

FOR COURT USE ONLY

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ROBERT E. WILKINSON,

IN THE COURT OF COMMON PLEAS
 HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
 ENTER

HON. CURT C. HARTMAN

THE CLERK SHALL SERVE NOTICE
 TO PARTIES PURSUANT TO CIVIL
 RULE 63 WHICH SHALL BE TAXED
 AS COSTS HEREIN.

Appellant,

Case No. A 1604

Judge Curt C. Hartman

vs.

ENTRY ADOPTING THE
 MAGISTRATE'S DECISION

ENTERED
 JUN 01 2017

RON HALL'S FAMOUS FINAL
 CLEANING COMPANY, LLC, et al.,

Appellees.



D118381169

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that disallowed benefits to the Appellant Robert E. Wilkerson. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, oral arguments, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs are to be paid by the Appellant. This is the final appealable order. There is no just reason for delay.

[Signature]
 MAY 31 2017
 JUDGE CURT C. HARTMAN

MAGISTRATE

MAY 31 2017

HAS SEEN

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



ROBERT E. WILKERSON,

Case No. A 1604368

Appellant,

Judge Beth A. Myers

vs.

Magistrate Michael L. Bachman

RON HALL'S FAMOUS FINAL
CLEANING COMPANY, LLC, et al.

MAGISTRATE'S DECISION

Appellees.

RENDERED THIS 8TH DAY OF MARCH, 2017

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying Robert E. Wilkerson's ("Appellant") claim for unemployment benefits. The hearing office for the Review Commission found that the Appellant was discharged for just cause. This appeal was taken under submission upon the conclusion of review of the administrative record, the briefs and oral arguments.

CLERK OF COURTS
HAMILTON COUNTY, OH
COMMON PLEAS
2017 MAR - 8 PM 3:39
FILED

BACKGROUND

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued an Initial Determination that allowed unemployment benefits. Ron Hall's Famous Final Cleaning Company, LLC ("Employer") appealed the Initiation Determination. A Redetermination was issued by ODJFS that affirmed the Initial Determination. The Employer filed an appeal from the Redetermination and ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The Appellant did not appear for the hearing. The hearing officer reversed the Redetermination. The hearing officer found that the Appellant was discharged by the Employer for just cause. The Appellant requested further review of the claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision.

STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H); *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. A reviewing court must not make factual findings or determine a witness's credibility and must affirm the Review Commission's decision if there is competent, credible evidence to support it. *Id.*

DISCUSSION

The court has reviewed the record provided by the Review Commission and the briefs of ODJFS and the Appellant. The hearing officer found that the Appellant was discharged for just cause. Revised Code 4141.29(D)(2)(a) provides that no individual will be paid unemployment benefits if the individual quit work without just cause or is discharged for just cause in the connection with work. Just cause is defined by the courts as "that which, to an ordinarily intelligent person, is a justifiable reason for doing

or not doing a particular act.” *Irvine v. Unempl. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985) quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). Each case must be considered upon its particular merits, because “whether just cause exists necessarily depends upon the unique factual considerations of the particular case.” *Irvine* at 17.

An employee is considered to have been discharged for just cause when “the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interests.” *Kiikka v. Ohio Bur. of Emp. Serv.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist.1985). The employee’s conduct need not rise to the level of misconduct, but there must be a showing of some fault on the employee’s part. *Sellers v. Bd. of Rev.*, 1 Ohio App.3d 161, 440 N.E.2d 550 (10th Dist.1981). Just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. The purpose of the Act is “to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level. . .” *Williams* at ¶ 22 quoting *Irvine v. Unempl. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17.

The hearing officer made the following findings of fact in this case.

Claimant was employed as a cleaner from January 2015 until April 5, 2016. On April 5, 2016, claimant was told by the superintendent to stop using his cell phone. Claimant ignored him. The superintendent notified claimant that he was suspended, and claimant refused to leave.

Claimant began screaming and swearing, yelling, among other things, “fuck this,” and “I ain’t gonna do a damn thing.” Mr. Hall called claimant and tried to calm him down, but claimant continued yelling and swearing. Claimant yelled and used profanity in front of the client. Claimant was discharged.

Hearing Officer Decision, p.l.

ODJFS contends that the Appellant's behavior violated the Employer's handbook that states that disruptive behavior will result in immediate dismissal. ODJFS also asserts that the Appellant's behavior was an unreasonable disregard of the Employer's best interest and therefore the Appellant was discharged for just cause.

The Appellant contends that the facts, as testified to by the Employer's witnesses, were totally inaccurate. Appellant contends that the problem was that Ray Hall, the owner's Son, took liberties with his authority because he could. The Appellant put forth an entirely different set of facts than that of the hearing officer.

The Appellant did not appear at the hearing to provide testimony or otherwise participate in his defense at the administrative hearing. It has been established that a reviewing court may not make factual findings or determinate a witness credibility in an unemployment compensation appeal. *Williams v. Ohio Dept. of Job & Family Services* at ¶ 20. Therefore, this court must rely upon the facts as determined by the hearing officer. The facts of this case give rise to a just cause finding especially when the Appellant's behavior put the Employer's relationship with its client in jeopardy.

DECISION

The decision of the Review Commission denying the Appellant's unemployment compensation claim is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight. Therefore, the Appellant's claim for unemployment benefits was properly denied.



**MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 3/8/17

Deputy Clerk: 