

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

SCOTT WAGENBRENNER,

CASE NO: 16CVF-12-10509

Appellant,

v.

JUDGE: REECE II

OHIO STATE DEPARTMENT OF JOB
AND FAMILY SERVICES,

Appellees.

DECISION AND ENTRY
AFFIRMING THE DECISION ON REQUEST FOR REVIEW AFFIRMING
HEARING OFFICER AS MAILED ON OCTOBER 5, 2016

REECE, JUDGE

The matter before the Court is the administrative appeal filed by Scott Wagenbrenner (Appellant). The Appellant takes issue with the Decision on Request for Review Affirming Hearing Officer – mailed on October 5, 2016 - as issued by the Unemployment Compensation Review Commission (Commission) The Appellant named the Ohio Department of Job and Family Services as the Appellee. The Appellant also named his former employer. That entity has not made an appearance in this matter.

After extending the briefing schedule, the matter was fully briefed. For reasons that follow the Decision on Request for Review Affirming Hearing Officer is

AFFIRMED.

STATEMENT OF THE CASE

The Appellant filed for unemployment benefits and was initially allowed to participate. The Appellant's former employer contested the Appellant's right to participate because the employer argued that the Appellant was terminated for cause.

The Appellant was then held to have been terminated for cause and he was no longer allowed to participate. The Appellant has appealed.

FACTS

The Appellant filed an Application for Determination of Benefit Rights for a benefit year beginning June 19, 2016. On August 1, 2016, the Director issued a Redetermination disallowing claimant's application based upon the finding that claimant was discharged from his employment with Vector Security Inc., for just cause in connection with work. There was also a determination that the Appellant had been overpaid benefits in the amount of \$1,054.00, for the weeks ending July 2, 2016, and July 9, 2016, and that the Appellant must repay said amount to the Appellee.

On August 3, 2016, the claimant filed an appeal from the Redetermination. On August 4, 2016, the Appellee transferred jurisdiction to the Commission. On August 23, 2016, a hearing was held before Hearing Officer Leanne Colton, by telephone the Appellant appeared and offered his testimony. Appellant was represented at the hearing. No one appeared on behalf of Vector Security Inc.

The Appellant testified that he was a commercial sales rep for his employer. (Hr.Tr. p. 4, l. 25) The Appellant acknowledged that his employer had terminated him because he was “unable to perform my job because of my sales quota.” (Hr.Tr. p. 5, l. 9 - 12) The Hearing Officer asked him ‘when was the last time he met his quota’, and his answer established that he had not met the quota during the relevant time. (Hr.Tr. p. 5, l. 22 – 26; p. 6, l. 1 - 6) Appellant’s testimony was that he did have some additional contracts in the pipeline that would apparently allow him to make his quota.

The Appellant acknowledged his prior warnings concerning his work performance. (Hr.Tr. p. 6, l. 24 – 26; p. 7, l. 1 - 5) The Appellant also confirmed that his April, May & June numbers were below the numbers that the Appellant stated were his quota. (Hr.Tr. p. 8, l. 23 – 26; p. 9, l. 4 – 5; p. 9, l. 10 - 13) The Appellant claimed that he did not think his job was in jeopardy due to him not making his quotas. (Hr.Tr. p. 10, l. 22 - 24) He held that opinion even though he acknowledged that his last review contained the following: “it is expected that you sustain the acceptable level of performance. Failure to meet these levels will lead to further disciplinary action, up to and including termination of employment.” (Hr.Tr. p. 10, l. 9 - 14)

Appellant stated that he was aware of the quarterly quotas and that he actually missed the first quarter of 2016. (Hr.Tr. p. 14, l. 11 - 13) However the Appellant claimed that some other sales had been left out. (Hr.Tr. p. 14, l. 19 - 23) As of the date of his termination, the Appellant testified that he had only met “30-40%” of his quota for the second quarter. (Hr.Tr. p. 17, l. 11 - 14) Though the Appellant felt that he was going to be able to bring in a large amount of sales from two orders in late June 2016 – he was informed that those numbers were not going to count because it did not come out of Appellant’s ‘branch’. (Hr.Tr. p. 18, l. 11 - 19)

Following the hearing the Hearing Officer issued her Decision. The Hearing Officer determined that the Appellant was not meeting his job performance goals; that the Appellant knew that his failure to meet the performance goals could lead to his termination; that the employer had counseled him on prior occasions about the problem; and that at the time of his termination, the Appellant was behind in his performance goals.

