

FILED

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CLERK OF COURT
WILLIAMS COUNTY OHIO

IN THE COURT OF COMMON PLEAS OF WILLIAMS COUNTY, OHIO

James F. Wheeler,

Case No. 17 CI 026

Plaintiff,

vs.

NN Metal Stampings, Inc., et al.,

Defendant.

DECISION and JUDGMENT
ENTRY
FINAL APPEALABLE ORDER

I. Procedural History

The appellant James F. Wheeler filed his application for unemployment compensation on September 11, 2016. His application was disallowed in a redetermination issued by the Ohio Department of Child and Family Services (ODJFS) on November 10, 2016, based on a conclusion that Mr. Wheeler had quit his employment without just cause. Mr. Wheeler timely appealed the redetermination on December 1, 2016, and a hearing was conducted by telephone on December 19, 2016. On December 20, 2016, the hearing officer from the Unemployment Compensation Review Commission issued a decision affirming the redetermination and denying benefits to James Wheeler.

On January 10, 2017, Mr. Wheeler timely filed a request for review, incorporating a memorandum in support in which he argued, in part that his resignation was the result of the employer's unlawful conduct and his reasonable fear for his safety.

On January 25, 2017, the Unemployment Compensation Review Commission allowed Mr. Wheeler's request for review. However, on February 8, 2017, the commission disposed of the allowed request for review by affirming the officer's decision effectively denying Mr. Wheeler any unemployment benefits. On March 3, 2017, Mr. Wheeler timely filed this appeal to the Williams County Common Pleas Court.

II. Background

Based upon a review of the certified record of the telephone hearing which was held on December 19, 2016, Mr. Wheeler was a maintenance worker for the employer NN Metal Stampings, Inc. for approximately 14 years. As part of his duties he was required to work on electrical equipment in the plant. In April of 2016, Mr. Wheeler's supervisor (and the Plant Safety Coordinator) Brad Stark, left the employment of NN Metal Stampings, Inc. Chris Wurm became Mr. Wheeler's new supervisor in May of 2016. The employer also hired Toby Gipple as a co-worker with Mr. Wheeler in the maintenance department. The co-worker was hired in June of 2016. According to Mr. Wheeler, when his co-worker was hired he was not provided with proper Personnel Protective Equipment (PPE), including electrical safety gloves and locks for lockout/tagout procedures, despite Mr. Wheeler raising his concern with his supervisor. Mr. Wheeler claims he had discussions with his new supervisor, Mr. Wurm, on June 14, 2016 regarding the lack of PPE for his co-worker. Mr. Wheeler also claimed he discussed that his own safety gloves were out of date. He further discussed his concerns that the employer was allowing unqualified individuals to shut down and work on equipment without following lockout/tagout procedures and without required training.

No other witnesses testified at the hearing on behalf of Mr. Wheeler, and the company denied that Mr. Wheeler raised these safety concerns in June of 2016. According to Mr. Wheeler, he continued to use his outdated safety gloves in June, July, August and September of 2016 until he quit his employment in a letter of resignation dated September 7, 2016.

Mr. Wheeler testified that he voiced his safety concerns with his new supervisor on September 1, 2016. According to Mr. Wheeler, notwithstanding his concerns, Mr. Wurm instructed Mr. Wheeler to do the best he could with the equipment that he had. Mr. Wheeler testified that he feared for the safety of himself and his co-worker because he believed they did not have proper safety equipment to protect them from electrical shock or electrocution. He felt frustrated because he perceived that the employer took no steps to protect his safety. Later in the day, on September 1, 2016, Mr. Wheeler also raised his safety concerns with an OSHA investigator who was present at the plant conducting an unrelated safety investigation.

The only witness testifying for the employer, NN Metal Stampings, Inc. was Jerri Stanforth, the Human Resource Manager for the company. In September of 2016, she was acting as the Plant Safety Coordinator. Ms. Stanforth testified that the first time she became aware of Mr. Wheeler's complaint about the lack of safety equipment was on September 1, 2016. On that date, an OSHA investigator was at the NN Stamping plant conducting an investigation in an unrelated matter. As part of the investigation, the OSHA representative interviewed Mr. Wheeler. During the interview, Mr. Wheeler complained of his concerns over the lack of proper safety gloves for all maintenance department personnel. The OSHA representative, Mr. Epperson, advised Ms.

Stanforth of the need to secure the safety equipment. The safety equipment was immediately ordered by the company and was delivered to NN Stamping on September 9, 2016.

Based upon the evidence presented, the Hearing Officer for the Unemployment Compensation Review Commission found that Mr. Wheeler's last date of employment with NN Stamping was on September 1, 2016. On that date, the hearing officer found that Wheeler and his maintenance co-worker (Toby Gipple) were trouble shooting a press (#29) at the plant. Neither of the two maintenance workers had proper PPE (Protective Personal Equipment). After completing an initial diagnosis of the problem, they reported their preliminary findings to Chris Wurm, their new maintenance supervisor. The Hearing Officer also found that Mr. Wheeler reported his concerns about the out-of-date safety gloves and lack of safety equipment for maintenance co-worker Gipple. Mr. Wurm advised the maintenance co-worker's to do the best they could with what they had. Mr. Wurm then left the area to address another issue for the plant.

After September 1, 2016, Mr. Wheeler was not scheduled to work again until Tuesday, September 6, 2016. On that date, Mr. Wheeler called in to work and took a "personal" day off work (which was permitted). On September 7, 2016, Mr. Wheeler called his employer and took a "vacation" day which was also permitted.

