

FILED
COMMON PLEAS COURT

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IN THE COMMON PLEAS COURT OF MEIGS COUNTY, OHIO

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BARRY E AMES
Plaintiff

DEPT. OF
JOB & FAMILY SERVICES
DIRECTORS OFFICE

DIANE LYNCH
CLERK OF COURTS
MEIGS COUNTY, OHIO

vs

Case No. 16-CV-002

DIRECTOR OH DEPART.OF JOBS
AND FAMILY SERVICES et al
Defendant

DECISION/ENTRY

V251
P469

Appellant Barry Ames brings this action pursuant to R.C. 4141.282 as an appeal of a final decision of the Unemployment Compensation Review Commission, Hearing Officer Decision UCO No. 1611472000-0000, mailed on December 11, 2015.

Mr. Ames worked at Brothers Masonry beginning approximately July 1, 2015. (Review Commission File, November 19, 2015 Transcript P. 7). He separated from the employer on or about September 11, 2015. (Id.) Mr. Ames filed for Unemployment Compensation benefits, which were denied in an initial determination on October 8, 2015. (Director's File, Determination of Unemployment Compensation Benefits, 10/8/2015). After a subsequent appeal, this matter was transferred to the Unemployment Compensation Review Commission. (Notice that an Appeal Has Been Transferred by the Director to the Review Commission, November 6, 2015).

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A telephonic hearing was conducted on November 9, 2015, where Mr. Ames participated, but Brothers Masonry did not. (TR. 1). A decision denying benefits was issued on November 23, 2015. (Decision, 11/23/15). Mr. Ames timely filed a request for review, which was subsequently disallowed. (Decision Disallowing Request for Review, 12/11/2015).

R.C. 4141.282 (H) specifies the standard of review to be applied by this Court in appeals from decisions of the Review Commission. It states, in pertinent part, as follows: “If the Court finds the decision of the Commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the Commission. Otherwise, the Court shall affirm the decision of the Commission.”

In Tzangas, Plakas, & Mannos v. Ohio Bur. Of Emp. Serv. (1995), 73 Ohio St.3d 694, 697, the Ohio Supreme Court specified 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.” See also Francis v. Ohio Department of Job & Family Services, 2011-Ohio-2897, paragraph 19.

The determination of factual questions is primarily a matter for the hearing officer and the Review Commission. Brown-Brockmeyer Co. v. Roach (1947), 148 Ohio St. 511. As the trier-of-fact, the Review Commission and its hearing officer

are vested with the power to review the evidence and believe or disbelieve the testimony of the witnesses. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [review commission’s] decision’.” Roberts v. Hayes, supra, citing Irvine v. State of Ohio Unemp. Comp. Bd. Of Rev., (1985), 19 Ohio St. 3d 15, 18. If some credible evidence supports the commission’s decision, the reviewing court must affirm. C.E. Morris v. Foley Construction Co. (1978), 54 Ohio St. 2d 279. This court must defer to the Review Commission’s determination of purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence. Angelkovski v. Buckeye Potato Chips (1983), 11 Ohio App.3d 159, 162.

R.C. 4141.29(D)(2)(a) provides that no person shall be eligible for unemployment compensation benefits if “[h]e quit his work without just cause or has been discharged for just cause in connection with his work * * *.” Irvine v. Unemployment Comp. Bd. Of Rev., (1985), 19 Ohio St.3d 15, 16, 19 OBR 12, 482 N.E.2d. 587. The claimant has the burden of proving his entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work. Irvine, supra; Shannon v. Bur. Of Unemp. Comp. (1951), 155 Ohio St. 53, 97 N.E.2d 425 [44 O.O. 75]; Canton Malleable Iron Co. v. Green (1944). 75 Ohio App. 526, 62 N.E.2d 756 [31 O.O. 304]. “[T]here is, of course, not a slide-rule definition of just cause. Essentially,

each case must be considered upon its particular merits. Traditionally, just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine, supra* at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751, 73 O.O.2d.8.

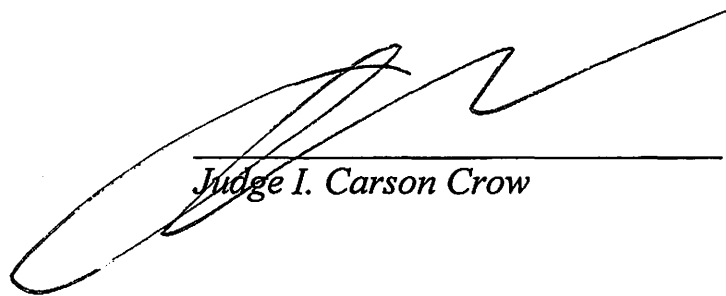
The determination of just cause depends upon the unique factual considerations of the particular case. Determination of purely factual questions is primarily within the province of the Hearing Officer and the Review Commission. Upon appeal, a court may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511, 518, 76 N.E.2d 79, 36 O.O. 167. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision. *Craig v. Bur. Unemp. Comp.* (1948), 83 Ohio App. 247, 260, 83 N.E.2d 628, 38 O.O. 356. Moreover, “[o]ur statutes on appeals from such decisions [of the board] are so designed and worded as to leave undisturbed the board’s decisions on close questions. Where the board might reasonably decide either way, the courts have **NO AUTHORITY** (my emphasis) to upset the board’s decision.” *Charles Livingston & Sons, Inc. v. Constance* (1961), 115 Ohio App. 437, 438, 185 N.E.2d 655, 21 O.O.2d 65.

The determination of just cause under R.C. 4141.29(D)(2)(a) is a factual determination. Brown v. SYSCO Food Servs. of Cincinnati, LLC (4th Dist.), 2009-Ohio-5536, 2009 WL 3359209; Wilson v. Matlack, Inc. (4th Dist. 2000), 141 Ohio App. 3d 95, 100; Shephard v. Ohio Dept. Job & Family Servs. (8th Dist.), 2006-Ohio-2313, 166 Ohio App. 3d 747; Guy v. City of Stubenville (7th Dist.), 2002-Ohio-849, 147 Ohio App. 3d 142; Maldonado v. Ohio Dept. of Job & Family Servs. (7th Dist.), 2012-Ohio 4555; Barnes v. Director, Ohio Dept. of Job & Family Servs. (11th Dist.), 2003-Ohio1883; Baron v. Dayton Civ. Serv. Bd. (2nd Dist), 2013-Ohio-4723; Johnson v. Edgewood City School Dist. Bd. of Edn. (12th Dist.), 2010-Ohio-3135, 2010 WL 2653382; Irvine, supra. Deference must be afforded to the just cause determination of the Review Commission.

The Hearing Officer made the factual determination that there was no just cause for Mr. Ames to have voluntarily quit his job. So long as there is evidence in the record to support his determination, this court **CANNOT** (my emphasis) substitute its own findings for those of the Review Commission. R.C. 4141.282. Since the record supports, the December 11, 2015 decision of the Review Commission, the court must affirm as it is lawful, reasonable, nor against the manifest weight of the evidence.

AFFIRMED.

IT IS SO ORDERED.



Judge I. Carson Crow