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2017 JUN -1 10:30

CINDY ALLEN

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Amy S. Wilhelm,

2016CV0624

Appellant,

Judge Alan R. Mayberry

v.

Wood County Auditor

and

JUDGMENT ENTRY

Director, Ohio Department of Job
and Family Services,

Appellees.

May 30, 2017

This matter comes before the court on the appeal of Amy S. Wilhelm from a final decision of the Ohio Unemployment Compensation Review Commission denying her unemployment benefits. This review is governed by R.C. 4141.282(H), which provides that "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." The certified record was filed on December 19, 2016. The Appellant filed her brief and assignment of error on February 8, 2017. Appellee Director, Ohio Department of Job and Family Services filed her brief on April 25, 2017. Appellee Wood County Auditor filed her brief on May 8, 2017. The Appellant filed her reply brief on May 23, 2017.

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JUN - 1 2017

Appellant Wilhelm was employed at NorthWest Community Corrections Center from January 5, 2009 until June 23, 2016. Wilhelm began with NorthWest as the Administrative Manager and she became the Business Manager in October of 2013.

While NorthWest's disciplinary policy is progressive, it provides that an employee may be immediately discharged for incompetence, inefficiency or neglect of duty. The record here is clear. The appellant underperformed as the business manager to a degree that constituted inefficiency, incompetence and neglect of duty. The appellant was told that she was no longer a good fit for the position and was given the option of resigning or being fired. The appellant chose to resign. However, NorthWest's governing board held her resignation in abeyance and placed her on paid administrative leave while it investigated. The investigator concluded that the appellant "wasn't able to manage the operation budget". The board then accepted the appellant's resignation.

Because the appellant was given the option of resigning or being fired, her resignation has been treated as a termination. The question is whether the termination was supported by just cause. "Just cause" is "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board 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, 335 N.E.2d 751 (10th Dist. 1975).

The parties cite often to *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995). In *Tzangas*, the supreme court held that unsuitability for a position constitutes fault sufficient to support a just cause termination. *Tzangas*, paragraph three of the syllabus. The court then announced a four-part test for determining when an employer may properly find an employee unsuitable for the required

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JUN - 1 2017

work and thus be at fault, providing just cause for a termination. The four inquiries are whether (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position. *Id.*, paragraph four of the syllabus. The facts contained in the record satisfy all arms of this test.

Numerous instances of the appellant not performing the required work are documented in the record. It is clear from the appellant's testimony that she understood NorthWest's expectations regarding her duties as business manager. Nowhere in the record is there any indication that NorthWest's expectations of its business manager were unreasonable. In the two and one half years that the appellant was NorthWest's business manager, her duties did not substantially change. The record clearly establishes that the appellant was unable to function in this position. There was just cause to terminate her employment.

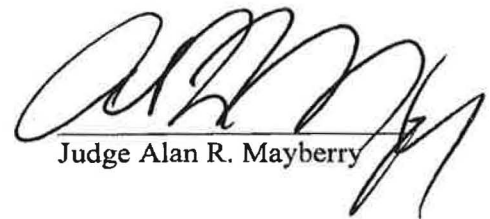
The appellant has made no showing that the commission's decision was unlawful, unreasonable or was against the manifest weight of the evidence. The review commission's denial of the appellant's request for review is supported by competent, credible evidence.

The decision of the Ohio Unemployment Compensation Review Commission is affirmed.

Court costs are assessed to Appellant.

So Ordered.

Judgment for court costs
rendered to Wood County



Judge Alan R. Mayberry

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