

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

ROMERO MOSLEY, :
 :
 Appellant, :
 : Case No. 16CV-9228
v. :
 : (JUDGE FRYE)
PROGRESSIVE INSURANCE, et al., :
 :
 Appellees. :
 :

DECISION, AND FINAL JUDGMENT

I. Introduction.

This is an administrative appeal from the Ohio Unemployment Compensation Review Commission. The UCRC held a hearing, and concluded that appellant Romero Mosley quit his job as a claims adjustor with Progressive Insurance without just cause, and was not eligible to receive unemployment compensation benefits.

II. Factual Background.

Romero Mosley was employed by Progressive Insurance between June 2006 and April 29, 2016. (Tr. 5, 14) He had several different positions, but was last employed as a claims adjustor or claims generalist. (Tr. 6)

The series of incidents with a Progressive insured that allegedly led appellant to quit his job began in November 2015. A man named Martinez started “making declarative statements about my past” including details about Mr. Mosley’s personal life in the course of discussions about an insurance claim. (Tr. 6) Mr. Mosley told Martinez that they should stick to discussing the merits of the insurance claim, but Martinez “indicated that it was within his right to speak to me in the manner that he did.” (Tr. 6) That same day, Mr. Mosley received a phone call from Progressive’s “Special Investigation Unit” indicating they had been contacted by law enforcement about the

Martinez claim, because “he had a history of threatening Progressive reps on previous claims” and had also sent photographs of claims representatives to them.

Immediately thereafter, Mr. Mosley testified that he asked to be removed from the Martinez claim, but was given no reason why the company would not do so. (Tr. 12) Mosley did not go to HR or anyone above his immediate supervisors to seek to be removed from responsibility for the Martinez claim. (Tr. 13)

Martinez called Progressive again a few days later. He did not reach Mr. Mosley, but left a voice mail. Mr. Mosley testified the message was as follows: “Don’t play with my money. Stop playing with my money. You mother fucking nigger. I know who you are. Mother fuck, nigger, nigger.” (Tr. 7) Later that day, according to Mr. Mosley, Martinez phoned Mosley’s female supervisor, called her an off-color name, and told her that he wished her mother died in a car accident. (Tr. 7) He also told her that he knew where Mr. Mosley attends church, and that Mosley was “lying about his claim.” (Tr. 7)

Martinez continued some contacts with Mosley by e-mail thereafter. The following month, corporate security contacted Mr. Mosley about Martinez, and he learned Martinez had sent them photographs of Mr. Mosley. They suggested Mosley either disable, or go private with any of his own social media; and they worked with Mosley to identify and eliminate old postal addresses, and other information about him on the Web. (Tr. 7)

From that point forward, Mr. Mosley continued some work with different individuals in Progressive’s Special Investigation Unit to answer questions about the claim. (Tr. 7 - 8) It was at this point that Mr. Mosley testified he thought the episode was kind of taking a toll on him. “It was very stressful at that time” and by the following month he claimed to be experiencing “heart palpitations,” being “very, very tired, and I didn’t really know what was going on.” (Tr. 8) At that point he saw a physician. He obtained blood work, an EKG, and other medical testing, according to Mr. Mosley. The physician allegedly concluded Mr. Mosley was “suffering from a panic disorder and she attempted to prescribe me Xanax.” (Tr. 8) Martinez continued to contact Mr. Mosley by email in January, while he was seeking medical attention. (Tr. 9) Mosley cannot pinpoint when his last conversation was with Martinez. (Tr. 10)

Mr. Mosley described the effect of this experience as follows: “I mean aside from it affecting every aspect of my life *** socially, inside of work, you know, performance-

wise. I just feel like, you know, no ordinary person would have to face this level of stress in order to just, you know, get through their day or make a living for themselves.” (Tr. 12)

According to appellant’s time-line, within about a month Mr. Mosley submitted a resignation to Progressive, feeling “[n]o ordinary person would have to be medicated throughout the course of their day in order to do their job or even function regularly.” (Tr. 8) Mr. Mosley testified he submitted a resignation in February, with 60-days advance notice. It is undisputed that his position ended in late April. Based upon his long tenure with Progressive, they allowed his long notice period to be rather long so that he kept medical insurance while, apparently, moving to California. (Tr. 9)¹

Mr. Mosley testified he reported to Progressive management the problems with the Martinez claim, and the stress it put him under. (Tr. 10) Their response was somewhat uncertain initially, according to Mr. Mosley. (Tr. 10) However, once Donia Darwish became involved - delayed perhaps because she was on maternity leave - “she was very prompt in regards to letting me know that she would be in touch with human resources and she would make sure that my supervisor, Mr. Gerald Sequan, would look in to resolving of the claim from just a file closing standpoint or just overall, I would say.” (Tr. 10) Although Mr. Mosley asked to have his name taken off the claim file, he was kept on it to address correspondence about it and inquiry from upper management. (Tr. 11)

Donia Darwish testified for Progressive, and contradicted Mr. Mosley on key factual points. She is a Claims Manager. She testified that she understood Mr. Mosley left employment because “the job was too challenging at the time and that he would be looking to pursue other things.” (Tr. 14) She did not learn about the Martinez incident until the time of Mosley’s resignation, and was “surprised” he was resigning. (Tr. 14) She had a total of three conversations. Initially, he asked about a different job, “and that’s when it became apparent that he may think of resigning.” (Tr. 15) This appears to have been on February 19th. Mr. Mosley “asked if there’s a different administrative job in Southern California available to him, and at that time he was asking if there’s

