

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

RADIA LEWIS)	CASE NO. CV-2016-11-4945
)	
Appellant)	JUDGE AMY CORRIGALL JONES
-vs-)	
)	
DIRECTOR, OHIO DEPARTMENT OF)	<u>ORDER</u>
J&F SERVICE, et al.)	
)	<u>(Final and Appealable)</u>
Appellee)	

- - -

This cause came before the Court upon the Administrative Appeal filed by Appellant on November 22, 2016. This appeal was taken from the final decision of the Unemployment Compensation Review Commission (“the Commission”) on October 26, 2016; disallowing a request for review of the hearing officer’s decision that claimant quit her employment without just cause when she accepted employment elsewhere. Thus, she was not eligible for unemployment compensation.

FACTUAL AND PROCEDURAL HISTORY

Appellant was employed with Nationwide Insurance Company from November, 2001 to June 10, 2016. Appellant alleges that employees were informed that the Nationwide Canton Service Center would be closing in three (3) years. Employees were encouraged to seek employment within the company, but it would involve relocating which was undesirable for appellant. Appellant applied for and was accepted for another position with a different company, GAR Disability Advocates (“DAR”).

On May 19, 2016, appellant informed Nationwide that she was quitting and accepted new employment. Appellant’s start date was June 20, 2016; however a couple days prior, Appellant was informed by DAR that they were rescinding the offer of employment due to restructuring.

On June 17, 2016, Appellant filed an application for unemployment benefits which was denied on July 7, 2016, due to disqualifying separation from employment. Appellant appealed the decision on July 19, 2016. On August 5, 2016, the Director affirmed the initial determination. Appellant appealed. On September 15, 2016, a hearing was held. Appellant was represented by counsel and gave testimony. The Commission issued a decision September 16, 2016, affirming the Directors' Redetermination of the initial denial.

LAW AND ANALYSIS

O.R.C. 4141.29(1)(2)(a)(iii) states in part:

(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, provided division (D)(2) of this section does not apply to the separation of a person under any of the following circumstances:

(iii) The individual has left employment to accept a recall from a prior employer or, except as provided in division (D)(2)(a)(iv) of this section, to accept other employment s provided under section 4141.291 of the Revised Code, or left or was separated from employment that was concurrent employment at the time of the most recent separation or within six weeks prior to the most recent separation where the remuneration, hours, or other conditions of such concurrent employment were substantially less favorable than the individual's most recent employment and where such employment, if offered as new work, would be considered not suitable under the provisions of divisions (E) and (F) of this section. Any benefits that would otherwise be chargeable to the account of the employer from whom an individual has left employment or was separated from employment that was concurrent employment under conditions described in division (D)(2)(a)(iii) of this section, shall instead be charged to the mutualized account created by division (B) of section 4141.25 of the Revised Code, except that any benefits chargeable to the account of a reimbursing employer under division (D)(2)(a)(iii) of this section shall be charged to the account of the reimbursing employer and not to the mutualized account, except as provided in division (D)(2) of section 4141.24 of the Revised Code.

In *Irvine v. Unemp. Comp. Bd of Review* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587, 590, the Supreme Court held that reviewing Courts may reverse "just cause" determinations "if they are unlawful, unreasonable, or against the manifest weight of the evidence." The Court noted that while appellate courts are not to make factual findings or to determine the credibility

of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record. *Id.* at 18, 19 OBR. at 15, 482 N.E. 2d at 590. This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in this court.

In *Cooper v. Ohio Bureau of Employment Services*, 1979 Ohio App. Lexis 9423, the Ninth District Court of Appeals stated:

“Two Ohio Courts of Appeal have held that quitting one job to take a higher paying job is a quit without just cause. They reasoned that the purpose of the law providing unemployment benefits was to provide economic relief to those who became unemployed involuntarily. Thus, quitting to take another job was a voluntary act not connected with the work and would shift the results of the employee's risk upon an innocent employer. We agree with those cases. See *Hippert v. Bd. of Review, Stark No. 4771* (5th Dist. Ct. App., February 25, 1978) 1B CCH Unemployment Insurance Reports, Ohio P9193; *Nagle v. Bd. of Review, Mahoning No. 78-120* (7th Dist.Ct. App., January 4, 1979).”

Thus, Cooper was denied benefits not because of any requirements of R.C. 4141.291, but because he quit work without just cause. Actually, R.C. 4141.291 provides the means whereby one who has quit without just cause may remove the disability and qualify for benefits.

Cooper has not been denied the equal protection of the laws. All employees who quit without just cause are treated alike. All are denied benefits for the duration of their unemployment until such time that they become re-employed in employment subject to the stated requirements of R.C. 4141.291. *Compare, Fulton County Bd. of Edn. v. Giles*, 56 Ohio St. 2d 433 (1978).

Upon a review of the record, the Court finds that Appellant quit work without just cause. Appellant has testified that while she had been told that her office would be closing that

was not going to happen for three (3) years thus there was no imminent need for Appellant to seek other employment.

The Court has found no evidence that the Appellant was denied due process.

Upon review, this Court finds that the decision of the Board was supported by a preponderance of substantial, reliable and probative evidence, and is not unconstitutional, illegal, arbitrary, capricious, or unreasonable.

IT IS ORDERED AND ADJUDGED this Administrative Appeal by the Appellant is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that the decision of the Appellee Director Ohio Department of Job and Family Services, et al., is AFFIRMED.

This is a final and appealable order. There is no just cause for delay.

The Clerk of the Summit County Court of Common Pleas shall serve a copy of this Order upon the following Defendant, Nationwide Mutual Insurance Company, by U.S. Mail, Certificate of Service, noting return of same.

IT IS SO ORDERED.



JUDGE AMY CORRIGALL JONES

CC: ATTORNEY JOHN C. OBERHOLTZER
ATTORNEY LAURENCE R. SNYDER
DEFENDANT, NATIONWIDE MUTUAL INSURANCE COMPANY