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

YOUNG WOMENS CHRISTIAN ASSOCIATION OF DAYTON OHIO, INC., Plaintiff(s), -vs- OHIO DEPARTMENT OF JOB AND FAMILY SERVICES et al, Defendant(s).	CASE NO.: 2016 CV 02025 JUDGE DENNIS J. ADKINS **DECISION, ORDER, AND ENTRY SUSTAINING ADMINISTRATIVE APPEAL**

This matter is before the Court on a *Notice of Appeal*, filed by the Young Women's Christian Association of Dayton, Ohio, Inc. ("Appellant") on April 19, 2016. On June 27, 2016, Appellant filed *Plaintiff-Appellant's Merit Brief* ("*Appellant's Brief*"). On July 21, 2016, the Director of the Ohio Department of Job and Family Services ("Appellee ODJFS") filed *Brief of Appellee, Director, Ohio Department of Job and Family Services* ("*Appellee ODJFS's Brief*"). On August 5, 2016, Appellant filed *Plaintiff-Appellant's Reply Brief* ("*Appellant's Reply*"). This matter is now properly before the Court and, for the reasons contained herein, the Court **SUSTAINS** Appellant's *Administrative Appeal.*

I. Facts and Procedural History

In its *Notice of Appeal*, Appellant states that it is appealing a decision by the State of Ohio Unemployment Compensation Review Commission ("Appellee UCRC"), finding that Appellant's former employee, Paula M. McLaughlin, was entitled to receive unemployment benefits following her termination. *Notice of Appeal* at 2. According to Appellant, Appellee UCRC erroneously found that Ms. McLaughlin had been terminated "without just cause in connection with work." *Id.* Appellant maintains that Ms.

McLaughlin knowingly violated Appellant's policies and procedures and, as a result, there is just cause to deny Ms. McLaughlin's receipt of unemployment benefits in this matter. *Id.*

In *Appellant's Brief*, it contends that Ms. McLaughlin was hired as a Special Events and Communications Manager on November 7, 2014, and was terminated on October 21, 2015. *Appellant's Brief* at 2. During her employment, Ms. McLaughlin exhausted her 120 hours of paid time off, and used an additional 46 hours of approved paid time off. *Id.* On either October 14, 2015 or October 15, 2015, Ms. McLaughlin asked to take off work on October 16, 2015. *Id.* Ms. McLaughlin was advised that this request could not be approved because she had a negative paid time off balance. *Id.* Ms. McLaughlin proceeded to take her request to the Human Resources Manager, who also denied her request because of the time Ms. McLaughlin had already taken off that year. *Id.* at 3. According to Appellant, Ms. McLaughlin reported to work on October 16, 2015, but she left at approximately 9:30 a.m., without getting permission. *Id.* Ms. McLaughlin returned to work on October 19, 2015, and was terminated on October 21, 2015. *Id.* at 4. Appellant notes that its Code of Conduct prohibits unauthorized absences, as well as insubordination, and either offense can result in immediate discharge. *Id.* Appellant further states that Ms. McLaughlin received a copy of the Code of Conduct at the beginning of her employment, and Ms. McLaughlin confirmed that she knew her absence on October 16, 2015 was not authorized. *Id.*

Although Appellee ODJFS determined that Appellant had just cause to terminate Ms. McLaughlin, Appellee UCRC reversed this determination on March 1, 2016. *Id.* at 5. On March 14, 2016, Appellant requested a review of Appellee UCRC's decision, and that request was denied on March 30, 2016. *Id.* In the instant appeal, Appellant asserts that Appellee UCRC's decision is contrary to law and against the manifest weight of the evidence. *Id.*, generally. Specifically, Appellant argues that Ms. McLaughlin was insubordinate and knowingly absent from work without permission. *Id.* at 8. Further, Appellant notes that Ms. McLaughlin admitted that she was "aware of the policy stating that she was subject to *immediate* termination for an unauthorized absence or insubordination." *Id.* at 10. Consequently, Appellant requests that the Court reverse the decision issued by Appellee UCRC, and deny unemployment benefits to Ms. McLaughlin. *Id.*

Conversely, in *Appellee ODJFS's Brief*, it asserts that Ms. McLaughlin was terminated "without just cause in connection with work." *Appellee ODJFS's Brief* at 1. According to Appellee ODJFS, Ms.

