

4141.29(D)(2)(a) and 4141.29(G), and applicable law, this Court hereby **AFFIRMS** the Determination of the Ohio Unemployment Compensation Review Commission.

ANALYSIS

A. STANDARD OF REVIEW

The Ohio Revised Code sets forth the standard of review this Court is required to observe when considering appeals of decisions rendered by the Ohio Unemployment Compensation Review Commission (Review Commission).

O.R.C. §4141.282(H) provides in pertinent part:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

* * *

This Court is further bound by the leading Supreme Court of Ohio case concerning Ohio unemployment compensation law, *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694. Specifically, as the reviewing court, this Court “may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Id.* at 697. *See, also, Williams v. Ohio Department of Job & Family Services*, 2011-Ohio-2897 (Ohio Sup. Ct.), at ¶ 19; *Westphal v. Cracker Barrel Old Country Store, Inc.*, 2010-Ohio-190 (9th District, Lorain No. 09CA009602), *not accepted for review*, 125 Ohio St.3d 1448. 2010-Ohio-2510, at ¶¶ 12-13.

The parties are not entitled to a trial *de novo*, and in making its determination, a reviewing court may not rewrite the Commission’s decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. Although the Review Commission’s decision should not be “rubber –stamped,” this Court’s role is to “determine whether the decision of the review commission is supported by evidence in the certified record.” *Kilgore, supra.*; *Roberts v. Hayes*, 2003-Ohio-5903, at ¶ 12. “If the court finds that such support is found, then the court cannot substitute its judgment for that of

the Review Commission.” *Id.*; *See, also, Blake v. Admr. Of the Unemp. Rev. Comm’n et al.*, 2017-Ohio-166 (9th District, Summit No. CA 27958), at ¶ 31.

The Review Commission and its hearing officer are the trier-of-fact, and as such the determination of factual questions is within their primary purview. *Central Ohio Joint Vocational School Dist. Bd. of Education v. Admr., Ohio Bureau of Employment Services*, 21 Ohio St.3d 5, 487 N.E.2d 288 (1986); *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Klemencic v. Robinson Memorial Hospital*, 2010-Ohio5108 (9th District, Summit No. CA 25293), at ¶ 7, citing *Ro-Mai Industries, Inc. v. Weinberg*, 2008-Ohio-301, 176 Ohio App.3d 151 (9th District, Summit No. CA 23792), at ¶ 8. Thus, the Review Commission and its hearing officer are responsible for weighing the credibility of the evidence and testimony. Accordingly, this Court must defer to the Review Commission’s determination of factual issues regarding the credibility of witnesses and the weight of conflicting evidence. *Bernard v. Administrator, Ohio Bureau of Employment Services*, 9 Ohio App. 3d 277, 459 N.E.2d 904 (9th Dist., 1983); *General Die Casters, Inc. v. Dir., Ohio Dep’t of Job & Family Servs.*, 2015-Ohio-4033 (9th Dist., 2015). The fact that reasonable minds might reach a different conclusion than the Review Commission does not provide a basis for the reversal of the Review Commission’s decision. *Roberts v. Hayes, supra*; *Klemencic, supra*, at ¶ 7. If some credible evidence supports the commission’s decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.* (1978), 54 Ohio St. 2d 279; *Westphal, supra*, at ¶ 14.

B. ARGUMENTS PRESENTED

The sole issue for consideration before this Court is whether the Review Commission’s finding that Appellant was terminated from her employment with OPRS Communities for just cause is supported by evidence in the certified record.

Appellant argues the Review Commission’s decision finding that Appellant was discharged for just cause is unsupported by the manifest weight of the evidence, is unlawful and unreasonable, and should not be affirmed. Appellant’s argument focuses largely on the hearing officer’s interpretation of the evidence offered at the January 17, 2017 hearing and what weight, if any, she gave to the testimony.

Appellees assert that there are sufficient facts and evidence in the record to support the hearing officer’s decision, and therefore this Court must defer to the fact-finder’s decision. Appellees further contend that the mere possibility that the Review Commission could have

reached an opposition conclusion does not mean this Court is bound to reverse the Commission's decision.

C. FACTS ENTERED INTO THE COMPLETE RECORD

This Court has reviewed the complete record filed with the Clerk of Courts, including: 1) the contents of the Director's file on the matter; 2) the redetermination decision issued by the Director of the Review Commission, dated December 8, 2016; 3) the transcript of the hearing before the hearing officer on January 17, 2017; 4) the Decision of the hearing officer, mailed March 8, 2017; and 5) Appellants' and Appellees exhibits. From the complete record, the Court finds the following facts:

Appellant Audrey D. Hylton (Appellant) was employed as a nursing staff scheduler for the Employer, OPRS Communities (Employer), from August 2013 until her discharge on September 30, 2016. *Transcript of January 17, 2017 hearing*, ("Tr."), at 4, 15. On June 21, 2016, Appellant received a Written Record of Oral Warning for unprofessional behavior. *Exhibit C; Tr.*, at 7. On August 17, 2016, Appellant was placed on a Performance Improvement Plan (PIP) as a result of her unsatisfactory performance. *Exhibit D*. Employer's Administrator met with Appellant on two separate occasions, September 6 and September 13, 2016, to discuss Appellant's lack of improvement. *Tr.*, at 5-6; *Exhibit E*, at 2. Appellant received a Final Warning on or about September 15, 2016, because Appellant showed no meaningful improvement regardless of weekly performance meetings. *Exhibit E*. Appellant then incurred two errors impacting staffing levels in Employer's facility. *Exhibit F; Tr.* At 7. Appellant was discharged from employment on September 30, 2016. *Id.*

