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LUCAS COUNTY

2017 DEC 22 AM 9:57

COMMON PLEAS COURT  
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**IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO**

Monica R. Austin,	*	Case No. CI17-2394
Plaintiff-Appellant,	*	
v.	*	Judge Michael R. Goulding
Ohio Department of Job & Family Services,	*	OPINION AND ORDER
Defendant-Appellee.	*	

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This matter is before the court on an administrative appeal from a decision by the Unemployment Compensation Review Commission. Plaintiff-appellant is appealing the decision of the Commission that affirmed the Director's Redetermination that Plaintiff-Appellant was discharged with just cause and therefore was not entitled to unemployment compensation benefits. Plaintiff-Appellant submitted her brief on July 28, 2017. Defendant employer submitted its brief on September 12, 2017. A certified transcript of the proceedings before the Commission was filed. All documents have been reviewed by the court. The court hereby affirms the Commission's decision.

**I.**

The record reflects that Plaintiff-Appellant Monica Austin was hired part-time by the Ohio Department of Job & Family Services ("ODJFS"), Defendant-Appellee, on August 4, 2009 as a customer service representative. Her position became a full-time position in January of

2010. Plaintiff-Appellant was aware of Defendant-Appellee's attendance requirements as well as any vacation or sick time available to her. Four absences in a year without available vacation, sick or Family Medical Leave Act ("FMLA") time would result in discharge. At some point prior to 2016, Plaintiff-Appellant applied for and was granted FMLA leave.

Plaintiff-Appellant was off work from June 3, 2016 to July 17, 2016 due to an approved medical leave for surgery. Her return date was July 18, 2016. Plaintiff-Appellant returned to work that day, however, proceeded to be absent from work either full days or partial days on July 19, July 20, and July 21, 2016. Plaintiff-Appellant returned to work on July 22, 2016 and received an email from Tom Magistro, human resource department, informing her that all available FMLA time was depleted. Despite this knowledge, Plaintiff-Appellant missed either the full or partial work days on July 26 and 28, 2016. During this time period, Plaintiff-Appellant submitted a new FMLA application wherein the doctor recommended she miss four hours a day until the end of the year. The application was denied as Plaintiff did not have the requisite number of work hours to receive approval of a new FMLA leave.

A meeting was held on August 1, 2016 between Plaintiff-Appellant and Nancy Sagman, program delivery supervisor, to discuss Plaintiff's absences. On August 2, 2016, Plaintiff-Appellant left work on an alleged workers' compensation injury. A pre-disciplinary meeting was held on August 23, 2016. Although Plaintiff-Appellant expressed mental issues that were hindering her work, she did not present any additional doctor's documentation or recommendation. She returned to the workplace on October 6, 2016. Plaintiff-Appellant was discharged on October 6, 2016 for violating the attendance policy of a four day absence without available leave time.

Within two years prior to her discharge, Plaintiff-Appellant was reprimanded on three different occasions due to four day absences without available leave time. She received working suspensions for each discipline despite the policy that one of these offenses is cause for discharge.

After her October 6, 2016 discharge, Plaintiff-Appellant applied for unemployment compensation benefits; she was denied at all administrative levels. Plaintiff-Appellant now appeals to this court the decision by the Commission denying her unemployment benefits.

## II.

Upon appeal from the Unemployment Compensation Review Commission, “[t]he 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.” R.C. 4141.282(H). See also, *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Servs.*, 73 Ohio St. 3d 694, 653 N.E.2d 1207 (1995). A reviewing court is not to make factual findings or to determine the credibility of the witnesses, but to determine whether the decision is supported by evidence in the record. *Id.* at 696 citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

An individual is not eligible for unemployment compensation benefits pursuant to R.C. 4141.29(D)(2)(a) if the individual “quit work without just cause or has been discharged for just cause in connection with the individual’s work...” “Just cause” must be determined “upon the unique factual considerations of the particular case.” *Irvine v. Unemployment Compensation Board of Review*, 19 Ohio St. 3d 15, 17, 482 N.E. 2d 587 (1985). “Excessive absenteeism and tardiness can be the basis for a “just cause” discharge.” *McCarthy v. Connectronics Corp.*, 183



