

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

PHILIP C. ADAMS,

CASE NO. 2017 CV 00165

Plaintiff,

JUDGE MARY KATHERINE HUFFMAN

-vs-

OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES, et. al,

Defendants.

DECISION, ORDER AND ENTRY
OVERRULING APPELLANT'S APPEAL
OF THE DECISION OF THE OHIO
DEPARTMENT OF JOB AND FAMILY
SERVICES AND AFFIRMING THE
DECISION OF THE OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION

This matter is before the court on the appeal of Appellant, Philip C. Adams, to challenge the Ohio Unemployment Compensation Review Commission's decision finding that he is not entitled to unemployment compensation benefits resulting from his voluntary unemployment. Appellant's Brief was due herein on April 3, 2017, pursuant to the Briefing Schedule filed by this court and served on the parties on January 17, 2017. Appellant filed his Brief on April 10, 2017. Appellee, Ohio Department of Job and Family Services filed its Motion for Judgment on the Record and Brief on May 30, 2017. Appellant filed its Reply in Support of Appellant's Brief on June 12, 2017. This matter is now ripe for decision.

I. PROCEDURAL HISTORY AND FACTS

The court has reviewed the entire certified transcript herein, from which the following facts are evident:

Appellant, Philip C. Adams, began his employment as a police officer with the City of Dayton on June 4, 2001. In June 2015, Appellant sustained an off-duty injury to his knee that prevented him from returning to work. On or about July 12, 2016, Appellant had exhausted every available leave offered to him by the City of Dayton. The City of Dayton allowed Appellant to use all of his accrued sick time, vacation time and compensatory time. Additionally, Appellant used his ninety days without pay benefit, and exhausted the twelve weeks an employee is permitted to be off work under the Family and Medical Leave Act (FMLA). Appellant was also permitted for a time to work under restricted duty.

On July 8, 2016, Sergeant Jeffrey K. Thomas sent Appellant a letter ordering Appellant to return to work on July 12, 2016. Appellant was asked to bring medical documentation indicating whether he was able to return to full duty or would again be required to work restricted duty. Appellant did not return to work on July 12, 2016. Additionally, Appellant did not complete the request for medical documentation, nor did he send the City of Dayton any updated medical documentation.

As a result of his actions, Appellant was considered by his employer to be absent without leave. An administrative hearing was scheduled for August 9, 2016 for the Appellant to respond to the absent without leave charge. The Appellant did not appear nor respond to the absent without leave charge. Appellant was not discharged until August 26, 2016.

Appellant filed an Application for Determination of Benefit Rights with Appellee, Director, Ohio Department of Job and Family Services ("ODJFS") on July 21, 2016. The Hearing Officer found that Appellant was voluntarily unemployed at the time her filed his application. He was

given the opportunity to return to work and/or provide additional medical documentation to support his contention that he was unable to return to duty, and he failed to heed either opportunity. Appellant was then terminated on August 26, 2016.

II. LAW AND ANALYSIS

Ohio Revised Code §§119.12 and 5101.35 permit the appeal to the Common Pleas Court of decisions of the Ohio Department of Job and Family Services, following a state hearing.

Ohio Revised Code §119.12 provides:

the court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

Appellant applied for unemployment compensation benefits, which under the Unemployment Compensation Act enables “unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonable decent level...” *Irvine v. Unemployment Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17 (1985).

Under O.R.C. § 4141.46, “[s]ections 4141.01 to 4141.46, inclusive, of the Revised Code shall be liberally construed.” Ohio Revised Code § 4141.01 (R) provides:

any application for determination of benefit rights made in accordance with section 4141.28 of the Revised Code is valid if the individual filing such application is unemployed, has been employed by an employer or employers subject to this chapter in at least twenty qualifying weeks within the individual’s base period...

Ohio Revised Code § 4141.29 (D)(2)(a) provides:

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period of time 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.

Ohio courts define just cause as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." (*Williams v. Ohio Dep't of Job & Family Servs.*, 129 Ohio St. 3d 332, 335 (2011); *Warrensville Heights v. Jennings*, 58 Ohio St. 3d 206, 207 (1991); *Irvine v. Unemployment Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17 (1985)). The determination whether there is just cause for discharge depends upon the unique factual circumstances of the particular case. *Williams v. Ohio Dep't of Job & Family Servs.*, 129 Ohio St. 3d at 335.

An employee is discharged with 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 (8th Dist. 1985). The employee's actions do not have to rise to the level of misconduct, but rather, there must be some fault on the employee's part. *Sellers v. Board of Rev.*, 1 Ohio App.3d 161 (10th Dist. 1981). A person discharged for being absent without leave is discharged for just cause. *Maisel v. Administrator, Ohio Bureau of Empl. Servs.*, 1999 Ohio App. LEXIS 1152, *10, 1999 WL 169771 (Ohio Ct. App., Franklin County Mar. 25, 1999). Additionally, "[i]t is the employee's responsibility to provide medical documentation in support of an illness once such information is requested by the employer." *Higgins v. Cardington Yutaka Techs., Inc.*, 2002 Ohio App. LEXIS 402, *9, 2002-Ohio-515 (Ohio Ct. App., Morrow County Jan. 25, 2002) citing *Durgan v. Ohio Bur. of Emp. Serv.*, 110 Ohio App. 3d 545. 551 (1996). Under the just cause standard, an ordinary intelligent person would not fail to provide medical documentation that is requested by an employer. *Id.*

After reviewing the entire record, the court finds that the decision of the Ohio Unemployment Compensation Review Commission is supported by reliable, probative, and

substantial evidence and is in accordance with law. There is no indication from the plain language of the statute that O.R.C. Sections 4141.01 through 4141.46 should be liberally construed in favor of the claimant. Moreover, the Ohio Supreme Court has held that it is improper to construe the unemployment compensation statute in favor of the claimant. *Bernard v. Unempl. Comp. Rev. Comm.*, 136 Ohio St. 3d 264 (2013). Therefore, this court finds that due deference must be given to an “administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing legislative command.” *Id.* at 12.

The Hearing Officer’s Decision was not unlawful, unreasonable or against the manifest weight of evidence because Appellant was voluntarily absent from work during the period between July 12, 2016 through August 26, 2016. Appellant did not act as an ordinarily intelligent person when he exhausted all available paid and unpaid leave, and did not return to work or provide the employer his requested medical information. Appellant was further declared absent without leave for a substantial period of time, and later did not attend his administrative hearing to defend the AWOL charges. Because Appellant was AWOL between July 12, 2016 and August 26, 2016, Appellant was considered to be on a voluntary leave of absence at the time he filed his application for benefits. Additionally, the record supports the finding that Appellant was discharged with just cause.

III. CONCLUSION

For the reasons stated above, the court **AFFIRMS** the decision of the Ohio Unemployment Compensation Review Commission, and **OVERRULES** Appellant’s Appeal.

SO ORDERED:

JUDGE MARY KATHERINE HUFFMAN

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED.
JUDGE MARY KATHERINE HUFFMAN

**To the Clerk of Courts:
Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.**

JUDGE MARY KATHERINE HUFFMAN

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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
Case Number: 2017 CV 00165
Case Title: PHILIP C ADAMS vs OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

So Ordered

Mary H. Huffman