¹ There are references to Mr. Mosley moving to California throughout the file. It is unclear exactly when he moved from Ohio. He did not explain whether there were reasons wholly independent of the Martinez incident that caused him to move so far away.

anything else that we can do and really asked directly if we would offer him some kind of severance with a notice.” (Tr. 16) Mr. Mosley then emailed his resignation on February 29, and had a follow-up conversation with Ms. Darwish shortly thereafter in which the Martinez incident first came up. (Tr. 15)

Ms. Darwish did not understand that the Martinez incident was the primary motivation behind Mosley’s decision to quit. (Tr. 15) To the contrary, his “exact words were that ‘the job is becoming too challenging.’” (Tr. 15) After hearing about the Martinez incident, moreover, Ms. Darwish looked in to the status of the claim and the corporate security incident, and learned both the claim and the incident were deemed “closed as of December 22, 2015.” (Tr. 19)

Shortly after the hearing the Hearing Officer mailed a decision reviewing the facts, and finding that Mr. Mosley “offered credible testimony demonstrating that his interactions with the customer made him anxious.” However, the Hearing Officer continued, appellant failed to demonstrate these interactions rose to a level of severity that reasonably justified quitting his employment, in part, because he quit roughly two months after the obnoxious customer’s claim had been closed. There was no ongoing contact with the customer, or other reasons that justified a decision to quit. In addition, the Hearing Officer found that Mr. Mosley failed to take all reasonable steps within Progressive to resolve the issue before quitting. (Decision, p. 2 of 6.) On August 31, 2016 the Commission Decision was mailed-out, stating it had reviewed the entire record and unanimously voted to affirm the Hearing Officer’s decision.

III. Standard of Review.

In an appeal from a decision of the Unemployment Compensation Review Commission the court must determine if the Commission decision was “unlawful, unreasonable, or against the manifest weight of the evidence,” and if so, “it shall reverse, vacate, modify, or remand the matter to the commission.” *Williams v. Ohio Dept. of Job & Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20, quoting R.C. 4141.282(H); see also, *YWCA of Dayton, Ohio, Inc. v. Ohio Dept. of Job & Family Services*, 2nd Dist. Case No. 27281, 2017-Ohio-4102, 2017 Ohio App. LEXIS 2183, ¶¶ 14 - 17.

Ohio law provides cases like this one with only a limited review, under which “a reviewing court may not make factual findings or determine a witness’ credibility and must affirm the commission’s findings if some competent, credible evidence in the record supports it. [citation omitted] In other words, a reviewing court may not reverse the commission’s decision simply because ‘reasonable minds might reach different conclusions.’” *Williams, supra*. The determination of purely factual questions is left primarily within the province of the hearing officer and the Commission.

“Just cause” is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. [citations omitted] The determination whether there is just cause for discharge depends upon the factual circumstances of each case.” *Williams, supra*, ¶ 22.

“Fault on an employee’s part is an essential component of a just-cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer’s instructions. [citation omitted] Unsuitability for a position constitutes fault sufficient to support a just-cause discharge.” *Williams, supra*, ¶ 24.

Generally, employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving employment. This ordinarily includes giving notice to their employer, to afford the employer an opportunity to solve the problem before the employee quits their job. *Loughman v. Ohio Dept. of Public Safety*, 10th Dist. 15AP-473, 2016-Ohio-1086, 2016 Ohio App. LEXIS 984, ¶ 14, citing *DiGiannantoni v. Wedgewater Animal Hosp., Inc.* 109 Ohio App.3d 300, 307 (10th Dist. 1996).

There is no evidence in the record suggesting Mr. Mosley gave a doctor’s report, or even copies of his medical records to Progressive to put them on notice of the nature and scope of his “anxiety” issue. In *Loughman*, the Court of Appeals addressed a similar case. As may well be true here, “[t]here is no evidence in the record that notice to her employer that she had a medical condition would have been a futile act, or that her employer would have ignored her medical condition and not acted on such to resolve any issues and accommodate appellant.” *Loughman, supra*, ¶ 17. Certainly this omission in the factual record might have been one factor coloring the Hearing Examiner’s view of Mr. Mosley’s claim.

After considering the entire record, the court finds that the decision of the Commission was lawful, reasonable, and consistent with the manifest weight of the evidence. It must be affirmed.

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Appellees.	:	
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FINAL JUDGMENT

(Affirming the Decision of the Ohio
Unemployment Compensation Review Commission,
Docket No. C2016-010099.)

For the reasons explained in the foregoing Decision, the holding of the Ohio Unemployment Compensation Review Commission in their Docket No. C2016-10099 is lawful, reasonable, and consistent with the manifest weight of the evidence. Accordingly final judgment is hereby rendered **AFFIRMING** the August 31, 2016 Decision of the UCRC, and dismissing this appeal by Romero Mosley.

Court costs are taxed against Mr. Mosley.

*****THIS IS A FINAL APPEALABLE ORDER.*****

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 07-25-2017
Case Title: ROMERO MOSLEY -VS- PROGRESSIVE INSURANCE ET AL
Case Number: 16CV009228
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard A. Frye". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 16CV009228

Case Style: ROMERO MOSLEY -VS- PROGRESSIVE INSURANCE
ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes