

1-10-12 C

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

JEFFERY COLES  
APPELLANT

CASE NO. 11 CV 65

VS.

JUDGE R. SCOTT KRICHBAUM

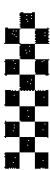
UNITED PARCEL SERVICE,  
ET AL. APPELLEES

JUDGMENT ENTRY

Hearing had on January 5, 2012 on Appellant's Objection to the Magistrate's Decision of Findings of Fact and Conclusions of Law filed November 2, 2011. Present were Attorney Jacquelyn Coles-Jones for the Appellant and Attorney Susan Sheffield for the Appellees.

The Court has considered Civil Rule 53 (D)(3)(b) Objections to Magistrate's Decision, Response to Appellant's Objections to Magistrate's Decision and the applicable law. The Court has undertaken an independent review as to the objected matters to ascertain that the Magistrate has properly determined the factual issues and appropriately applied the law in consideration of this matter. The Court adopts the Magistrate's Decision of Findings of Fact and Conclusions of Law in whole without modification as follows:

Case called this 1<sup>st</sup> 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 Abuse Professional recommended that Appellant complete an intensive outpatient 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.

There being no just cause for delay, Judgment is entered as above specified.

1-6-12  
DATE

R. S. Krichbaum  
JUDGE R. SCOTT KRICHBAUM

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