

11-2-11

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

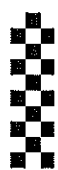
JEFFERY COLES
APPELLANT
VS.
UNITED PARCEL SERVICE,
ET AL. APPELLEE

CASE NO. 11 CV 65
MAGISTRATE TIMOTHY G. WELSH
MAGISTRATE'S DECISION
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case called this 1st day of November, 2011 pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission pursuant to R.C. 4141.282. The Review Commission found that Appellant, Jeffery D. Coles ("Appellant") was discharged from his employment as a delivery truck driver with Appellee, United Parcel Service, Inc. ("UPS") for just cause. As such, the Review Commission held that Appellant was not entitled to unemployment compensation benefits and ordered the repayment by Appellant of \$14,795.00 in benefits previously awarded.

Appellant was employed by UPS since 1996. He was a member of the Teamsters Union and his employment relationship was governed by a collective bargaining agreement ("CBA") negotiated between UPS and the Union. In 2006, Appellant was charged with an off-duty violation of Operating a Motor Vehicle while Under the Influence (OMVI). Appellant notified his employer of the offense and was referred to a Substance Abuse Professional for evaluation and assessment. As a result of the assessment, Appellant was required to attend six classes during which time he was placed on a leave of absence.

In January, 2010 Appellant was arrested and charged with OMVI for a second time. Again, he reported the incident to his employer and was assessed. The Substance



treatment program. Again, Appellant was placed on leave of absence. He was discharged by his employer on February 10, 2010.

The CBA provides that an employee will have a one time rehabilitation opportunity for alcohol abuse. The CBA further provides that "An employee shall be permitted to take a leave of absence for the purpose of undergoing treatment in an approved program for alcoholism..." The Review Commission found that Appellant was given a rehabilitation opportunity after his first OMVI and that after his second arrest he was not eligible for another rehabilitation opportunity. Although Appellant grieved his termination, the same was upheld by a joint labor-management committee. The Review Commission concluded that Appellant was discharged by his employer for just cause in connection with his work.

A reviewing court is precluded from making factual findings or determining the credibility of witnesses, and may not substitute its judgment for that of the Review Commission. After a review of the record herein, the Magistrate finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Magistrate further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

This is an appealable Order and the Clerk of Court shall serve copies of this decision upon all counsel and unrepresented parties within three (3) days of the filing hereof.

11-2-11
DATE


MAGISTRATE TIMOTHY G. WELSH

The parties shall have fourteen (14) days from the filing of this decision to file written objections with the Clerk of this Court. Any such objections shall be served upon all parties to this action and a copy must be provided to the Court. A party shall not assign as error on appeal on Court's adoption of any factual finding or legal conclusion of law under Civ. R. 53 (D)(3)(a)(ii), unless the party timely and specifically objects to the factual finding or legal conclusion as required by Civ. R. 53 (D)(3)(b). Any party may request the magistrate to provide written findings of fact and conclusions of law. In accordance with Civ. R. 52, this request must be made within seven (7) days from the date of filing of this decision.