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LORAIN COUNTY
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COURT OF COMMON PLEAS
TOM ORLANDO

**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
John R. Miraldi, Judge**

Date 10/16/17 Case No. 17CV191871

LORAIN COUNTY COMMUNITY COLLEGE
Plaintiff

BRIAN M WHITE
Plaintiff's Attorney (330)491-5332

VS

OHIO DEPARTMENT OF JOBS & FAMILY SERVICES
Defendant

PATRICK MACQUEENEY
Defendant's Attorney (216)787-3030

DECISION AND ENTRY ON ADMINISTRATIVE APPEAL

This cause came to be heard upon an administrative appeal filed by Appellant Lorain County Community College pursuant to R.C. §4141.282. A copy of the certified record has been filed with the court. Appellant has filed its brief urging reversal of the UCRC hearing officer which allowed a claim for unemployment benefits. Appellees Ohio Department of Jobs & Family Services have filed their briefs in opposition urging affirmance of the UCRC decision. At issue in this appeal is Appellee Robert Critell's claim for unemployment benefits and whether Appellee Critell quit his employment with appellant for just cause under R.C. §4141.29(D)(2)(a).

The common pleas court's statutory standard of review is set forth in R.C. §4141.282(H), which provides:

REVIEW BY THE COURT OF COMMON PLEAS

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.





Stated another way, the decision of the commission *must* be affirmed unless the court finds that the decision of the commission was unlawful, unreasonable or against the manifest weight of the evidence.

In addition, the resolution of factual issues and the credibility of the witnesses is within the determination of the hearing officer and the court must defer to the hearing officer on these issues. *Ro-Mai Industries, Inc. v. ODJFS*, Summit App. No. 23792, 2008 Ohio 301 (9th Dist., 2008). In *Ro-Mai, supra*, the Ninth District noted:

The resolution of factual questions is chiefly within the UCRC's scope of review. * * * The courts' role is to determine whether the decision of the UCRC is supported by evidence in the certified record. * * * If the reviewing court finds that that support is found, then the court cannot substitute its judgment for that of the UCRC. * * * The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [UCRC's] decision.

A party is entitled to unemployment benefits if he or she quits with just cause or is terminated without just cause. R.C. 4141.29(D)(2)(a). * * * Traditionally, in the statutory sense, "just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." * * * [Citations omitted.]

Id. at ¶¶8 & 9.

In this case, Appellee Critell worked for LCCC as a security officer for eighteen years, from March 1, 1998 through September 2, 2016 at which time he resigned. Critell alleges that he resigned due to a hostile work environment which involved harassment, intimidation and threats of physical assault from a number of custodial contracted employees of Triangle, with whom LCCC had a contract for cleaning services.¹ Tr. I at 11.

At some point in April, 2016, Appellee Critell sent an e-mail communication to LCCC that he was being harassed by members of the Triangle cleaning crew. Tr. I, 15. Critell indicated to LCCC that someone had spit on his vehicle. Tr. I, 16. Critell informed LCCC that Triangle employees had indicated that they would "get physical with him." Tr. I, 17. The information was transmitted to Triangle, who Keith Brown² testified wanted LCCC to address the situation at their level. Tr. I, 17. LCCC's solution was to issue no contact orders. Id. Brown testified that Critell was having "some serious challenges with Triangle." Tr. I, 18. LCCC also received two anonymous statements "about Cliff

¹ There are two separate hearing transcripts in this matter, dated December 5, 2016 and January 9, 2017, respectively. The court will designate these as Tr. I and Tr. II.

² Keith Brown is Appellant LCCC's Director of Human Resources and Campus Security. Tr. I, 7.





allegedly telling his, his employees to allegedly make up things about Mr. Critell * * *." Tr. I, 23.³ When questioned about the statements, Cliff apparently denied them. Tr. I, 24.

