

**IN THE COURT OF COMMON PLEAS
COUNTY OF WARREN, STATE OF OHIO**

JADE HING,)	
)	
Appellant,)	CASE NO. 16CV88884
)	
vs.)	
)	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,)	
)	<u>MAGISTRATE'S DECISION</u>
Appellee.)	

Jade Hing brings the above-referenced administrative appeal of a June 27, 2016 decision of an Ohio Unemployment Compensation Review Commission staff hearing officer denying her unemployment compensation benefits. For the reasons which follow, that decision is *affirmed*.

I. PROCEDURAL POSTURE

Appellant was discharged from her position as a poker dealer with Horseshoe Cincinnati Management, LLC (“Horseshoe”) on April 14, 2016. Appellant applied to the Ohio Department of Job and Family Services (“ODJFS”) on April 20, 2016 for unemployment compensation, which were denied on May 10, 2016. Appellant appealed this initial determination, and ODJFS issued a redetermination on May 27, 2016, affirming its original denial of benefits. On June 6, 2016, Appellant appealed to the Ohio Unemployment Compensation Review Commission (“UCRC”).

On June 20, 2016, a telephonic hearing was held before a UCRC staff hearing officer who issued a decision mailed June 27, 2016, affirming ODJFS’s redetermination. On July 1, 2016, Appellant sought further review, which UCRC disallowed by decision mailed July 20, 2016.

Appellant filed a timely notice of appeal to this Court on August 2, 2016.

II. EVIDENCE IN THE RECORD

Appellant was employed as a poker dealer at the Horseshoe Casino in Cincinnati, Ohio. Horseshoe maintains the following disciplinary protocol for enforcing its employee conduct standards:

Conduct Standards: Out of respect for our guests and each other, you are expected to maintain certain behavior and performance standards. The following list provides examples of behavior that can result in disciplinary action, it is not intended to be an exhaustive list. You are expected to use good judgment at all times in behaving appropriately at work.

Although the violations noted below may result in immediate Separation of Employment or immediate Final Written Warning upon first offense, less severe offenses are viewed cumulatively and will normally be handled on a four-step basis of progressive discipline:

- First Step – Documented Coaching
- Second Step – Written Warning
- Third Step – Final Written Warning
- Fourth Step – Separation of Employment

Discipline will be separated into 3 categories: Attendance, Performance/Policy, and Variances (money-handling).

Management may, based on the severity and the specific facts of the incident, accelerate the disciplinary process to include any of the four steps up to and including immediate Separation of Employment. Also, violations of more than one Conduct Standard in a single act will result in increased or multiple disciplinary steps up to and including immediate Separation of Employment. Investigative suspension may be used to suspend an employee while an investigation is conducted. The following list is not all-inclusive and may be revised periodically.

Horseshoe submitted a “performance documentation” to ODJFS regarding Appellant’s policy/performance violations between September 24, 2014 and February 8, 2016, and the resulting action taken by Horseshoe’s management:

Date	Type of Entry	Nature of Entry	Comments
9/24/2014	Documented Coaching	Policy/Performance	Killed “all-in” player’s hand Tournament
10/10/2014	Informational Entry	Policy/Performance	Premature Turn Card
11/19/2014	Informational Entry	Policy/Performance	Killed the board with action pending
1/23/2015	Written Warning	Policy/Performance	Killed the Board with action pending
9/24/2015	Final Written Warning	Policy/Performance	Killed live hand/Failure to Notify Supervisor
10/6/2015	Informational Entry	Policy/Performance	Killed live player’s hand
2/8/2016	Informational Entry	Policy/Performance	Premature turn card Tournament

The events which preceded Appellant’s discharge occurred April 8, 2016 and are described by Horseshoe as follows:

On Friday 04/08/16 Jade made 2 separate mistakes misreading hands and pushing the pot to the wrong player. The first was on table 3 at approximately 10:20 am where Jade misread and killed the winning player’s hand, a straight, and pushed the pot to a 3 of a kind. Surveillance had to be called to verify the hand and reconstruct the pot to find out how much should be paid to the winning hand. The second instance was while dealing Omaha Hi-Lo on table 30 at approximately 1:55pm where a split pot was pushed to one winner. The “Hi” straight was misread and killed. In this case the players were able to assist in reconstructing the pot.

The aforementioned violations by Jade include negligence and lack of attention to game outcome and as a result, the game was paused, and the pots awarded had to be redirected to the true winning hands that were killed. These actions compromised the integrity of the game and caused multiple players to lose their investments in the pot before being rectified. Due to lack of attention, loss to the players was the fault of the dealer.

Poker Manager, Michael Ragnese spoke to Jade at which time she asked if she would be fired because she was aware that she was on a FWW and the nature of the infraction is consistent with

previous mistakes. Michael had Jade explain what happened and replied that he would look into the matter and follow up with her at a later date.

The testimony at the June 20, 2016 telephonic hearing fully support Horseshoe's claim, and it does not appear that Appellant contests these facts.

Appellant argues that she is not unsuited for her job, and that she has dealt approximately 100 to 200 hands per eight hour shift, 25,000 hands per year, and some 75,000 hands over a three year period, without making a mistake. In essence, Appellant argues that it simply is not fair for her to be fired due to the nine uncontroverted mistakes she made.

Appellant also argues that the mistakes she made were caused by a patron who had been sexually harassing Appellant, a matter Appellant called to the attention of Horseshoe management. The testimony in the record suggests that Horseshoe acted upon this information and reached an agreement with the patron that he would not sit at Appellant's table. However, as the hearing officer's decision notes, there is no specific claim by Appellant that her mistakes of April 8, 2016 were caused by the patron in question, or even that he was present in the casino on that day.

III. SCOPE OF THE COURT'S REVIEW

The Court of Common Pleas' standard of review of decisions of the UCRC is narrowly circumscribed. If the Court finds that the UCRC's decision was 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. *Lang v. Ohio Dep't. of Job & Family Servs.*, 134 Ohio St.3d 296, 2012 Ohio 5366, 982 N.E.2d 636, ¶11. The Court may not make factual findings or determine a witness' credibility and must affirm the UCRC's decision if some competent credible evidence in the record supports it. *Young Women's Christian Ass'n. of Dayton, Ohio, Inc. v. Ohio Dep't. of Job & Family Servs.*, 2d Dist. No. 27281, 2017 Ohio 4102, ¶15. A reviewing court may not reverse the UCRC's decision simply because reasonable minds might reach different conclusions. *Lang*, 134 Ohio St.3d 296, ¶11; *Tzangas, Plakas & Mannos v. Ohio Bur. of Employment Servs.*, 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207.

IV. ANALYSIS

No individual may be paid unemployment compensation benefits if “the individual quit work without just cause, or has been discharged for just cause in connection with the individual’s work...” R.C.4141.29 (D)(2)(a). Just cause for termination, which disqualifies a claimant from receiving unemployment compensation, exists if a person of ordinary intelligence would conclude that the circumstances justify terminating employment. *Parrett v. Unemployment Compensation Review Comm’n.*, 4th Dist. No. 16 CA 15, 2017 Ohio 2778, ¶15.

The Unemployment Compensation Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control; when an employee is at fault with regard to her loss of employment, she is no longer a victim of fortune’s whims, but instead directly responsible for her own predicament; fault on the employee’s part separates her from the intent and protection of the act. *Tzangas, Plakas and Mannos*, 73 Ohio St.3d at 699-98. If an employer has been reasonable in finding fault on behalf of the employee, then the employer may terminate employment with “just cause,” precluding receipt of unemployment compensation. Although what constitutes “fault” cannot be rigidly defined, fault on behalf of the employer remains an essential component of just termination. *Id.* at 698.

For purposes of determining whether a claimant was discharged for just cause, so as to be ineligible for unemployment compensation, a claimant’s fault for the discharge is not limited to willful or heedless disregard of a duty or a violation of an employer’s instructions. *Williams v. Ohio Dep’t. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011 Ohio 2897, 951 N.E.2d 1031, ¶24. The critical issue is not whether the employee has technically violated some company rule, but rather whether the employee, by her actions, has demonstrated an unreasonable disregard for her employer’s best interests. *Brown v. Bob Evans Farms, Inc.*, 190 Ohio App.3d 837, 2010 Ohio 6011, 944 N.E.2d 716, ¶17 (7th Dist.).

In an unemployment compensation case, reaching a determination on the issue of unsuitability, or inability to perform one’s job, answers the very question of whether there was just cause for discharge, such as to render the claimant ineligible for benefits. *Houser v. Ohio Dep’t. of Job & Family Servs.*, 10th Dist. No. 10AP-116, 2011 Ohio 1593, ¶11. An employer may properly find an employee unsuitable for the required work, and thus to be at fault for the discharge when 1.) the employee does not perform the required work, 2.) the employer made known its expectations of the employee at the time of hiring, 3.) the expectations were reasonable, and 4.) the requirements of the job did not change substantially since the date of the original hiring for that particular position. *Williams*, 129 Ohio St.3d 332 at ¶24.

This case turns upon the question of whether nine separate mistakes made by Appellant when dealing poker, over a less than two year period, justify Horseshoe's termination of her employment. While that number of mistakes over that period of time, made in another type of employment, may be unreasonable grounds for discharge, a reasonable person may conclude that in the business of poker dealing, where the integrity of the house is of paramount importance, the margin for inexactitude must, necessarily, be exceedingly thin. This Magistrate cannot conclude that the decision of the Commission hearing officer finding just cause is unreasonable.

IV. MAGISTRATE'S DECISION

The June 27, 2016 decision of the Ohio Unemployment Compensation Review Commission denying Appellant Jade Hing unemployment compensation benefits is *affirmed*.

Court costs herein assessed to Appellant.



MAGISTRATE ANDREW HASSELBACH

NOTICE TO PARTIES

The parties shall take notice that this decision may be adopted by the Court unless objections are filed within fourteen (14) days of the filing hereof in accordance with Civil Rule 53 (D)(3)(b).

A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R.53 (D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R.53 (D)(3)(b).

**INSTRUCTIONS TO THE CLERK FOR SERVICE OF MAGISTRATE'S DECISION
PURSUANT TO CIVIL RULE 5**

PLEASE SERVE THE FOLLOWING ATTORNEY(S): Robin Jarvis

PLEASE SERVE: Jade Hing



MAGISTRATE ANDREW HASSELBACH