

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COLUMBUS FAIR AUTO ACTION, INC.,

Case No: 16CVF-07-6686

Appellant,

JUDGE REECE II

-vs-

DENNIS E. BOOTH, ET AL.,

Appellees.

DECISION AND ENTRY

AFFIRMING THE DECISION DISALLOWING REQUEST FOR REVIEW AS MAILED
ON JUNE 30, 2016

REECE, JUDGE

The above-styled case is before the Court on Columbus Fair Auto Auction, Inc.'s (Appellant) appeal from the June 30, 2016 Decision Disallowing a Request for Review issued by the Unemployment Compensation Review Commission (Commission). The Appellant named the Ohio Department of Jobs and Family Services (Appellee), and the Appellant's former employee Dennis E. Booth. The Appellant filed its Brief on September 26, 2016. The Appellee filed its Brief on October 7, 2016. The Appellant filed its Reply Brief on October 17, 2016. Mr. Booth has yet to move or plead.

For the reasons that follow, this Court **AFFIRMS** the Commission's Decision of June 30, 2016 that disallowed the request for review.

I. STATEMENT OF THE CASE:

Appellant filed a Notice of Appeal with this Court. The Notice of Appeal asserted that the Commission's Decision of June 30, 2016 was in error. The Appellant asserted that Mr. Booth was in fact fired for cause and therefore the Commission should have not adopted the findings of the Hearing Officer. Instead the Commission issued its June 30, 2016 decision disallowing the request for further review.

II. STATEMENT OF THE FACTS:

Mr. Booth was hired by the Appellant on May 19, 2015. Mr. Booth was hired as the general manager for the Appellant's body shop. Mr. Booth was let go in November of 2015.

Mr. Booth filed for unemployment benefits on November 29, 2015. On January 28, 2016 the Director issued a Redetermination that disallowed Mr. Booth's application. The Redetermination held that Mr. Booth had been terminated for just cause. Mr. Booth, on February 18, 2016 filed an appeal from that Redetermination.

Due to the appeal, the matter was transferred to the jurisdiction of the Commission. On April 4, 2016 a hearing was held before a Hearing Officer. The Appellant and Mr. Booth appeared. On April 19, 2016 the Hearing Officer issued her Decision that reversed the Director and held that Mr. Booth was not fired for cause and therefore, he was entitled to benefits. The Hearing Officer stated:

The employer failed to provide reliable, substantial and probative evidence that claimant intentionally disregarded company policy or that his conduct was so severe to warrant discharge. Claimant had no previous written warnings regarding not managing employees properly. He admitted that he was told verbally in September of 2015 not to discipline employees in public and he had not received any further discipline regarding this matter.

Claimant had problems with Ms. Campana and had reported that to management as well as his supervisor. Ms. Campana was not available for testimony and her account of the final incident is not credible as she was ultimately discharged for similar conduct. Further, the employer let Ms. Campana's mother perform the investigation which appears biased in nature and since Ms. Zeek was also not available to testify, it could not be determined if the investigation was fairly conducted.

The employer did not present sufficient evidence to establish that claimant created a hostile work environment, refused to perform specific work duties (insubordinate) or filed a retaliatory complaint (as his allegations against the other employee were not disputed, it was only alleged that he filed his complaint late). Furthermore, claimant's supervisor testified that he did not have any problems with claimant's performance and claimant was provided with no written warnings prior to discharge. Finally, both claimant's supervisor and claimant were merely told that the company was making a management change and were not told he [claimant] was discharged

for any of the above allegations. Although it may have been a good business decision to discharge claimant it was not a just cause discharge.

Appellant appealed that decision to the Commission. The Commission issued its Decision Disallowing Request for Review on June 30, 2016. The Appellant filed its appeal with this Court.

The parties have briefed the issues. This matter is ready for review.

III. STANDARD OF REVIEW:

R.C. §4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. Please note the following:

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. R.C. §4141.282(H)

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission’s decision was supported by some competent and credible evidence. Id. The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer's determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence.