Appellant Critell testified before the hearing officer that he felt LCCC failed to address the situation involving the Triangle employees and that he feared for his safety and security. Tr. II, 11. He testified that the Triangle employees told him that they would "fuck me up." Id. He testified to being screamed at by Triangle employees and being called "all kinds of names." Tr. II, 15. In particular, Critell testified to the verbal assaults and threats of physical or bodily harm made by Triangle employees:

Q. Okay. Well, what is she saying to you?

A. She's saying that I was, "fucking rude." I had, "no reason to talk to him that way." And she just kept on calling, you know, just kept on saying things. And, so, I said, "This doesn't concern you." And then she said, "Yes, it fucking concerns me. He's my teammate," this and that. She went on and on. And, he's out in the hallway and he looks at me and he says, "Why don't you come out here. You're talking so big in there." * * *

Q. It's okay.

A. I've been wanting to get this out for a long time.

Q. I understand. Go ahead. So, he says something to the effect of, "Why don't you come out here in the hallway with me. You've been talking big in there."

A. Right, right.

Q. Okay.

A. So, as I walk by him, you know, I do look at him and he says, "Let's go out there and I'll fuck you up." I didn't do that. I went back in the office. No, excuse me, as he's telling me there, there's another employee standing by the door.

Q. A third employee or just one of the two?

³ Cliff is the Triangle supervisor who oversees daily operations. Tr. I, 24.





- A. It's a, it's a, it's another employee. It's a male.
- Q. One of the Triangle cleaners or somebody ...
- A. Yes, I (sic) was a Triangle. There's no other people but the Triangle cleaners that are with us at night.
- Q. Okay.
- A. So, he's standing at the door and he says, "You better watch your back because I will fuck you up." * * *

Tr. II, 15-16.

Appellee Critell further testified that once LCCC's no contact order was in place, he complied with the order, however, the Triangle employees (and their supervisors) did not:

- A. I reported that to Ken.
- Q. Reported what?
- A. About them being in the area where I am. Ah, you know, and making remarks and stuff. And, Ken had told me they cannot, they're supposed to clean that floor and they're not supposed to be around me when I come in and I'm not supposed to be around them when they come in. There shouldn't be no contact. Which I thought that's what a no contact order was. But, it wasn't like that. I obeyed the order. They didn't. Every night when I would come into work, they were outside smoking. They knew what time I come into work, so, and they always stayed on the first floor and, you know, they would come in the office and clean and I would leave. Things like that. So, I did what I was supposed to do, they didn't follow it. And, the manager, this Breedlove and Kim and Kim Meyers and Kim Ramond and David Higgenbothum (phonetic), their, his supervisors, were outside smoking with them when I would come in and those three individuals were out there, they said nothing to them.

Tr. II, 22-23. Critell testified that the three Triangle employees were always together:

- A. They were, you know, they were in the same group and those individuals had a good working relationship. They were always together. If they were out smoking, those three were there. Ah, if they were walking to another





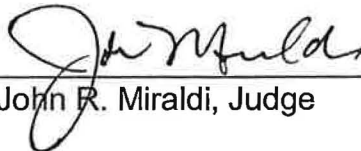
building from outside, it was those three. So, I took that as a possible threat for my safety and well being.

Tr. II, 12. The evidence before the hearing officer appears to indicate that the threats being made to Appellee Critell under the specific attendant circumstances in which they occurred were credible and that for all of the grievances and other "procedures" effected by Appellant LCCC, none of them adequately addressed the very real concern of Appellee's safety. Under these circumstances, the record before the court supports the finding that Appellee Critell had a justifiable reason for quitting his employment.

The court finds that the decision of the UCRC hearing officer is supported by the testimony in the record (the weight of which is soundly within the determination of the hearing officer) and is not against the manifest weight of the evidence. See, *Durgan v. Ohio Bur. Of Emp. Services*, 100 Ohio App.3d 545, 551, 674 N.E.2d 1208, 1212 (9th Dist., 1996), citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 697, 653 N.E.2d 1207. Likewise, the court finds that the UCRC officer's finding is not unlawful or unreasonable.

Therefore, the decision of the UCRC that Appellee Critell quit his employment with Appellant LCCC for just cause under R.C. §4141.29(D)(2)(a) is AFFIRMED. Case closed. Costs to Appellant.

IT IS SO ORDERED.



John R. Miraldi, Judge

cc: All Parties

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**

