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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

PJ'S FABRICATING INC.,

PLAINTIFF/APPELLANT

v.

WILBUR L. CROSTON III, et al.,

DEFENDANTS/APPELLEES.

Case No. 2015CV01583

JUDGE HARTNETT

JUDGMENT ENTRY AFFIRMING
ORDER OF THE STATE OF OHIO
UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION

This case arises as a result of an Ohio Unemployment Compensation Review Commission ("Review Commission") decision granting unemployment compensation benefits to Defendant/Appellee Wilbur L. Croston, III ("Croston"). The question to be determined is whether Croston was discharged from employment without just cause, thereby making him eligible for unemployment compensation benefits. The Review Commission's decision is hereby AFFIRMED.

Factual Background

Croston was employed by Plaintiff PJ's Fabricating Inc. ("PJ's Fabricating") for approximately three months as an "unloader" in the Powder Coat Department. Croston's employment was part of the PJ's Fabricating's production line; as parts passed through the line, the unloading portion of the schedule was to be completed by Croston. His job included unloading, inspection, and packaging for shipment items that came off the conveyor from the paint shop.

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PJ's Fabricating discharged Croston from employment the day after its customer, Brackin Metalworks, made a complaint that a skid with parts on it fell over during transit and became damaged. Prior to this incident, Brackin Metalworks had been pressuring PJ's Fabricating to purchase a \$26,000 piece of equipment that would make tighter shrink wrapping orders for pickup or shipment to customers. Croston had shrink-wrapped the Brackin order at issue and testified that he wrapped the order correctly, including the skid. Steven Moore of PJ's Fabricating testified that he watched Croston wrap the order and he knew that Croston did not attach the wrap to the skid. However, Mr. Moore did not intervene in Croston's work and he allowed the order to ship to Brackin because he did not think the order would have fallen during delivery. Nonetheless, the day after this customer complaint, PJ's Fabricating discharged Croston.

Two other incidents relating to Croston's employment were discussed at the Review Commission's hearings. First, another customer, Jones Metal, complained via email to PJ's Fabricating that gray padding, which was packed between metal parts to protect them in shipment between the customer and PJ's Fabricating was not being replaced between the parts when they were packed for delivery back to the customer. However, prior to Croston's employment, these pads were not replaced into the boxes for the return shipment to Jones Metal; rather, they were used as cushions on top of buckets by other PJ's Fabricating employees during certain work procedures, not related to Jones Metal orders.

Second, another customer, Everhard Products, complained to PJ's Fabricating that it was shipping unusable lids, due to the fact that the lids provided by PJ's Fabricating were a different color than the accompanying metal boxes. As a result of this complaint,

PJ's Fabricating brought the lids back and repainted them. Croston was aware that the color of the lids was different than that of the boxes, but shipped them because his supervisor, Steven Moore, told him to do so.

Procedural History

Upon his termination, Croston applied for unemployment compensation benefits. The Director issued an initial determination holding that Croston was discharged from employment without just cause, and allowed his claim for unemployment benefits. PJ's Fabricating timely appealed. In a redetermination decision, the Director reversed the decision, holding that Croston was discharged from employment with just cause, and disallowed his application for unemployment benefits. Croston filed a timely appeal and the Director transferred jurisdiction to the Review Commission pursuant to R.C. 4141.281(B).

The Review Commission conducted in-person evidentiary hearings. The Commission reversed the Director's redetermination decision, holding that Croston had been discharged from employment without just cause, and was therefore eligible for unemployment compensation benefits. Thereafter, PJ's Fabricating timely requested further review by the Commission, which the Commission disallowed. PJ's Fabricating thereafter appealed to this Court, seeking reversal of the Commission's decision allowing Croston unemployment compensation benefits.

Standard of Review

In considering this appeal, the Court applies Ohio Revised Code § 4141.282(H), which requires this Court to affirm a decision of the Review Commission allowing a claim for unemployment compensation benefits unless the Review Commission's

decision was “unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694. If “some evidence in the record” supports a Review Commission’s decision, it must be affirmed. See, *Binger v. Whirlpool Corp.*, 110 Ohio App.3d 583, 589 (1996); *Durgan v. Ohio Bur. of Emp. Serv.*, 110 Ohio App.3d 545, 551. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission’s] decision.” *Irvine v. State Unemployment Comp. Bd.* (1985), 19 Ohio St.3d 15, 17. A reviewing court cannot usurp the function of the trier of fact by substituting its judgment for theirs. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 45. The reviewing court must give deference to the Review Commission’s credibility determination regarding witness testimony. *Durgan*, 110 Ohio App. 3d at 552.