Angelkovski v. Buckeye Potato Chips, Id., at 162.

In regard to the right to unemployment compensation, the following is applicable to the issues raised in this appeal:

The Act's existence is not to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, the employee is directly responsible for his own predicament, and such fault separates the employee from the Act's intent and the Act's protection. *Scouler v. Ohio Dept. of Family Servs.*, 2007-Ohio-2650

Finally, the existence of 'just cause' is at issue in this appeal. Just cause "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."

Irvine v. Unemployment Comp. Bd. of Review (1995), 19 Ohio St.3d 15 1t 17. Just cause must be determined on a case by case basis." *Id.*

From within this framework, this Court will render its decision.

IV. ANALYSIS:

This Court has reviewed the Briefs and has also reviewed the certified record. The testimony and evidence indicated that there existed competing evidence as to what transpired at Appellant's business relating to the termination of Mr. Booth. The Appellant claimed that Mr. Booth was in fact fired while Mr. Booth and Mr. Varvel testified that Mr. Booth was not asked to return to work due to a business decision. Furthermore, the Hearing Officer heard testimony that the Appellant had a program of progressive discipline that was not followed by the Appellant. The Hearing Officer also heard from Mr. Booth's supervisor who indicated that said individual had no problem with Mr. Booth's work.

Complicating matters was the interfamily nature of the Appellant's witnesses. The

evidence established that on September 8, 2015 Mr. Booth gave a written warning to Ms. Campana. Ms. Campana was an employee supervised by Mr. Booth. Mr. Booth had another private meeting with Ms. Campana concerning the poor quality of her work on November 12, 2015. After that meeting Ms. Campana complained to Ms. Zeek about how Mr. Booth handled the November 12, 2015 meeting. At that time Ms. Zeek was Appellant's HR coordinator. Ms. Zeek was also Ms. Campana's mother. Ms. Zeek then investigated the allegations on behalf of her daughter.

The Hearing Officer clearly decided that the testimony of Mr. Booth and Mr. Varvel was more credible than the Appellant's reliance upon an investigation conducted by someone's mother. The Hearing Officer merely judged Mr. Booth's evidence to be more credible. As noted *supra*, it is not this Court's role to replace the credibility findings of the Hearing Officer.

Appellant's argument – stripped down to its basic point – was that the Hearing Officer should have believed its evidence over the evidence produced by Mr. Booth. The Appellant did not establish that the Hearing Officer based her decision on systemically unreliable evidence or material inconsistent evidence. The Hearing Officer just did not believe Appellant's facts as much as she did Mr. Booth's.

The Hearing Officer came to the conclusion that Mr. Booth's version of the facts and his evidence was more credible than the testimony and evidence produced by the Appellant. As such the Hearing Officer's Decision is supported by the law and the evidence. Therefore, there was no error in the Commission's decision not to review the matter further.

The Commission's decision to disallow further review is **AFFIRMED**.

V. DECISION:

The Commission's Decision to disallow further review, as mailed June 30, 2016 is lawful, reasonable and supported by the evidence. It is **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER

Judge Guy Reece II

Copies to:

ADAM E CROWELL
5123 NORWICH ST
HILLIARD, OH 43026
Counsel for the Appellant

ALAN P SCHWEPE
30 EAST BROAD STREET
26TH FL
COLUMBUS, OH 43215-3428
Counsel for the Appellee Director, ODJFS

DENNIS E BOOTH
21292 FIVE POINTS PIKE
WILLIAMSPORT, OH 43164
Appellee pro se

Franklin County Court of Common Pleas

Date: 10-26-2016

Case Title: COLUMBUS FAIR AUTO AUCTION INC -VS- DENNIS E BOOTH
ET AL

Case Number: 16CV006686

Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature "Guy L. Reece, II" is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT", "FRANKLIN COUNTY OHIO", "1800", and "ALL THINGS ARE POSSIBLE".

/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 16CV006686

Case Style: COLUMBUS FAIR AUTO AUCTION INC -VS- DENNIS E
BOOTH ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes