

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

OMAR FAROOQ AHMAD MD PC, :
Appellant, : Case No. 16CVF-001896
vs. : JUDGE SCHNEIDER
OHIO DEPARTMENT OF JOB AND :
FAMILY SERVICES, et al., :
Appellees. :

**DECISION AND JUDGMENT ENTRY AFFIRMING THE DECISION OF
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION ISSUED
ON JANUARY 27, 2016**

AND

**DENYING THE DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES' MOTION FOR JUDGMENT ON THE RECORD (FILED ON MAY
17, 2016**

AND

**SUA SPONTE TREATING APPELLANT'S NOTICE OF APPEAL FILED ON
FEBRUARY 23, 2016 AS APPELLANT'S BRIEF, APPELLEE DIRECTOR'S
MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE
RECORD AS APPELLEE'S BRIEF AND APPELLEE SARLAK'S REPLY TO
MEMORANDUM IN OPPOSITION TO MOTION FOR JUDGMENT ON THE
RECORD AS APPELLEE SARLAK'S BRIEF**

AND

NOTICE OF FINAL APPEALABLE ORDER

SCHNEIDER, JUDGE

This matter comes before this court upon an appeal pursuant to R.C. § 4141.282(H) from a January 27, 2016 Decision of the Unemployment Compensation Review Commission ("Commission").

On February 23, 2016, Appellant Omar Farooq Ahmad MD PC dba Chesapeake Retina Centers filed a lengthy Notice of Appeal. On May 17, 2016, Appellee Director, Ohio Department of Job and Family Services ("ODJFS") moved this court for judgment on the record based upon Appellant's failure to file his brief in support of the appeal

according to the briefing schedule established by the court. Appellant responded by asserting that his brief was contained within his Notice of Appeal. Appellee ODFJS then requested that the arguments set forth in its memorandum in support of its motion for judgment on the record be deemed Appellee's brief. Likewise, Appellee Jacqueline Sarlak asked the court to deem her reply to the memorandum in opposition to the motion for judgment on the record to be Appellee Sarlak's appellate brief.

The court finds that the parties' requests have merit and grants the requests. The court will consider the arguments contained within Appellant's Notice of Appeal to be Appellant's brief. The court will consider the arguments contained within the motion for judgment on the record to be Appellee ODFJS's brief. The court will consider the arguments contained within the reply to the memorandum in opposition to the motion for judgment on the record to be Appellee Sarlak's brief.

I. STATEMENT OF THE CASE AND FACTS

Appellee Jacqueline Sarlak was employed by Appellant Omar Farooq Ahmad MD PC from July 7, 2014 until May 7, 2015 as a medical biller. Hrg. Trans., p. 5, 14-15. In this position, Ms. Sarlak was required to collect payment from Appellant's patients who had a past due balance with Appellant. Ms. Sarlak worked in a cubicle behind the reception desk. Hrg. Trans., p. 6-7.

In January of 2015, Appellee Sarlak was talked to by the office manager about her tone of voice with patients and being too loud. Sarlak was also not getting along with a co-worker and she was told that they needed to work it out.

On April 28, 2015, Appellee Sarlak was advised that a patient had complained about her collection demeanor. Ms. Sarlak denied the allegations and no form of

discipline was issued/administered by Appellant. Hrg. Trans., p. 12. In early May of 2015, Appellee Sarlak talked to the patient while at the office about a past due account. When she was informed by the patient that she could not make a payment on the bill or pay the balance, Appellee Sarlak requested that the patient complete a hardship letter as per her employer's policy. Hrg. Trans., p. 11. Ms. Sarlak did not believe that the patient was upset by the request. *Id.* p. 16.

Nonetheless, on May 7, 2015, Appellant received a call from the patient complaining that Appellee Sarlak had asked her to make a payment in a rude and aggressive manner. *Id.* p. 8. Appellant discharged Appellee Sarlak that same day. *Id.* p. 10-15.

Appellee Sarlak applied for unemployment compensation benefits on May 26, 2015. On August 4, 2015, Appellee ODJFS issued a Redetermination that Appellee Sarlak was discharged for just cause and not eligible for benefit. Appellee Sarlak appealed the decision and the case was transferred to the Unemployment Compensation Review Commission.

A telephone hearing was held on September 9, 2015. On September 23, 2015, the Hearing Office issued a decision reversing the Redetermination of August 4, 2015 and finding that Ms. Sarlak's termination was without just cause. On October 8, 2015, Appellant sought review by the Commission and another hearing was held on November 23, 2015. On January 27, 2016, a second Hearing Office issued a decision affirming the prior Hearing Officer's decision from September 23, 2015 and denying Appellant's review. Appellant then appealed to this Court on February 23, 2016.

II. LAW AND ARGUMENT

Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this court must affirm the commission's decision 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, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). The court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission's province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696.

Indeed, the Hearing Officer and the Review Commission are primarily responsible for the factual determinations and for the judging of the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 162 (1983). If an employer has been reasonable in finding fault on behalf of the employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

Consequently, it is the duty of this court to determine whether the decision is supported by the evidence in the record. *Tzangas* at 696; *Irvine* at 18. "If some competent, credible evidence supports the commission's decision, then the court must affirm the decision." *Moore v. Ohio Unemp. Comp. Rev. Comm.*, 2012-Ohio-1424, ¶ 20. A court cannot reverse the commission's decision merely because reasonable minds

might reach different conclusions based on the evidence in the record. *Id*; *Tzangas* at 697; *Irvine* at 18. Moreover, when evaluating whether the decision is supported by the evidence, “[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the commission].” *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988). As a result, this Court will defer to the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski, supra* at 162.

III. THE COURT’S FINDINGS AND CONCLUSIONS

A review of the record on appeal shows that both Appellant (via his witness Crystal Nicely) and Appellee Sarlak offered testimony at the September 9, 2015 hearing before the Commission. In her Decision of September 23, 2016, the Hearing Officer began by noting that the parties offered conflicting testimony with regard to the underlying facts and circumstances of claimant’s separation, including whether or not there were prior warnings as well as with regard to the final incident. The Hearing Officer went on to find that while Appellant alleged or asserted that Ms. Sarlak received all of the verbal warnings and continued to be rude to patients, Ms. Sarlak denied the allegations about being rude to patients and claimed she was not aware her job was in jeopardy or that the conversations with Appellant were somehow disciplinary in nature.

As a result, the Hearing Officer evaluated the factual evidence and made determinations about the credibility of the witnesses as well as the weight of the evidence. In doing so, the Hearing Officer found that Appellant had failed to establish that Ms. Sarlak was rude to the patients or disregarded company policy. The Hearing Officer noted that Appellant’s representative admitted that it was Ms. Sarlak’s job to

request payment forms from patients when they had overdue accounts and that she was merely doing her job when she requested payment from a patient. The Hearing Officer also made the factual determination that there was no evidence presented that Ms. Sarlak was rude to the patient during the final incident that lead to her discharge. Consequently, the Hearing Officer found that while Appellee Sarlak may not be a pleasant person to get along with at work, this was not just cause for her termination. *See* September 23, 2015 Decision, p. 4 of 6.

Likewise, after the re-hearing on November 23, 2015, a second Hearing Officer affirmed the first Hearing Officer's decision in a Decision mailed on January 27, 2016, based on similar findings. He found that although Appellant received three complaints from patients about Appellee Sarlak, she was in a job that by its nature causes stress for individuals and that she did not intend to offend the patients. He found that Appellee Sarlak was trying to do her job and that being loud and abrupt was not sufficient evidence to create just cause for discharge. *See* January 27, 2016 Decision, p. 4 of 6.

In his Notice of Appeal, Appellant argues that Ms. Sarlak had poor work performance issues in addition to acting in an insubordinate fashion and causing the business to lose customers. Appellant filed several documents as exhibits to his notice of appeal in support of these allegations. These documents were not offered as evidence at the hearings before the Commission and there was virtually no testimony on these issues given by Ms. Nicely. Essentially, Appellant asks this court to re-weigh the evidence, re-judge the credibility of the witnesses and to make different factual determinations.

As noted above, when reviewing a decision of the Commission, this court is not permitted to make factual findings or determine the credibility of witnesses, as factual

questions remain solely within the commission's province. *Williams*, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696. In this case, based upon the evidence, the Hearing Officers resolved the factual issues and disputes surrounding the discharge of Ms. Sarlak, to which this court must defer. *Angelkovski, supra* at 162. The Hearing Officers properly exercised discretion by giving more weight to the testimony of Ms. Sarlak rather than Appellant's witness, Crystal Nicely. Upon full review of the certified record and evidence offered, the court finds the Commission's January 23, 2016 Decision is supported by the facts and is lawful. It is not for this court to substitute its judgment on the facts for the Commission. Therefore, this court affirms the Commission's Decision.

DECISION

Based on the foregoing, and upon a review of the record, this court concludes that there is reliable, probative and substantial evidence supporting the January 27, 2016 Decision of the Unemployment Compensation Review Commission. Moreover, this court concludes that the Commission's Decision is in accordance with law. The January 27, 2016 Decision of the Unemployment Compensation Review Commission is hereby **AFFIRMED**. Appellee Director, Ohio Department of Job and Family Services' Motion for Judgment on the Record filed on May 17, 2016 is hereby **DENIED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the

judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY.

THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

Electronic notification to counsel and parties.

Franklin County Court of Common Pleas

Date: 08-11-2016
Case Title: OMAR FAROOQ AHMAD MD PC -VS- JACQUELINE SARLAK
ET AL
Case Number: 16CV001896
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 16CV001896

Case Style: OMAR FAROOQ AHMAD MD PC -VS- JACQUELINE SARLAK ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0018962016-05-1799970000
Document Title: 05-17-2016-MOTION - DEFENDANT: OHIO STATE DEPT JOB AND FAMILY SERVICES - MOTION FOR JUDGMENT ON THE RECORD
Disposition: MOTION DENIED