Significantly, PJ’s Fabricating has misstated the standard of review in its brief in its assertion that the claimant must prove that he is entitled to unemployment compensation, which includes a showing that existence of just cause for discharge was not shown. In an unemployment compensation appeal, the Court’s role is to examine the Review Commission’s decision and determine whether the decision is supported by the certified record. *Roberts v. Hayes*, 2003-Ohio-5903 at ¶ 12.

Findings

A. Croston’s discharge was without just cause.

The Review Commission granted Croston unemployment compensation benefits on the grounds that he was discharged without just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a). “Just cause” is defined as “that which, to an ordinary

intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine* at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12.

It is well-settled that an employee is 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.* (1985), 21 Ohio App.3d 168, 169. The employee’s conduct need not rise to the level of misconduct, but there must be a showing of fault by the employee. *Sellers v. Bd. of Review* (1981), 1 Ohio App.3d 161. The “just cause” test for discharge is whether the discharge was due to the culpability of the employee rather than due to circumstances beyond the employee’s control. *Loy v. Unemp. Comp. Bd.* (1986), 30 Ohio App.3d 1204, 1206.

Here, the three incidents precipitating Croston’s discharge were beyond the employee’s control and not due to his own culpability. Regarding the Brackin Metalworks complaint, Croston’s supervisor testified that he himself had watched Croston wrap the skid and knowing that it was improperly wrapped, he allowed the order to be shipped. He testified that he did not think it would tip over during shipment based upon the manner in which Croston had wrapped it.

The Review Commission Hearing Officer focused on this incident because it was the incident that precipitated Corston’s discharge according to the testimony of PJ’s Fabricating’s witness. The Hearing Officer stated:

If Claimant’s testimony, that he properly wrapped the pallet, is correct, there was no fault on his part regarding the final incident. Conversely, if the Production Foreman’s testimony is correct, that he observed claimant wrap the pallet and that he allowed it to be shipped, because he felt that it would not fall over the way Claimant had wrapped it, the employer cannot now say that Claimant was at fault. As the evidence does not indicate that the final incident cited

by the employer was the result of any wrongful conduct by Claimant, the employer did not have just cause to discharge him.

This decision is not unlawful, unreasonable, or against the manifest weight of the evidence.

Next, the record supports the Review Commission's decision regarding the Jones Metal incident with the padding. Testimony showed that the grey pads had been used by various departments as seat cushions on top of buckets when employees performed certain work duties and were therefore not packed back in with the parts for delivery to Jones Metal prior to Croston's employment. The Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

Finally, the record supports the Review Commission's decision regarding the Everhard Products incident with the lids. Croston testified that he knew that the lids were a different color than the accompanying boxes, but wrapped them for pickup because his supervisor instructed him to do so. The Hearing Officer found this testimony to be credible. Again, the Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

There is no evidence in the record that supports a finding that the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. This is true for all three incidents relating to Croston's discharge. However, the Court could have reached this conclusion based solely on the Brackin incident, which PJ's Fabricating cites as the incident that precipitated Croston's discharge.

B. The Hearing Officer's decision is fully supported by the certified record.

PJ's Fabricating argues that the Hearing Officer did not rule on whether Croston's failure to complete work orders or work schedules was just cause for discharge. The

Hearing Officer took testimony regarding this issue, and conflict indeed existed.

However, the Hearing Officer is not bound by common law or statutory rules of evidence in the administrative hearing process. R.C. 4141.281(C)(2); OAC § 4146-7-02(B).

Significantly, when faced with conflicting testimony, “the commission, not the court, resolves the conflicts and determines the credibility of the witnesses.” *Cottrell v. ODJFS*, 2006-Ohio-793 at ¶ 15.

By PJ’s Fabricating’s own admission, the incident that precipitated Croston’s discharge was not whether Croston failed to complete work orders or work schedules, but was the Brackin Metalworks complaint whereby the employer watched Croston pack the order for shipment and thought it would be fine. The Review Commission’s decision relating to this and the two other specific customer complaints are more than sufficiently supported by the certified record and the Court hereby affirms the Review Commission’s decision that Croston was discharged without just cause.

CONCLUSION

Credible evidence supports the Review Commission’s decision. Thus, even if this Court would have reached a different conclusion, the law prohibits a reviewing court from substituting its judgment for that of the Review Commission. *Simon*, 69 Ohio St.2d at 41. Based upon a review of the entire certified record, and pursuant to current and binding case law, this Court finds the Review Commission’s determination that Claimant was discharged without just cause and is therefore entitled to unemployment compensation benefits to be supported by sufficient and credible evidence. Therefore, the Court defers to the Review Commission’s decision and finds that the decision was not

unlawful, unreasonable, or against the manifest weight of the evidence. The decision of the Review Commission is hereby **AFFIRMED**.

IT IS SO ORDERED.


Hon. Chryssa N. Hartnett

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