The Hearing Officer provided the following explanation for her decision:

Here, the above findings of fact establish by a preponderance of the evidence that claimant's own conduct and actions in failing to meet his required sales quotas placed his job in jeopardy, and were contrary to the employer's interests. Specifically, claimant failed to meet his required revenue and RMR for several months. In addition, claimant had prior warnings and he was given a chance to improve. Claimant did not, however, improve, and he continued to not meet his required sales quotas. While claimant argues that he did not have the follow-up meetings noted in the April 6 warning, he also acknowledges that he knew he was not meeting his quotas for April and May. Therefore, these meetings not being held had no negative impact on claimant's knowledge that he was not meeting the required quotas. Moreover, the expectations were known, reasonable (claimant had met his sales quotas in the past), and they did not recently change in any significant or unreasonable manner. As such, claimant was sufficiently at fault to reasonably justify his discharge, and he was subject to discharge at that time pursuant to policy.

Under these circumstances, therefore, it is found that claimant was discharged for just cause in connection with work. This is a disqualifying separation. (R&R at p. 4)

Having come to the conclusion that the Appellant was not entitled to participate, the Hearing Officer also concluded that the Appellant needed to repay the benefits already received.

The Appellant appealed and that action led to the October 5, 2016 Decision that is now the subject of this appeal. This matter has been fully briefed and the issue is ready for review.

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 and the Commission’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.

This case also deals with the concept of a ‘just cause’ termination. Please note the following statutory language:

- D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:
- (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,

Just cause has been explained as follows:

"Just cause" is not defined by statute. The Supreme Court of Ohio has indicated that there is no "slide rule definition of just cause," but that the phrase could be considered "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." See *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, citing *Peyton v. Sun T.V. and Appliances* (1975), 44 Ohio App.2d 10, 12.

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

ANALYSIS OF THE APPELLANT'S ARGUMENTS

The Appellant laid out the following argument within his Brief: "There is No Evidence the Scott Was Discharged for Just Cause Because He Performed the Required Work and Met All Necessary Conditions of His Employment with Vector Security Inc." (Appellant's Brief at p. 9) However, as noted *supra*, the Hearing Officer heard evidence from the Appellant that showed he failed to meet the first quarter quota and he was failing to meet the second quarter quota when he was terminated. Hence, the decision of the Hearing Officer – adopted by the Commission – is not against the manifest weight of the evidence.

In Appellant's Reply Brief, the Appellant contested the fact that the quota at issue was quarterly. The Appellant argued that it was a yearly quota. However, at the hearing – and during direct examination by his counsel – the Appellant acknowledged that the quota was quarterly. (Hr.Tr. p. 12, l. 15 – 23)

The Appellant asked that this Court ignore the Appellant's apparent failure to meet the first quarter's quota. The Appellant asked that this Court ignore the fact that when the Appellant was terminated he had only made – in his own words – "30-40%" of his second quarter goals. Appellant concluded that the Hearing Officer and the Commission must have erred when they relied upon that evidence to find that the

Appellant was terminated for just cause. This Court will not substitute its judgment for that of the Hearing Office.

Nothing within the Appellant's Brief or Reply Brief creates a situation where the Hearing Officer or the Commission relied upon evidence that was internally inconsistent. The Appellant never meaningfully claimed that the decision from the Commission was unlawful or unreasonable. The ultimate outcome of the administrative process was supported by some credible and competent evidence.

The Decision of Request for Review Affirming Hearing Officer as mailed on October 5, 2016 is not unlawful, unreasonable, or against the manifest weight of the evidence. It therefore must be **AFFIRMED**.

DECISION

This Court holds that the Decision of Request for Review Affirming Hearing Officer as mailed on October 5, 2016 is not unlawful, unreasonable, or against the manifest weight of the evidence. It is therefore **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER

Guy Reece II, Judge

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Franklin County Court of Common Pleas

Date: 03-23-2017

Case Title: SCOTT WAGENBRENNER -VS- OHIO DEPARTMENT JOB &
FAMILY SERVICES ET AL

Case Number: 16CV010509

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 16CV010509

Case Style: SCOTT WAGENBRENNER -VS- OHIO DEPARTMENT
JOB & FAMILY SERVICES ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes