



Thus, the statute makes clear that the Court is limited in its reviewing capacity. For instance, in determining whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence, the Court is not permitted to make findings of fact or evaluate the credibility of witnesses; it may decide only whether the administrative decision is supported by some credible evidence. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995); *Shephard v. Ohio Dep't of Job & Family Servs.*, 166 Ohio App. 3d 747, 2006-Ohio-2313, ¶ 18, 853 N.E.2d 335 (noting that courts must "give deference to the commission in its role as finder of fact"). Accordingly, a decision of the Commission will not be overturned if it is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978). Otherwise stated, the fact that reasonable minds could come to different conclusions in reconciling and weighing the evidence is an insufficient basis for reversal. *Tzangas*, at 697; *Shephard*, 166 Ohio App. 3d at ¶ 18 ("On close questions, when the board might reasonably decide either way, [the court] ha[s] no authority to upset the agency's decision.").

### **FACTUAL BACKGROUND**

As set forth above, the Court is not permitted to interpret the factual background of the case *de novo*, but must instead defer to the Commission's findings and evaluation of the credibility of witnesses. See *Tzangas*, at 696. The Court therefore bases its factual background on the Hearing Officer's "Findings of Fact" as set forth in the September 1, 2016 Unemployment Compensation Review Commission Decision.

Appellant was employed as a staff registered nurse with Mount Carmel Health Systems from September 9, 2013 until May 11, 2016. During Appellant's employment, she received several reprimands, some oral and some written:

- On December 4, 2013, Appellant was orally advised that surgeons with whom she worked had complained about her conduct in the operating room, such as ignoring orders and improperly using her cell phone during surgery.
- A year later, on December 17, 2014, Appellant received a written reprimand for similar conduct, i.e., improperly using her cell phone, not being attentive in the operating room, and "arguing" with her colleagues. (Comm. Dec. at 3).
- In April of 2015, a "Manager's Note" outlined similar concerns. It is unclear as to whether Appellant was ever confronted about the allegations in the Note.
- On February 3, 2016, Appellant received a final written warning based on her failure to prepare for a procedure in the operating room.
- On May 11, 2016, Appellant was orally confronted by Linda Atkinson, Nurse Manager of Surgery, about two complaints she had received from Appellant's colleagues. Her colleagues complained that a week prior, Appellant had been "snide" and "uncivil." (*Id.* at 4). Appellant denied the allegations. Atkinson stated that she would investigate the matter further, but placed Appellant on administrative leave in the meantime.

Following Atkinson's "investigation"—which entailed talking to one other nurse—she spoke with Clinical Manager Erin Knisley and decided that based on Appellant's history of infractions, they "did not want to continue to work with her." (Hearing Transc. at 13). Thus, on May 12, 2016, Atkinson and Knisley called Appellant and informed her

that her employment “would be coming to an end.” (Hearing Dec. at 4). Appellant was given the option to resign in lieu of being terminated, which she did.

### **PROCEDURAL BACKGROUND**

Shortly after her resignation, Appellant filed an application for unemployment benefits with the Ohio Department of Job and Family Services (“ODJFS”). On May 25, 2016, Appellant’s initial request for benefits was allowed, as the agency found “that the claimant was discharged without just cause.” (See Initial Determination at 1). This allowance was reaffirmed on June 30, 2016. Appellant’s employer again appealed the decision, at which time ODJFS transferred jurisdiction to the Review Commission.

On August 9, 2016 and August 25, 2016, Hearing Officer Kevin Thornton conducted telephone hearings on behalf of the Review Commission. Appellant, Atkinson, and Knisley testified during the hearings. On September 1, 2016, the Review Commission notified the parties of its decision to reverse ODJFS’s allowance of benefits. Unlike the initial determination, Hearing Officer Thornton found that Appellant had been discharged for just cause. Specifically, Officer Thornton found that the “weight of the evidence” indicated that Appellant was discharged “for continued unprofessional acts and behavior, after receiving progressive discipline.” (Comm. Dec. at 4).

On September 28, 2016, the Commission denied Appellant’s request for any further review. Appellant then filed an appeal with this Court.

### **LAW & ANALYSIS**

Ohio Revised Code § 4141.29(D)(2)(a) governs the substance of this appeal. The statute provides that a claimant is not eligible for unemployment benefits if the

individual "has been discharged for just cause in connection with the individual's work[.]" R.C. 4141.29(D)(2)(a). Generally, "just cause" is anything that an ordinarily intelligent person would consider "a justifiable reason for doing . . . a particular act." *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). However, there is no strict, dispositive definition of just cause; rather, "[t]he determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case." *Id.* at 17 (noting that this evaluation is often "primarily within the province of the referee and the board"). In reviewing whether an employer had "just cause" to discharge an employee, the Court is limited to the record as certified by the review commission. *Abrams-Rodkey v. Summit Cty. Children Serv.*, 163 Ohio App. 3d 1, 2005-Ohio-4359, 836 N.E.2d 1, ¶ 32 ("[T]he trial court is limited to reviewing only what was before the review board when it came to its decision."). Finally, pertinent to the case *sub judice*, "an employee who resigns in anticipation of being discharged must be judged by the same criteria as if the discharge had actually taken place." *Parks v. Health One*, 10th Dist. No. 88AP-982, 1989 WL 88887 (Aug. 8, 1989).

