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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

PHILLIP BUKOVSKY
Plaintiff

SOUTH EAST HARLEY DAVIDSON SALES ETC. - ET
AL.
Defendant

Case No: CV-16-866807

Judge: SHANNON M GALLAGHER

JOURNAL ENTRY

98 DISPOSED - FINAL

THE COURT AFFIRMS CLAIMANT PHILLIP BUKOVSKY'S APPEAL AND REVERSES THE DECISION BY THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION. THE COMMISSION'S DECISION FINDING THAT CLAIMANT BUKOVSKY IS NOT ELIGIBLE FOR UNEMPLOYMENT BENEFITS BECAUSE HE QUIT EMPLOYMENT FROM SOUTH EAST HARLEY DAVIDSON SALES, ETC. WITHOUT JUST CAUSE IS UNSUPPORTED BY THE EVIDENCE IN THE RECORD AND IS UNLAWFUL, UNREASONABLE, AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. R.C. 4141.282(H); TZANGAS, PLAKAS & MANNOS V. ADMINISTRATOR, OHIO BUREAU OF EMPLOYMENT SERVS., 73 OHIO ST. 3D 694, 697, 1995-OHIO-2016.

CLAIMANT QUIT HIS POSITION WITH HARLEY DAVIDSON FOR JUST CAUSE BECAUSE HE HAD A JUSTIFIABLE REASON FOR QUITTING AFTER TWO DAYS OF EMPLOYMENT. R.C. 4141.29(D)(2)(A); IRVINE V. UNEMPLOY. COMP. BD. OF REVIEW, 19 OHIO ST. 3D 15, 17 (1985). SPECIFICALLY, CLAIMANT WAS UNABLE TO PERFORM THE DUTIES OF THE POSITION DUE TO HIS MEDICAL EYE CONDITION, AS ESTABLISHED BY BOTH HIS TESTIMONY AT THE HEARING AND THE MEDICAL RECORDS SUBMITTED WITH HIS APPEAL. THE POSITION ALSO POSED A HIGH DEGREE OF RISK TO MR. BUKOVSKY'S HEALTH AS DEMONSTRATED BY THE PANIC ATTACKS HE SUFFERED AFTER EACH DAY OF WORK.

ADDITIONALLY, MR. BUKOVSKY HAD JUST CAUSE TO QUIT BECAUSE THE POSITION WAS UNSUITABLE. THE POSITION WAS A RISK TO MR. BUKOVSKY'S HEALTH; MR. BUKOVSKY LACKED THE REQUISITE PHYSICAL FITNESS FOR THE WORK IN THAT HE WAS UNABLE TO SEE THE PARTS NUMBERS OR THE COMPUTER SCREEN; MR. BUKOVSKY LACKED ANY PRIOR TRAINING OR EXPERIENCE TO PREPARE HIM FOR THE POSITION; AND THE POSITION WAS SUBSTANTIALLY FURTHER FROM MR. BUKOVSKY'S HOME THAN HIS PRIOR POSITION. R.C. 4141.29(F).

THE HEARING OFFICER CONCLUDED THAT WHETHER THE POSITION WAS SUITABLE WAS NOT AT ISSUE BECAUSE MR. BUKOVSKY ACCEPTED THE POSITION, AND R.C. 4141.29(F) IS ONLY APPLICABLE IF A CLAIMANT REFUSES AN OFFER OF EMPLOYMENT. HOWEVER, WHETHER A POSITION IS SUITABLE SHOULD FACTOR INTO A "JUST CAUSE" ANALYSIS UNDER R.C. 4141.29(D)(2)(A), ESPECIALLY IF THE POSITION COULD HAVE BEEN REFUSED AT THE TIME OF THE ACCEPTANCE WITHOUT JEOPARDIZING THE CLAIMANT'S RIGHT TO BENEFITS. SEE NEIDLINGER V. ADMINISTRATOR, 5TH DIST. STARK NO. CA 4857, 1978 OHIO APP. LEXIS 9504, AT *10 (JUNE 21, 1978). ACCORDINGLY, THE COMMISSION'S DECISION IS REVERSED AND CLAIMANT BUKOVSKY IS ELIGIBLE FOR UNEMPLOYMENT COMPENSATION BENEFITS.

COURT COST ASSESSED TO THE DEFENDANT(S). PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

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Shannon M Gallagher

Judge Signature

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