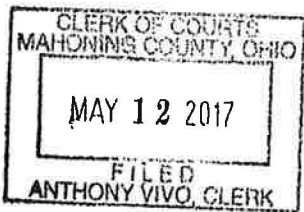


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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

CARL R. NOBLE)	CASE NO. 16 CV 2489
)	COURTROOM NO. 4
)	
APPELLANT)	JUDGE JOHN M. DURKIN
)	
VS.)	
)	JUDGMENT ENTRY
DIRECTOR, ODJFS, ET AL)	
)	
APPELLEES)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") pursuant to Ohio Revised Code Section 4141.282.

In this case, the record before the Review Commission establishes that the Director, Ohio Department of Job and Family Services ("Director") issued an initial determination on May 3, 2016 that Appellant Carl R. Noble ("Noble") was discharged from employment with J.D. Transportation Inc. ("JDT") with just cause and disallowed Noble's claim for benefits. Noble timely appealed the Director's determination and on May 20, 2016 the Director affirmed the initial determination disallowing Noble's claim for benefits. Thereafter, Noble filed another timely appeal and the matter was transferred to the Review Commission on June 1, 2016.

A telephonic evidentiary hearing was held before the Review Commission on June 16, 2016. On June 28, 2016, the Review Commission Hearing Officer issued a decision affirming the determination by the Director disallowing Noble's claim for benefits. The Review Commission Hearing Officer found that Noble was discharged



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from his employment with just cause and was therefore ineligible for unemployment compensation benefits. Pursuant to Noble's request, the Review Commission allowed a further review. On August 17, 2016 the Review Commission affirmed the Hearing Officer's decision. This appeal followed.

In this case, the record before the Review Commission establishes that Noble worked as a truck driver for JDT from March 2004 until he was discharged from employment on March 14, 2016. JDT's only business is trucking.

JDT's policies require all truck drivers to meet all Federal Motor Carrier regulations to remain employed. Federal Motor Carrier regulations disqualify a person from holding a CDL if that person's diabetes is controlled by insulin. In this case, Noble has diabetes that is controlled by insulin. JDT discharged Noble from employment after Noble's doctor would not approve his physical form so that he could continue to driving a truck for JDT because his diabetes was controlled by insulin.

The procedure for reviewing a Review Commission's decision is set forth in R.C. 4141.282(H) which provides as follows:

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.

To reverse, vacate or remand the matter, this Court must find that the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to

support the Review Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4th Dist. 1965); *Roberts v. Hays*, 9th Dist. No. 21550, 2003-Ohio-5903, paragraph 12.

The determination of factual questions is a matter primarily for the hearing officer and the Review Commission. *Brown-Brockmyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E.2d 79 (1947). If some credible evidence supports the Review Commission's decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In this case, Noble was discharged from his employment with JDT with just cause pursuant to R.C. 4141.29(D)(2)(a). That section concerns eligibility for employment benefits and provides in part as follows:

(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 ... has been discharged for just cause in connection with the individual's work...

"Traditionally, just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985). The Seventh District Court of Appeals considered the "just cause" issue in *Kosky v. American Gen. Corp.*, 7th Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

In this case, the issue before the Review Commission was whether or not Noble was terminated with just cause. There is evidence in the record that Noble has diabetes which needs to be controlled with insulin and accordingly he is disqualified from holding a CDL. JDT's policies require its truck drivers to hold a CDL. While there was conflicting testimony, it is not the duty of this Court to make factual findings or to determine the credibility of witnesses. Rather, it is the duty of the Review Commission to determine those matters.

Noble's argument that the Hearing Officer failed to consider that he was not able to maintain his CDL due to a medical condition which was out of his control is without merit. The record is clear, Federal Regulations and JDT policies require that truck drivers to have a valid CDL. Noble was not able to maintain a valid CDL due to his medical condition of having to control his diabetes with insulin. JDT had no other positions available to Noble since JDT's only business was trucking.

This Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Review Commission is hereby affirmed.

DATE: 5/11/17


JUDGE JOHN M. DURKIN | for

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIVIL RULE 5.