

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

UNIVERSITY OF AKRON)	CASE NO. CV-2017-04-1481
)	
Plaintiff)	
-vs-)	JUDGE AMY CORRIGALL JONES
)	
DIRECTOR, ODJFS, et al.)	
)	
Defendants)	<u>ORDER</u>
)	(Final and Appealable)

- - -

PROCEDURAL HISTORY

On October 17, 2016, the claimant filed an application for unemployment benefits. On November 7, 2016 the Director of the Ohio Department of Job and Family Services (“ODJFS”) allowed her application for benefits, holding that she had been terminated from her employment as a custodian with the University of Akron (“U of A”) without just cause. The U of A filed a timely appeal of that determination, and on December 14, 2016, the ODJFS issued its redetermination order by which it reversed the initial determination, disallowed her application for benefits, and ordered that the claimant repay those she had received under R.C. 4141.35(B). The ODJFS transferred jurisdiction to the State of Ohio Unemployment Compensation Review Commission (“UCRC”), which conducted a hearing on January 12, 2017. The hearing officer reversed the ODJFS Re-determination and cancelled the overpayment order, holding that “[t]he claimant was discharged for excessive absenteeism. However the claimant’s absenteeism was caused by a medical condition beyond her control. Absent evidence of misconduct, her discharge was not reasonable.” Therefore, the hearing officer determined that her discharge was without just cause. The U of A appealed on February 2, 2017 and requested Commission-level review. The Commission issued a decision on February 15, 2017 by which it affirmed the hearing officer’s January 12, 2017 decision.

The matter is now before the court on an administrative appeal from a decision of the UCRC, filed by the U of A pursuant to R.C. §4141.282. The parties have submitted briefs. The court considers the matter fully submitted.

STANDARDS OF REVIEW

A common pleas court reviewing a determination by the review board may only reverse the review board's imposition of penalties if the decision is unlawful, unreasonable, or against the preponderance of the evidence. *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301 at ¶ 6, 891 N.E.2d 348, (citation omitted).

“Every reasonable presumption must be made in favor of the decision and the findings of facts of the UCRC. *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, 526 N.E.2d 1350.” *Id.* at ¶7. “The resolution of factual questions is chiefly within the UCRC's scope of review. *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 696, 653 N.E.2d 1207.” *Id.* at ¶8.

“The court's role is to determine whether the decision of the UCRC is supported by evidence in the certified record. (citations omitted).” *Id.* “If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the UCRC. (citations omitted).” *Id.* “The fact that reasonable minds might reach different conclusions is not a basis for reversal of the Review Board's decision. *Irvine v. Unemp. Comp. Bd. Of Rev.* (1985), 19 Ohio St.3d 15, 18, 482 N.E.2d 587.” *Id.*

“The Court of Common Pleas is not authorized to *try* the issues of fact in this kind of proceeding. Pursuant to Section 4141.28 (O), Revised Code, it is limited to finding ‘that the decision [of the board of review] was unlawful, unreasonable, or against the manifest weight of the evidence,’ in which event, ‘it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification, otherwise * * * [it]

shall affirm such decision.” *Hall v. American Brake Shoe Co.*, 13 Ohio St.2d 11, 13, 233 N.E.2d 582 (1968). The court must give due deference to the administrative resolution of evidentiary issues concerning credibility of witnesses and the weight of any conflicting evidence. *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207. In the administrative process, the UCRC is the trier of fact. “The weight to be given evidence and credibility of witnesses is to be made by the trier of fact.” *State v. Williams*, 83 Ohio App.3d 39, 43, 610 N.E.2d 1188 (1992).

“In determining issues of witness credibility, the [trier of fact] considers the appearance of each witness upon the stand, his manner of testifying, and the reasonableness of the testimony, the opportunity he had to see, hear, and know the things about which he testified, his accuracy of memory, his frankness or lack of it, and his intelligence, interest, and bias, if any, together with all the facts and circumstances surrounding the testimony.” *Adair v. Ohio Dept. of Rehab. & Corr.*, 96 Ohio Misc.2d 8, 11, 708 N.E.2d 302 (1998). “The trier of fact is not required to believe testimony of witnesses, and may choose to believe part but not all of testimony of given witness[es].” *Thornton v. Parker*, 100 Ohio App.3d 743, 751, 654 N.E.2d 1282 (1995). Ultimately, the UCRC resolved any conflicting evidence presented by the parties by making a credibility determination. The UCRC was in the best position to make such a determination. This court will give due deference to that determination.

Further, this court may not reverse the UCRC’s decision just because it might interpret the evidence in a different manner. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423, (1965), paragraph two of the syllabus.

ANALYSIS

The hearing officer made specific findings of fact as follow:

The claimant worked for the University of Akron as a custodian from February 19, 2008 to October 13, 2016. University of Akron defines excessive absenteeism as absences greater than the number of days accrued.

Between September 13, 2015 and September 13, 2016, the claimant was absent 22 days but only accrued 15 paid days off. In February 2016, she received a three day suspension for her attendance and then was discharged. However, the claimant provided credible testimony that her absences were related to a serious medical condition. The claimant's medical condition prevented her from working when symptoms were acute and caused multiple emergency room visits u=in addition to doctor's appointment[s]. For all her unexcused absences the claimant provided the university with medical documentation upon returning to work and for her doctor appointments she had the time pre-approved.

The claimant received unemployment benefits, totaling \$2,275.00 for the weeks ending October 29, 2016 through December 10, 2016.

The U of A argues that the claimant was terminated for excessive absenteeism and exhibiting a pattern of absenteeism. It notes that she missed 22 days of work in a one-year period in spite of only earning 15 days of sick time for the period and that in her last month she missed five days, two of which were unexcused. The U of A urges that the hearing officer focused only her actual days missed and not on the alleged pattern of absenteeism she displayed. The U of A asserts that she never informed her employer what was causing her to be absent.

The hearing officer weighed the evidence presented on both sides and determined that she was justified in her absences due to a condition that she had no control over. Further, the hearing officer determined by the preponderance of the evidence that she did substantiate her reasons for missing work. The court notes additionally that the U of A did not appear for the January 11, 2016 hearing but appealed the determination nevertheless. The court can find no cause to disturb the findings below.

CONCLUSION

Based on the evidence and testimony presented at the hearing by the UCRC, it is clear to this court that the evidence supported the UCRC's decision. Therefore, the court finds that its decision was not unlawful, unreasonable, or against the preponderance of the evidence and affirms the decision accordingly.

There is no just reason for delay.

IT IS SO ORDERED.



JUDGE AMY CORRIGALL JONES

CC: ATTORNEY BRIAN M. WHITE
ATTORNEY LAURENCE R. SNYDER

WDW