

The employer conducted an investigation and met with the Appellant on January 11, 2013. During the meeting, the Appellant stated that "I made a mistake". The employer took the Appellant's statement to be an admission of guilt to the fact that he had concealed the gold bar on his person.

The hearing officer dealt with the issue of whether or not the Appellant was discharged for just cause by the employer. The hearing officer received testimony from Dan Bloomfield, a representative of the employer, and from the Appellant.

Dan Bloomfield testified that an investigation had been conducted concerning the missing gold bar. As part of the investigation, the video footage from the employer's security system was reviewed. Mr. Bloomfield indicated the video footage demonstrated that the Appellant had possession of the gold bar. Mr. Bloomfield also testified that when the Appellant was confronted, he stated that he had "screwed up". When asked to explain his statement, Appellant stated that he had misplaced the bar and later found it. When questioned during the investigation, Appellant did remember where he got the gold bar.

Appellant testified at the hearing and denied having possession of the gold bar. The hearing officer asked what he meant when he said he screwed up and Appellant stated that he did not know. The hearing officer asked the Appellant why he made the statement "I screwed up" if he did not do anything wrong. Appellant responded that he made the statement because he was scared. The hearing officer then asked the Appellant what the employer did that scared him so much that he just could not deny any wrongdoing. Appellant stated he denied any wrongdoing, but he finally admitted his guilt in hopes of keeping his job.

The hearing officer determined that he did not need to review the video due to the Appellant's admission. There was a technical problem, which prevented the hearing officer from opening the program which contained the video. Both Appellant and Appellee had the video prior to the hearing.

The hearing officer ruled that the Appellant was discharged for just cause. The hearing officer's decision was upheld by the Unemployment Compensation Review Commission.

The Appellant appeals the decisions rendered by the Unemployment Compensation Review Commission. Appellant claims that the decision of the Unemployment Compensation Review Commission were unlawful, unreasonable, or against the manifest weight of the evidence. Specifically, the Appellant claims that the hearing officer's decision not to review the video footage was unreasonable and denied him his right to a fair hearing.

In Reier v Dir., Ohio Dept. of Jobs and Family Servs., 2003 Ohio 3723, the Court held that R.C. 4141.282(H) requires the Common Pleas Court to uphold the Commission's decisions unless it finds it to be unlawful, unreasonable, or against the manifest weight of the evidence. The Court cited the Ohio Supreme Court's decision in Irvine v Unemployment Compensation Board of Review, 19 Ohio St. 3d 77, 80:

"The determination of whether just cause exists depends upon unique factual considerations of the particular case. Determination of purely factual questions is primarily within the province of the referee and the board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. Like other courts serving in an appellate capacity, we sit on a court with limited power of review. Such courts are not permitted to make factual findings or to determine the credibility of witnesses. The duty or

authority of the courts is to determine whether the decisions of the board is supported by the evidence in the record. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. Moreover, our 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 to upset the board's decision."

As the Court in Reier went on to note, deference is afforded to the Review Commission's findings because the board is best able to observe the witnesses and use these observations in determining the credibility of the witnesses.

The Ohio Supreme Court in Tzangus, Plakas & Mannis v Ohio Bur. Of Emp. Servs., 73 Ohio St. 3d 694 held that the Unemployment Compensation Act was not intended to "protect employees from themselves, but to protect them from economic forces over which they have no control". When an employee is at fault, he is no longer the victim of fortune's whim, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection.

In this case, the hearing officer found the Appellant's testimony denying any wrongdoing not to be credible. The hearing officer found the Appellant's admission of wrongdoing, made during the investigation, to be credible.

This Court is not permitted to make factual findings or to determine the credibility of the witnesses. The decision in this case is supported by evidence in the record, to-wit the admission of the Appellant.

The Appellant cites the case of Kappan v. Director, Ohio Dept. of Job and Family Services, 2013 Ohio 4964 in support of his position that the hearing officer's decision was unreasonable. In Kappan, the employee was dismissed for failing to perform the necessary calibrations to laboratory equipment. The calibration reports were not brought

before the hearing officer. Instead, the representative for the employer testified about the contents of the calibration reports. Kappen never admitted any wrongdoing. The Court overturned the decision of the hearing officer for failure to consider the actual reports.

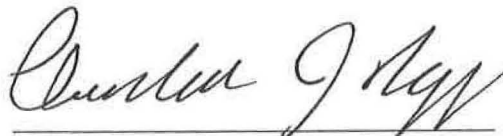
Appellant argues that in this case the video footage is akin to the calibration reports in Kappen.

However, unlike Kappen, the hearing officer had more than just an employer's representative telling him about the contents of the document. In this case, the hearing officer had the Appellant's admission of his wrongdoing. The Appellant's admission distinguishes this case from the holding in Kappen.

Appellant could have presented a copy of the video footage at the hearing, but chose not to. Appellant could have presented the video footage as direct evidence or to cast doubt upon the credibility of Mr. Bloomfield. If the video footage supported the Appellant's version of the incident, the Court wonders why he did not present such evidence to the hearing officer. Under the facts set forth in the record, the Court cannot find the decision of the hearing officer not to review the video footage was unreasonable, unlawful, or against the manifest weight of the evidence.

The Court finds that the decision of the Unemployment Compensation Review Commission is supported by evidence set forth in the record.

Therefore, the Court denies the Appellant's appeal.


Christopher J. Regan, Judge