McLaughlin was fired because of confusion regarding whether Appellant had a flextime policy. *Id.* at 2. Further, Appellee asserts that Ms. McLaughlin's request to take off work on October 16, 2015 had been approved by her immediate supervisor a week prior, and that it was customary for Appellant's employees to take a day off after working excessive hours leading up to an event. *Id.* Appellee also states that Ms. McLaughlin was not warned that leaving work on October 16, 2015 could result in termination of her employment. *Id.* at 8. Based upon these assertions, Appellee ODJFS argues that Ms. McLaughlin never demonstrated unreasonable disregard for Appellant's interests and, in fact, Ms. McLaughlin attempted to speak with her supervisors about their concerns, in an effort to abide by Appellant's policies and procedures. *Id.* According to Appellee ODJFS, Ms. McLaughlin's actions did not constitute insubordination that would require termination, and the Court must give deference to Appellee UCRC's determination of the credibility of witnesses. *Id.* at 9. Therefore, Appellee ODJFS requests that the Court should affirm Appellee UCRC's decision. *Id.* at 10.

Finally, in *Appellant's Reply*, it contends that, contrary to Appellee ODJFS's assertion that Ms. McLaughlin was terminated because of confusion about the existence of a flextime policy, she was actually terminated because "she left work knowing that her request to take time off was not approved." *Appellant's Reply* at 2. Further, Appellant argues that it is not customary for someone who has worked excessive hours leading up to an event to take a day off. Appellant acknowledges that this does happen sometimes; however, that decision is based upon the needs of the organization and the employee's prior use of paid time off. *Id.* at 2-3. In addition, Appellant argues that Ms. McLaughlin has admitted fault, which makes Appellee ODJFS's credibility arguments irrelevant. *Id.* at 5. Consequently, Appellant reiterates its request that the Court reverse Appellee UCRC's decision. *Id.* at 6.

II. Law and Analysis

A. Standard of Review

Pursuant to R.C. 4141.281(A), a party may appeal a determination of unemployment benefit rights or a claim for benefits determination. "Within twenty-one days after receipt of the appeal, the director of job and family services shall issue a redetermination or transfer the appeal to the unemployment compensation review commission. A redetermination under this section is appealable in the same manner as an initial determination by the director." R.C. 4141.281(B).

Once the Review Commission has sent a final decision to all interested parties, any party may appeal the decision to the Court of Common Pleas within thirty days. R.C. 4141.282(A). Ohio's Revised Code mandates that the Court of Common Pleas shall hear appeals from administrative decisions on the certified record of the Commission. The court shall reverse, vacate, modify or remand the decision of the Commission only if that court "finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282(H). This strict standard of review was emphasized in *Tzangas, Plakas & Mannos, Attorneys v. Ohio Bureau Of Employment Services*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995).

The Court may not reverse the decision of the Review Commission just because reasonable minds may have reached a different conclusion. *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App. 3d 151, 2008-Ohio-301, 891 N.E.2d 348 (2008). As the trier of fact, the Review Commission is vested with the power to access the evidence and determine the believability of the witnesses. Therefore, the Court should give deference to the Review Commission's determination of factual issues that relate to the weight of conflicting evidence and credibility of witnesses. *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159, 162; *Budd Co. v. Mercer* (1984), 14 Ohio App.3d 269.

B. Administrative Appeal

R.C. 4141.29 governs unemployment compensation benefits and the eligibility and qualification for those benefits and provides, in relevant part, that:

> (D) … no individual may … be paid benefits under the following conditions:
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> ***
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> (2) For the duration of the individual's unemployment if the director finds that:
> (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.]

R.C. 4141.29(D)(2)(a). The Ohio Supreme Court has noted the following on the "just cause" determination:

> In *Irvine, supra*, this court stated that "[t]raditionally, 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* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists "'to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened

> concepts of this modern day.'" (Internal citation omitted.) "'The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.'" (Internal citation omitted.) Thus, while a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.
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> The 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 is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.
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> While this court did hold in *Irvine* that "the determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case," *Irvine* at 17, 19 OBR at 15, 482 N.E.2d at 590, that does not compel the appellate court's abandonment of fault-based just cause analysis in favor of a "totality of the circumstances" examination. Instead, *Irvine* recognizes that the question of fault cannot be rigidly defined, but, rather, can only be evaluated upon consideration of the particular facts of each case. If an employer has been reasonable in finding fault on behalf of an 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.

Tzangas, Plakas & Mannos, 73 Ohio St.3d at 697-698.

Upon review, the Court finds that Appellant had just cause to terminate Ms. McLaughlin for several reasons. First, the Court notes that Appellant's Code of Conduct specifically states that "[u]nauthorized absence from workstation during the workday or abandoning one's job" may constitute grounds for immediate discharge. Further, pursuant to Ms. McLaughlin's testimony, she had access to the Code of Conduct and understood Appellant's policies. Moreover, Ms. McLaughlin specifically testified that she knew about the provision that allowed Appellant to terminate employees for insubordination and unauthorized absence, and further admitted that her absence on October 16, 2016 was not approved.

Next, the Court finds that Appellee ODJFS's assertion that Appellant had an informal policy of allowing employees to take a day off after working excessive hours lacks merit. Specifically, Ms. McLaughlin's supervisor testified that there are certain occasions where an employee will be allowed to take a day off, following an excessive amount of work leading up to an event; however, she also testified that this is based upon the current needs of the organization, and depends completely on the specific circumstances surrounding the request and the employee at issue. The Court notes that there was no credible evidence presented to indicate that Appellant ever had any flextime policy in place, or that Ms. McLaughlin should

have reasonably assumed that she would be given the date of October 16, 2015 off. Based upon the record and testimony in this matter, Ms. McLaughlin had negative 46 hours of paid time off when she asked to take off work on October 16, 2015, and her supervisor testified that Ms. McLaughlin had just taken a two week leave from work in the two months leading up to October 16, 2015. Consequently, it appears reasonable to the Court that Ms. McLaughlin would be expected to come to work on October 16, 2015.

Finally, the Court finds that Appellee ODJFS's argument that Ms. McLaughlin received prior permission from her supervisor to take off on October 16, 2015 is not credible. Although Ms. McLaughlin stated that her supervisor verbally approved her request to take off work on October 16, 2015, Appellant credibly notes that Ms. McLaughlin failed to raise this assertion when she was terminated, nor did she refer to this alleged prior approval in her subsequent e-mail to the Human Resources Manager, asking her to detail the grounds for Ms. McLaughlin's termination. Rather, Ms. McLaughlin's supervisor credibly testified that she advised Ms. McLaughlin that her request to take October 16, 2015 off from work would not be approved and, if she left without authorization, her supervisor did not know what type of disciplinary action would be taken. The Court acknowledges that, generally, Appellee UCRC's credibility determinations would be given deference; however, here, Appellee UCRC found Ms. McLaughlin to be credible in spite of testimony and documentation that directly contradicted her claims. Specifically, in an e-mail sent to the Human Resources Manager following her termination, Ms. McLaughlin asked for a detailed explanation for her termination. The Human Resources Manager replied, indicating that Ms. McLaughlin's initial request could not be approved because of her negative paid time off balance, and further stating that Ms. McLaughlin's absence on October 16, 2015 was unauthorized. There was no reference to any claim that Ms. McLaughlin's supervisor had approved her request for time off, or any confusion about the existence of a flextime policy. As a result, it is clear to the Court that Ms. McLaughlin's testimony lacks credibility, and reasonable minds could not differ in that regard.

III. Conclusion

Based upon the foregoing, the Court finds that Appellant had just cause to terminate Ms. McLaughlin's employment, and the termination was in connection to Ms. McLaughlin's work. Moreover, the Court finds that Appellee UCRC's decision is unlawful, unreasonable, and against the manifest weight of the evidence. Therefore, the Court **SUSTAINS** Appellant's *Administrative Appeal.*

SO ORDERED:

JUDGE DENNIS J. ADKINS

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So Ordered