

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

DaVarus Cornett,		Case No. 16CV-11382
Appellant,		Judge Stephen L. McIntosh
vs.		
Director, Ohio Department of Job and Family Services, et al.,		
Appellees.		

**Decision and Judgment Entry Affirming Decision of Ohio
Unemployment Compensation Review Commission**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 4141.282 administrative appeal, by DaVarus Cornett (Appellant), from a “Decision Disallowing Request for Review” that the Ohio Unemployment Compensation Review Commission issued on November 9, 2016. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Facts and Procedural History

The facts of this case are undisputed.

On May 19, 2014, Appellant was hired by the United States Postal Service as a non-career Postal Support Employee. *Transcript of Testimony, Oct. 6, 2016 (T.) 9, 14.* As a Postal Service employee, Appellant received a copy of his employer’s Employee and Labor Relations Manual (ELM).

ELM Section 511.43 provides: “Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.”

ELM Section 665.41 provides: “Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service.”

ELM Section 665.42 provides: “Employees who fail to report for duty on scheduled days, including Saturdays, Sundays, and holidays, are considered absent without leave except in cases where actual emergencies prevent them from obtaining permission in advance. In emergencies, the supervisor or proper official must be notified of the inability to report as soon as possible. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed in a nonpay status for the period of such absence. The absence may be the basis for disciplinary action.”

ELM Section 665.6 provides: “Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in 665.”

In March 2015, Appellant was suspended from work for seven working days because he was absent without leave on February 14, 15, 16, and 17, 2015, on March 15, 2015, and on March 19, 2015. *T. 20.*

On May 24, 2016, Appellant was absent from work because his car broke down, but he did not call the Postal Service to report that he would be absent. *T. 10-11, 15.*

On May 25, 2016, Appellant was tardy reporting to work because he did not have a ride to work. *T. 10-11, 15.* Appellant did not provide the Postal Service with a reason for his tardiness. *T. 11.*

On May 26, 2016, Appellant was scheduled to work overtime at the end of his regular shift, but he left work at the end of his regular shift without notifying the Postal Service that he had done so. *T. 10-12, 15.*

On June 3, 2016, Appellant was absent from work because he did not have a ride to work. *T. 10, 12, 15-16.* Appellant did not notify the Postal Service that he would not be at work that day. *T. 12.*

On June 12, 2016, Appellant was absent from work because he did not have a ride to work. *T. 10, 12, 16.* Although Appellant called the Postal Service to report that he would not be at work that day, he provided no reason for his absence. *T. 12.*

On June 14, 2016, Appellant was absent from work because he did not have a ride to work. *T. 10, 12, 16.* Appellant did not notify the Postal Service that he would not be at work that day. *T. 12.*

On June 29, 2016, the Postal Service notified Appellant that his employment was being terminated in thirty days, because his unsatisfactory attendance violated the Postal Service's standards of conduct, as set forth in the Employee and Labor Relations Manual, quoted above. *T. 9-10, 14.*

On July 15, 2016, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning July 10, 2016.

In an initial Determination issued on August 11, 2016, ODJFS allowed Appellant's application for benefits, having determined that he was discharged from his employment without

just cause in connection with work. Pursuant to the initial Determination, Appellant began receiving benefits in the amount of \$357 per week, for the weeks ending July 23, 2016 through September 10, 2016. The Postal Service appealed the initial Determination.

While Appellant was receiving unemployment compensation benefits, his union filed a grievance as to his discharge. *T. 16*. Through the grievance process, Appellant's discharge was ultimately converted to a disciplinary suspension for the period of June 30, 2016 through October 6, 2016, when Appellant returned to work. *T. 16-17*.

In a Director's Redetermination issued on September 19, 2016, the Director of ODJFS reversed the initial Determination and disallowed Appellant's application for benefits, having determined that Appellant was discharged from his employment for just cause in connection with work. The Director further held that Appellant had been overpaid benefits in the amount of \$2,856 and ordered Appellant to repay that amount to ODJFS. Appellant appealed the Director's Redetermination to the Ohio Unemployment Compensation Review Commission.

On September 21, 2016, the Director transferred jurisdiction of Appellant's appeal to the Commission.

On October 6, 2016, a Commission Hearing Officer conducted a hearing on Appellant's appeal. Appellant testified, as did Harold Peetz, a Labor Relations Specialist for the Postal Service. *T. 8-9*. Their testimony is reflected in the recitation of facts, above.

On October 14, 2016, the Hearing Officer issued a Decision in which he rendered the following findings of fact:

Claimant was employed by the U.S. Postal Service from May 19, 2014 through June 30, 2016. He last served as a non-career postal support worker.

Claimant's supervisors became increasingly concerned with claimant's attendance. He received a suspension regarding concern with his attendance on March 25, 2016 [*sic*].

Concern with claimant's attendance continued after the issuance of the suspension. Claimant was absent on May 24, 2016 due to a lack of transportation. He was also tardy on May 25, 2016 due to transportation concerns. Claimant was absent on May 26, 2016 and June 3, 12, and 14, 2016 due to a lack of transportation. On June 30, 2016, claimant was discharged by the U.S. Postal Service due to concern with his attendance.

Claimant filed an Application for Determination of Benefit Rights on July 15, 2016. His Application was initially allowed with a weekly benefit amount of \$357.00. Claimant initially received benefits for the week ending July 23, 2016 through the week ending September 10, 2016 in the amount of \$357.00 per week.

Upon his discharge from employment with the U.S. Postal Service, claimant filed a union grievance. As of October 6, 2016, claimant returned to work with the U.S. Postal Service as a mail processing clerk. His discharge was converted to a suspension and last chance agreement.

The Hearing Officer modified the Director's Redetermination as follows:

Claimant was separated from employment with the U.S. Postal Service due to a disciplinary layoff for misconduct in connection with work. He was ineligible for benefits for the period of the disciplinary layoff, June 30, 2016 through October 6, 2016.

As this is not a disqualifying separation, his Application for Determination of Benefit Rights is no longer disallowed. His Application is allowed as noted in a prior decision from the Ohio Department of Job and Family Services. The Ohio Department of Job and Family Services will adjust charges to base period employers in accordance with this Decision.

Due to the holding of ineligibility for benefits, it must be found that claimant was overpaid benefits for the week ending July 23, 2016 through the week ending September 10, 2016 in the amount of \$2,856.00 and he is ordered [*sic*] repay that amount to the Ohio Department of Job and Family Services.

The Hearing Officer provided the following reasoning for the Decision:

Claimant was initially discharged by the U.S. Postal Service due to concern with his attendance. Claimant grieved that discharge and the discharge was converted to a suspension. Therefore, it must be found that claimant was separated from employment with the U.S. Postal Service due to a disciplinary layoff.

Claimant was subject to a disciplinary layoff from employment with the U.S. Postal Service due to concern with his attendance. The evidence and testimony presented establishes that claimant frequently missed work due to transportation concerns. These attendance concerns will serve to support the disciplinary layoff.

Given these circumstances, it must be found that claimant was ineligible for benefits for the period of the disciplinary layoff, June 30, 2016 through October 6, 2016.

On October 14, 2016, Appellant requested that the Commission review the Hearing Officer's Decision.

On November 9, 2016, the Commission issued a "Decision Disallowing Request for Review," in which the Commission declined to review the Hearing Officer's Decision.

On December 2, 2016, Appellant appealed the Commission's Decision to this Court.

Standards of Appellate Review

Revised Code 4141.282(H), which governs this appeal, provides:

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

A reviewing court may reverse the Commission's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Loughman v. Ohio Dept. of Pub. Safety*, 10th Dist. No. 15AP-473, 2016-Ohio-1086, ¶ 7. When a reviewing court applies this standard, it may not make factual findings or determine witness credibility. *Id.* Factual questions remain solely within the Commission's province. *Id.* Thus, a reviewing court may not reverse the Commission's decision simply because reasonable minds might reach different conclusions. *Id.*

In determining whether the Commission's decision is supported by the manifest weight of the evidence, a reviewing court applies the civil manifest weight of the evidence standard set forth in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279 (1978), syllabus, which holds: "Judgments supported by some competent, credible evidence going to all the essential elements

of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *Loughman*, ¶ 7.

Analysis

The purpose of Ohio’s Unemployment Compensation Act is to provide financial assistance to persons who are without employment through no fault of their own. *Kohl v. Health Mgt. Solutions, Inc.*, 10th Dist. No. 15AP-17, 2015-Ohio-4999, ¶ 17.

Revised Code 4141.29(D)(1)(b) provides that an individual is not entitled to unemployment compensation benefits for any week where the individual has been given a disciplinary layoff for misconduct in connection with the individual’s work. *Isenberg v. Aircraft Memorials, Inc.*, 11th Dist. No. 2011-T-0093, 2012-Ohio-2564, ¶ 13; *Pfeifer v. Veterans Affairs*, 4th Dist. No. 08CA781, 2009-Ohio-766, ¶ 23.

The issue in this appeal is whether the Commission’s determination, that Appellant was given a disciplinary layoff for misconduct in connection with his work, is supported by evidence in the record. Based upon the testimony of Harold Peetz and of Appellant himself, as set forth above, the Commission’s determination is clearly supported by evidence in the record. It is undisputed that the Postal Service gave Appellant a disciplinary layoff for his repeated violations of his employer’s published attendance policies.

The manifest weight of the evidence therefore supports the Commission’s determination that Appellant was given a disciplinary layoff for misconduct in connection with his work, and that he was not, therefore, entitled to unemployment compensation benefits for the weeks of his disciplinary layoff, pursuant to R.C. 4141.29(D)(1)(b).

Conclusion

Appellant has failed to file a brief in support of his appeal, in accordance with the “Clerk’s Original Case Schedule” issued on December 2, 2016. On February 17, 2017, the Director of ODJFS filed a motion for judgment on the record. The motion is unopposed, and it is hereby **GRANTED**.

Having reviewed the record certified to the Court by the Ohio Unemployment Compensation Review Commission, the Court concludes that the Commission’s November 9, 2016 “Decision Disallowing Request for Review” was not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 03-21-2017
Case Title: DAVARUS CORNETT -VS- OHIO STATE UNEMPLOYMENT
REVIEW COMMISSIO
Case Number: 16CV011382
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the center, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 16CV011382

Case Style: DAVARUS CORNETT -VS- OHIO STATE
UNEMPLOYMENT REVIEW COMMISSIO

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0113822017-02-1799980000
Document Title: 02-17-2017-MOTION - NON-PARTY: DIRECTOR
OHIO DEPARTMENT OF JOB & FAMILY - JUDGMENT ON THE
RECORD BY APPELLEE
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 16CV0113822016-12-3099980000
Document Title: 12-30-2016-MOTION TO ADD PARTY -
PLAINTIFF: DAVARUS CORNETT
Disposition: MOTION IS MOOT