Ohio App. 3d 248, 2009-Ohio-3392, 916 N.E.2d 871 (6<sup>th</sup> Dist.), citing *Mohawk Tools v. Admr.*, *Ohio Bur. Of Emp. Servs.*, 6<sup>th</sup> Dist. Williams No. WMS-85-15, 1986 Ohio App. LEXIS 5978 (March 14, 1986). In addition, “[j]ust cause for discharge may be established by proof that the employee violated a specific company rule or policy....” *Jones v. Bd. of Review*, 10<sup>th</sup> Dist. Franklin No. 93AP-430, 1993 Ohio App. LEXIS 4788 (Sept. 28, 1993).

Plaintiff-Appellant filed her appeal on the basis that Defendant-Appellee failed to prove her FMLA hours were exhausted, that she was not provided due process, that Defendant-Appellee failed to follow policy, and she was not offered reasonable accommodations.

Defendant-Appellee argues that Plaintiff-Appellant violated the absenteeism policy that states an employee may not have four or more absences without available leave time. If this policy is violated, it will result in the employee’s discharge.

First, Plaintiff-Appellant claims that the information regarding her total FMLA hours used were not given to her prior to discharge. Plaintiff-Appellant acknowledged she received an email from a Human Resources representative on July 22, 2016 noting she had exhausted her hours. She did, however, receive the entirety of this information and documentation after discharge. Plaintiff-Appellant did not object to the admission of the documentation delineating her absences and totaling her hours nor did she argue as to any inaccuracies of the information. The court finds the documentation regarding the exhaustion of her FMLA hours credible.

Plaintiff-Appellant also argues she was not provided due process. She argues that the first decision denying her benefits in October, 2016 was made prior to her being heard. This argument, however, was not made nor was evidence presented to support this argument prior to this court’s review. This court only reviews the Commission’s decision and therefore, unable to address Plaintiff-Appellant’s second issue. See, 4141.282(H).

In addition, Plaintiff-Appellant argues that Defendant-Appellee failed to follow policy. The policy reflects four absences without leave will effectively result in the employee's discharge. Plaintiff-Appellant argues that she violated this policy in the past which resulted in working suspensions rather than discharge. Defendant-Appellee's representative testified at the Commission hearing that the employer was attempting to keep Plaintiff-Appellant employed and opted to discipline her rather than discharge. Plaintiff-Appellant testified that she knew another violation of the policy would result in discharge. The court finds that Plaintiff-Appellant knew of the policy and that another violation may result in discharge.

Plaintiff-Appellant's final argument is that Defendant-Appellee failed to offer reasonable accommodations. It appears from the record that Plaintiff-Appellant filed another request for FMLA leave on or about July 25, 2016. This request was denied as Plaintiff had not worked the requisite hours prior to obtaining additional leave. Further, Plaintiff-Appellant did not argue this issue or provide any documentation or evidence at the Commission hearing to support this contention. Therefore, Plaintiff waives this argument.

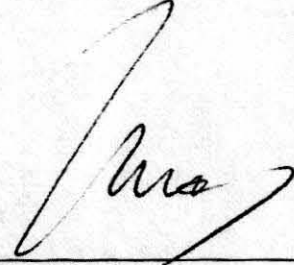
Although Plaintiff-Appellant disagrees with the Commission's decision, she has not brought forth any evidence that demonstrates that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Commission's findings of fact were supported by competent evidence. The court affirms the decision of the Unemployment Compensation Review Commission as said decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

**JUDGMENT ENTRY**

It is ORDERED, ADJUDGED and DECREED that the determination rendered by the Unemployment Compensation Review Commission in the Decision mailed on February 10, 2017 is hereby affirmed.

THIS IS A FINAL APPEALABLE ORDER.

Date: 12-21-17

  
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Judge Michael R. Goulding

cc: Monica R. Austin, Pro Se  
Eric A. Baum, Esq.