Appellant's initial application for unemployment benefits was disallowed by the Ohio Department of Job and Family Services' Office of Unemployment Compensation on October 7, 2017. Appellant appealed the initial determination to the Director of the Ohio Department of Job and Family Services, who held on October 28, 2016 that Appellant was discharged from employment with just cause. Appellant filed a timely appeal for a redetermination, which was affirmed on December 8, 2016, holding that Appellant was discharged from employment for just cause. Appellant then appealed from the Redetermination on December 29, 2016, and the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

A hearing was held via telephone on January 17, 2017 before the Hearing Officer, Jennifer Hanysh (Hanysh). Hanysh took testimony from Appellant and OPRS Communities. Hanysh issued her Decision on January 31, 2017, finding Appellant's actions demonstrated a disregard of Employer's interest, and she was therefore discharged for just cause under the Ohio Revised Code. Appellant appealed Hanysh's decision to the Review Commission on February 21, 2017, and the decision was upheld.

D. Conclusions of Law

1. Deference to the Review Commission

It is well-settled that while this Court has received the entire administrative record, Ohio law requires a reviewing court to defer to the decision of the Review Commission. The Review Commission and its hearing officer are the triers-of-fact, and as such the determination of factual questions is within their primary purview. *Central Ohio Joint Vocational School Dist. Bd. of Education v. Admr., Ohio Bureau of Employment Services*, 21 Ohio St.3d 5, 487 N.E.2d 288 (1986); *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Klemencic v. Robinson Memorial Hospital*, 2010-Ohio5108 (9th District, Summit No. CA 25293), at ¶ 7, citing *Ro-Mai Industries, Inc. v. Weinberg*, 2008-Ohio-301, 176 Ohio App.3d 151 (9th District, Summit No. CA 23792), at ¶ 8. Thus, the Review Commission and its hearing officer are responsible for weighing the credibility of the evidence and testimony. Accordingly, this Court must defer to the Review Commission's determination of factual issues regarding the credibility of witnesses and the weight of conflicting evidence. *Bernard v. Administrator, Ohio Bureau of Employment Services*, 9 Ohio App. 3d 277, 459 N.E.2d 904 (9th Dist., 1983); *General Die Casters, Inc. v. Dir., Ohio Dep't of Job & Family Servs.*, 2015-Ohio-4033 (9th Dist., 2015).

2. Appellant's Employment was Terminated for Just Cause

"Just Cause" is defined by Ohio courts as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Peyton v. Sun T.V.* (1975), 44 Oho App.2d 10, 12; *See, also, Westphal, supra*, at ¶ 10. 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. Services* (1985), 21 Ohio App.3d 168, 169; *Westphal, supra*, at ¶ 11. The conduct of the employee need not be so severe as to be categorized as "misconduct," but there must be some showing of fault by the employee. *Sellers*

v. *Bd. of Review* (1981), 1 Ohio App.3d 161; *Westphal, supra*, at ¶ 12. The “just cause” test rests upon the question of 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.

As explained by the Ohio Supreme Court in *Tzangas, supra*, there need not be egregious fault, intentional or willful acts, or purposeful fraud on the employer, in order to meet the fault requirement of just cause. In fact, a determination of just cause depends upon the unique factual considerations of a particular case and is primarily an issue for the trier of fact. *Peyton, supra*. “Although just cause is reviewed from the employer’s point of view, ‘[i]n keeping with the intent and purpose of the Ohio Unemployment Compensation Act, ‘fault’ must be further determined from the employee’s perspective.’” *SARTA v. Director, ODJFS, et al.*, 2010-Ohio-2142 (5th Dist., 2010) quoting *Morris v. Ohio Bureau of Employment Servs.* (1993), 90 Ohio App. 3d 295, 299, 629 N.E.2d 35.

Appellant contends Hanysh’s determination is unsupported by the testimony offered by Appellant herself and Dana Wherley (Wherley), Employer’s Director of Human Resources. Specifically, Appellant argues Wherley’s testimony contained discrepancies which Hanysh did not afford proper weight to in making her determination. However, this Court finds the question of what and how much weight, if any, is given to testimony, is a question best left to the finder of fact. This Court is without jurisdiction to weigh the evidence or assess credibility of either Appellant or Wherley. *Brown-Brockmeyer, supra*. Hanysh’s decision was made based upon the testimony and evidence taken at the January 17, 2017, hearing. This Court cannot substitute its own opinion on the weight to be given—or not—to the witness’ testimony.

Further, this Court finds there is a substantial amount of evidence in the record supporting the determination that Employer discharged Appellant with just cause in connection with work. An examination of the complete record reveals Appellant: 1) was given an oral warning in June 2016, memorialized in writing, with regard to her informing another staff member that a particular person had been terminated from the facility; 2) was placed on a 30-day Performance Improvement Plan (PIP) for failure to perform her duties satisfactorily; 3) had regular performance reviews, including meetings on September 6 and 14, 2016; 4) was given a final warning, in writing, concerning her performance on September 15, 2016; 5) was confronted with performance failures such as errors in scheduling, poor communication with staff, and misuse of overtime; 6) committed two errors within a week’s time causing Employer’s medical

facility to be short staffed and incurring staffing costs to Employer; and 7) demonstrated a continual pattern of errors and failure to perform, despite progressive discipline and performance evaluation. This Court notes all of these findings were evaluated for credibility by Hanysh in making her determination, and further finds that her determination was supported by the evidence within the record.

COURT ORDERS

Based on the foregoing, this Court hereby **AFFIRMS** the Determination of the Ohio Unemployment Compensation Review Commission.

IT IS SO ORDERED



JUDGE ALISON BREAUX

CC: ALL PARTIES OF RECORD