At 10:00 p.m. on September 7, 2016, Mr. Wheeler sent an e-mail to his employer in which he resigned his position effective the next day. The Hearing Officer found that Mr. Wheeler quit without prior notice because of his increased concerns about safety issues at the plant. Based upon the testimony, the Hearing Officer found that Mr. Wheeler quit without just cause and was ineligible to receive unemployment benefits. In support of his decision, the Hearing Officer

reasoned that Mr. Wheeler had not taken any reasonable action to explore options to keep his job before quitting. Ironically, as pointed out by the Hearing Officer, NN Stamping had already addressed Wheeler's concerns before he actually quit his job. The safety equipment at issue had been ordered and delivered to the plant on or about September 9, 2016.

The Hearing Officer found that Mr. Wheeler did not become unemployed "involuntarily." He quit without just cause.

III. The law

A party may appeal from a final determination of the Ohio Unemployment Compensation Review Commission to the Court of Common Pleas, which shall hear the appeal on the record certified by the commission. ORC §4141.282 (H). A trial court shall reverse the determination of the commission only if it finds that the decision of the commission was "unlawful, unreasonable, or against the manifest weight of the evidence." A hearing officer is in the best position to determine purely factual questions and a court must accept the hearing officer's factual findings if there exists competent, credible evidence to support those findings. *Friedel v. Quota*, 2015-Ohio-4060 (Ohio App. 6th Dist.). Every reasonable presumption must be made in favor of the commission's decision and its finding of fact. *Id.*

An individual is ineligible for unemployment benefits if the individual quits his employment without cause. ORC §4141.29(H); *Elliot v. Bedsole Transp., Inc.*, 2011-Ohio-3232 (Ohio App. 6th Dist.), ¶13. The term 'quit' connotes a voluntary act by an employee not controlled by the employer. *Id.* "Just cause" is that which to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Henize v. Giles*, 69 Ohio App. 3d 104, 110 (Ohio

App. Dist.), citing *Irvine v. Unemployment Compensation Bd. of Review* (1985), 19 Ohio St. 3d 15,17. The claimant bears the burden of establishing just cause for quitting. *Id.* Whether just cause exists must be determined on a case-by-case basis. *Id.*

The Ohio Supreme Court has held that the Unemployment Compensation Review Commission is vested with the sole province of making factual determinations. A trial court is not permitted to weigh the evidence and substitute its judgment upon the factual determinations. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St. 2d 41, 45. Although ORC §4141.46 mandates that Ohio's unemployment law is to be liberally construed in favor of a beneficiary, courts are also to consider that the purpose of the unemployment laws is to provide financial assistance to those who find themselves unemployed through no fault or choice of their own. *Abate v. Wheeling – Pittsburgh Steel Corp.*, 126 Ohio App. 3d 742, 748 (Ohio App. 7th Dist.).

IV. Discussion

As required by ORC §4141.282 (H), the Court has carefully reviewed the entire record of proceedings to determine the validity of Mr. Wheeler's appeal to this court.

Mr. Wheeler's appeal raises questions on the factual determination of the original hearing officer and that of the Unemployment Compensation Review Commission finding that Mr. Wheeler 'quit' his employment without just cause. As previously noted, the factual determinations are within the sole province of the commission. This court must not substitute its judgment upon reviewing the Commissioner's factual determinations.

The evidence considered by the Hearing Officer discloses that Mr. Wheeler had worked for NN Stamping for fourteen (14) years in their maintenance department. In the summer of 2016,

the prior maintenance supervisor left the company and he was replaced by Chris Wurm. Mr. Wheeler testified that he first raised his concerns about inadequate and out-of-date safety equipment (including safety gloves) on June 14, 2016. Mr. Wheeler testified that the employer took no corrective action at that time. The representative of NN Stamping denied ever receiving the safety concern complaint from Mr. Wheeler in June of 2016. According to Ms. Stanforth, if there was a need to order and/or update the safety equipment, Mr. Wheeler himself had the authority to do so. Ms. Stanforth also testified that in the company's training of employees at the plant, it was always emphasized with the workers to never hesitate to report safety concerns to the supervisors or any other management personnel.

Mr. Wheeler testified about his ongoing safety concerns continuing from June of 2016 but he conceded he had not raised the issues with anyone else at the plant other than Chris Wurm on June 14, 2016. He continued his employment in June, July, August and into September of 2016. During that time period, he continued to use his own out-of-date safety gloves.

On September 1, 2016, after Mr. Wheeler and his co-maintenance worker (Mr. Gipple) were analyzing problems with Press #29, Mr. Wheeler again expressed safety concerns with his supervisor, Chris Wurm. When Wheeler reminded Wurm of the on-going need for up-to-date safety gloves and equipment for the three members of the maintenance department (including for Supervisor Wurm), he was told to do the best with what he had.

On that very same day, September 1, 2016, Mr. Wheeler also expressed these same safety concerns to an OSHA investigator, who in turn, brought the issue to the attention of Ms. Stanforth. The company immediately ordered the necessary and updated equipment for all three maintenance

staff members and all items were delivered to the plant by September 9, 2016. Mr. Wheeler never became aware that the personal protective equipment had been delivered to the plant because he resigned his position effective September 8, 2016.

V. CONCLUSION

After reviewing the entire record, the determination of the Ohio Unemployment Compensation Review Commission was lawful, reasonable and was not against the manifest weight of the evidence. O.R.C. §4141.282. There was more than sufficient, competent and credible evidence in the record to support the Commission's decision. A reviewing court may not reverse the Commission's decision simply because reasonable minds might reach different conclusions.

The decision of the commission affirming the denial of unemployment benefits to Mr. Wheeler is affirmed. The appeal of Mr. Wheeler is hereby denied and overruled.

Costs to the appellant, James F Wheeler, Jr.

This is a Final Appealable Order and the Clerk of Courts of this Court shall serve all counsel of record as required under Ohio Civil Rule 58(B).



J.T. Stelzer, Judge