative Appeal under Chapter 4141 of the Ohio Revised Code. Such issues are clearly subject to the purview of the National Labor Relations Board under federal law. The document of preemption prohibits this court's consideration of such claims. Similarly, a claim that the Appellant's speech and/or behavior were protected under the First Amendment are without merit and demonstrate a fundamental misunderstanding of the First Amendment. No state action is implicated in the Defendant's discharge from private employment.

Based on all the foregoing and upon the record submitted on appeal, it is clear that the decision of the Unemployment Compensation Review Commission is not unlawful, not unreasonable, nor is it against the manifest weight of the evidence. The decision of the review commission is supported by competent credible evidence in the record on appeal. It is the judgment of the court, therefore that the decision of the Ohio Unemployment Review Commission is affirmed. Costs to the Claimant-Appellant.



Joseph N. Schmenk
JUDGE

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TO THE CLERK:
Serve all parties with
Notice and Date of this
Judgment per the provisions
of CIV.R. 5(B)
JUDGE