

IN THE OTTAWA COUNTY COMMON PLEAS COURT, OHIO
CLERK OF COURTS
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Lana Schlosser :
Appellant, :
v. :
Apria Healthcare LLC :
Appellee. :

Case No. 16CV56
Judge Bruce Winters
DECISION

Lana Schlosser (“Schlosser”) was employed by Apria Healthcare LLC (“Apria”) as a senior customer qualification specialist. Schlosser’s record contains several incidences of what Apria classified as unprofessional conduct. Schlosser received verbal and a written warnings regarding her interaction with coworkers. After a final incident of unprofessional conduct, Schlosser was terminated from employment.

Schlosser applied for unemployment benefits and said claim was initially allowed by the Ohio Department of Job and Family Services. Apria appealed the determination and the initial determination was affirmed. Apria appealed the redetermination and the case was transferred to the Ohio Unemployment Compensation Review Commission and a hearing was held. The redetermination was reversed and Schlosser’s claim for benefits was disallowed. Further Schlosser was ordered to repay benefits she received. Schlosser requested a review of the reversal and said request was disallowed. The instant appeal followed.

In an administrative appeal, a trial court’s duty is to determine whether the decision appealed from is unlawful, unreasonable or against the manifest weight of the evidence. Akzo Salt, Inc. v. Ohio Bureau of Employment Services (1995), 107 Ohio

App. 3d 567. A court of common pleas must affirm an order of an administrative board if the order is supported by reliable, probative and substantial evidence and is in accordance with law. Paramount Auto, Inc. v. Motor Vehicle Dealers Board (1997), 118 Ohio App. 3d 511. Making this determination calls for a hybrid factual/legal inquiry in which the agency's findings of fact are presumed to be correct and questions of law are reviewed de novo. Moran v. Ohio Dept. of Commerce, Real Estate Div. (1996), 109 Ohio App. 3d 494.

The resolution of purely factual questions is for the board of review and its referees as triers of the facts. Brown-Brockmeyer Co. v. Roach (1947), 148 Ohio St. 511. The role of the court of common pleas, upon an appeal based on factual grounds, is limited to determining whether the board's decision is supported by evidence in the record. Kilgore v. Bd. of Review (1965), 2 Ohio App. 2d 69. The court may not substitute its judgment for that of the board; it may not reverse simply because it interprets the evidence differently than did the board. Fahl v. Bd. of Review (1965), 2 Ohio App. 2d 286. Because the statutory standard of review is couched in terms of manifest weight of the evidence, a decision of the board supported by some competent, credible evidence going to all the essential elements of the controversy will not be reversed by a reviewing court as being against the manifest weight of the evidence. C. E. Morris Co. v. Foley Construction Co. (1978), 54 Ohio St. 2d 279. Stated another way, a reviewing court will not reverse on the manifest weight of the evidence where reasonable minds could weigh the evidence and arrive at contrary conclusions. In re Parker v. Anheuser-Busch (Jan. 28, 1983), Franklin App. No. 81AP-718, unreported.

R.C. 4141.29 provides in part,

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

Traditionally, just cause, in the statutory sense, is 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 Ohio App. 2d 10. While the determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case, that does not compel the appellate court's abandonment of fault-based just cause analysis in favor of a "totality of the circumstances" examination. Instead, the question of fault cannot be rigidly defined, but, rather, can only be evaluated upon consideration of the particular facts of each case. If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination.

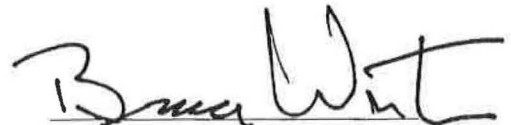
Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs., 73 Ohio St. 3d 694, 696, 653 N.E.2d 1207, 1210, 1995 Ohio LEXIS 1882, *4, 1995-Ohio-206 (Ohio Sept. 13, 1995)

In the present case, the Hearing Officer found that Defendant's supervisors had concerns with her interaction with coworkers in mid-September 2015 and gave her a verbal warning. Then, on September 18, 2015, Defendant's supervisors gave Defendant a written warning regarding an inappropriate email. Defendant also shouted at a supervisor during the telephone call about the written warning. Finally, on September 28, 2015, Defendant had inappropriate discussions with a coworker, regarding her corrective

action. The Court finds that the decision is supported by reliable, probative and substantial evidence and is in accordance with law.

CONCLUSION

In light of the foregoing analysis, the Court AFFIRMS the administrative decision.


Judge