Appellant argues that she was discharged without just cause for three main reasons. First, Appellant asserts that her employer failed to properly investigate the most recent complaints asserted against her. In support of her position, Appellant explains that one of the complainants had a personal vendetta against her, that Atkinson did not corroborate the other complaint preceding her dismissal, and that several other nurses use their cell phones at the hospital without reprimand. Appellant also submits two anonymous letters in support, allegedly written by colleagues on her behalf. Second, Appellant claims that Atkinson and Mt. Carmel discriminated against

her in violation of the Family Medical Leave Act. Appellant states that she had been granted partial FMLA leave to care for her daughter who has cancer. She was due to return to work full-time the day she was terminated. Finally, Appellant argues that she was unable to fully present her case to the Hearing Officer as she did not have an attorney and was unable to cross-examine witnesses or object to certain testimony.

Appellee ODJFS contends that the Commission's decision was not unreasonable, unlawful, or against the manifest weight of the evidence. ODJFS argues that the findings of fact as determined by the Hearing Officer make clear that Mt. Carmel followed its progressive discipline policy and discharged Appellant after several oral and written reprimands for unprofessional behavior. Procedurally, ODJFS objects to the Court considering Appellant's FMLA claim and anonymous letters of support, as it argues these arguments and evidence were not presented to the Commission. ODJFS also emphasizes that any disputes over the credibility of testimony presented to the Hearing Officer and corresponding findings of fact are matters upon which the Court is not permitted to base a reversal.

As correctly noted by Appellee ODJFS, the Court's review in this appeal is limited to whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). And the Court must affirm the Commission's decision if it was supported by "some competent, credible evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978). Therefore, because of this highly deferential standard, the Court cannot reverse the Commission's determination merely because it disagrees with it. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947).

Bound by the above-referenced standards, the Court finds that it must affirm the Commission's determination, as the Commission's decision was not unreasonable, unlawful, or against the manifest weight of the evidence. The determination of the Hearing Officer, who was in the best position to judge the credibility of the witnesses and weigh conflicting testimony, was supported by some competent credible evidence. Specifically, Atkinson and Knisley both testified as to the several disciplinary infractions on Appellant's record during her three years of employment with Mt. Carmel.<sup>1</sup> They also testified as to the disciplinary reprimands, warnings, and actions taken by Mt. Carmel, which appeared progressive in nature. This, the Court finds, could lead a reasonable person to conclude that Appellant was at fault and was therefore terminated with "just cause."

As for Appellant's procedural arguments, while Appellant was uncounseled, the Hearing Officer did allow her to cross-examine both witnesses, which she did, albeit not extensively. (See Transc. at 20; 12-14). Further, while the Court may agree that the timing of Appellant's return from FMLA leave and her termination was suspect, Appellant did not introduce this argument or any evidence to support it at the administrative level. Therefore, as explained above, the Court is precluded from considering it.<sup>2</sup>

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<sup>1</sup> Appellant objects to much of this testimony as "hearsay," however, stringent rules of evidence do not apply in hearings before the Commission. See *Simon v. Lake Geauga Printing Co.*, 69 Ohio St. 2d 41, 44, 430 N.E.2d 468 (1982) ("[E]vidence which might constitute inadmissible hearsay where stringent rules of evidence are followed must be taken into account in proceedings such as this where relaxed rules of evidence are applied.").

<sup>2</sup> To be clear, this finding does not preclude Appellant from pursuing FMLA discrimination claims by separate litigation.

Candidly, if the strict rules of deference did not apply here, the Court may have reached a different outcome. Nonetheless, the administrative record provides some credible evidence, i.e., testimony and a series of written reprimands that document a course of progressive discipline, to support the Hearing Officer's decision. Therefore, the Court has no option but to affirm.

### CONCLUSION

For the foregoing reasons, the Court finds the Commission's determination was supported by some competent and credible evidence. As the Court does not find the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence, the Court is required to affirm the Commission's decision.

This Entry constitutes a final, appealable order and the Court finds there is no just reason for delay.

IT IS SO ORDERED.

  
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Judge David A. Trimmer

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Pursuant to Civ.R. 58(B), the Clerk is hereby directed to serve upon all parties not in default for failure to appear, notice of this Judgment and its date of entry upon the journal. This is a final appealable order.