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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

CHERYL L.D. MAKRIS,	:	CASE NO. 2017 CV 342
Appellant,	:	JUDGE MAUREEN A. SWEENEY
vs.	:	JUDGMENT ENTRY
STATE OF OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, ET AL,	:	
Appellees	:	

This is an appeal of a final administrative decision denying Cheryl Makris ("Claimant") unemployment compensation benefits after she was separated from employment from Ray Kashmiry & Associates, Inc. ("Employer"). Our standard of review in this matter is very narrow. We must affirm the decision of the Unemployment Compensation Review Commission ("Commission") unless we find that the decision is unreasonable, unlawful, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 697. Our sole duty is to determine whether the decision below is supported by the record. *Cafaro Management Co. v. Polta et al*, 2012-Ohio-4558 (7th District, Mahoning No. 11 MA 171), at ¶ 13. Factual determinations are within the province of the Commission as factfinder. *Maldonado v. Director, ODJFS*, 2012-Ohio-4555 (7th District, Mahoning No. 10 MA 190), at ¶¶ 10, 13. If evidence of record supports the Commission's decision, we must affirm. *Maldonado*.

We must determine whether the Employer's discharge of Claimant was with just cause pursuant to R.C. 4141.29(D)(2)(a). 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." *Irvine, v. State of Ohio Unemp. Comp. Bd. Of Rev.*, (1985), 19 Ohio St. 3d 15, at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. Each case must be considered upon its particular merits. *Irvine.*

> The 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, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.

Tzangas, at 697-698. An employee is discharged for just cause when " '...the employee, by his actions, [has] demonstrated an unreasonable disregard for his employer's best interests.'" *Jeffrey Coles v. UPS, et al*, 2013-Ohio-1428 (7th District, Mahoning No. 12 MA 22), at ¶ 16, citing to *Astro Shapes, Inc. v. Sevi,* 7th Dist. No. 09 MA 105, 2010-Ohio-750, 2010 WL 708997, ¶34. The determination of just cause is a factual matter, and thus is within the Commission's purview. *Maldonado*, at ¶ 13 (*citations omitted*); *Kosky v. Am. Gen. Corp. et al*, 2004-Ohio-1541 (7th District, Belmont No. 03 BE 31), at ¶ 14. Therefore, we must review the facts of the case.

The facts show that Claimant processed claims and billing for the Employer, and answered phones, among other duties. She had worked as a temporary employee for eight years and then joined the Employer's full-time staff in January, 2016. She was struck by a car in mid-August, 2016, and returned to work in a wheelchair. Claimant had surgery to repair her leg injury in early September and after a short recuperation at home, she returned to work, again, in a wheelchair. However, Claimant requested part-time work because she found that full-time work was too difficult, given her condition.

While Claimant had taken the bus to work her full-time hours prior to her injury, she started working 10:00 a.m. to 3:00 p.m. because another employee worked those hours and could transport Claimant to work. However, the Employer found that the company's needs required

that Claimant's hours change to 9:00 a.m. to 1:00 p.m., to which Claimant agreed. Claimant then approached the Employer and requested that her hours be changed to 8:30 a.m. to 1:30 p.m. to accommodate her husband's work schedule, so that he could bring her to work. The Employer denied the change.

Claimant then requested that she be permitted to work from home for the three months that she would remain in the wheelchair. The Employer denied the request because Claimant's work could only be done on the Employer's premises. Claimant then told the Employer she would have to take off work until she was permitted to walk on her injured leg again, likely in December, 2016. The Employer could not accommodate this request, since the busy season was upon the Employer, and Claimant was needed during that time.

Unemployment compensation benefits are only available when one is involuntarily unemployed, either partially or totally. *R.C. 4141.29*; *Maldonado,* at ¶ 12. Claimant could do the work, but could not arrange transportation once the Employer changed Claimant's work hours. Her husband could not take her to work with her new work hours and he did not want her to take an Uber to work. Therefore, the Hearing Officer properly found that work was available and offered to her, but she declined to work the new hours. An employer may, but need not, allow an employee to dictate his or her own work hours, and therefore Claimant was not involuntarily unemployed as required by R.C. 4141.29. *Maldonado.*

The Hearing Officer then examined Claimant's termination to determine whether the Employer had discharged Claimant with just cause. The Court's review is limited to whether the Review Commission's decision is supported by the evidence. *Kosky.* When the Employer changed her hours, Claimant could not ride with her co-worker; Claimant's husband could not transport Claimant because of his work hours and did not want Claimant to take an Uber.

Transportation to and from work is the responsibility of the employee. *Hurd v. Director, ODJFS, et al*, 2002-Ohio-5874 (7th District, Mahoning No. 01 CA 180), at ¶ 11. Based upon the facts of this case, the Commission properly found that the Employer, who needed someone to work during the busy season, had discharged Claimant with just cause.

The final issue addressed by the Commission was whether Claimant was available for work, as required by R.C. 4141.29 (A) (4). The Employer offered Claimant the part-time work she had requested, but needed her to work from 9:00 a.m. to 1:00 p.m. Claimant could not arrange transportation for those hours, and her husband did not want her to take an Uber to work. As transportation is Claimant's responsibility, the Commission properly found that Claimant was not available for work as required by the Unemployment Compensation Act.

The Commission's decision is not unreasonable, unlawful, or against the manifest weight of the evidence. Therefore, the Commission's decision is affirmed.

IT IS SO ORDERED.

NOV 13 2017

DATE

JUDGE MAUREEN A. SWEENEY

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5