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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

Hezekiah Norman

Case no. 11 CV 1081 D

Plaintiff

**DECISION ON**

v.

**ADMINISTRATIVE APPEAL**

Director, Ohio Department of Job and  
Family Services, et al.

Defendants

This employee's unemployment compensation appeal is now briefed by both parties and ready for decision.

A court's disposition of an appeal from the Unemployment Compensation Review Commission is governed by R.C. 4141.282(H), which states:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The determination of factual questions is primarily a matter for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511. As the trier-of-fact, the Review Commission and its hearing officers are vested with the power to review the evidence and believe or disbelieve the testimony of the witnesses. Accordingly, this Court should defer to the Review Commission's determination of purely factual issues that concern the credibility

Journalized on the court's  
docket on 2-10-12

W. J. Hill

County Clerk

of witnesses and the weight of conflicting evidence. *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App. 3d 159,162.

In the present case, the claimant was denied benefits on the ground that he was discharged for just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a). This section provides in pertinent part as follows:

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(2) For the duration of the individual's employment if the Director finds that:

(a) The individual \*\*\* has been discharged for just cause in connection with the individual's work.

The appellant Hezekiah Norman was employed as a resident security specialist at the Volunteers of America Halfway House ("VOA"). VOA is a residential community corrections facility attempting to teach convicted felons new patterns of behavior. Mr. Norman was employed in direct resident supervision in that position from May 17 to December 12, 2010.

Employer VOA states Mr. Norman was discharged for excessive absences and for failing to de-escalate a conflict with a VOA resident according to his training. Among the findings of the Commission's hearing officer are:

Claimant approached Mr. Wilson and demanded to see his jacket. The resident refused to cooperate. Claimant threatened to write a "ticket" on Mr. Wilson. A ticket was a type of disciplinary action that went into the personnel file of the resident. As Claimant walked to the front desk to write the ticket, the resident followed him. He asked Claimant not to write a ticket on him. Claimant ignored the resident. The resident approached Claimant and said, "Fuck you." Claimant stood up and made the same comment to the resident. The two individuals traded profanities. Other staff members intervened to restrain the resident.

An investigation was conducted into Claimant's actions on November 27, 2010. Claimant was discharged for provoking a resident instead of taking steps to de-escalate a confrontation.

An examination of the transcript of the hearing shows that the hearing officer's decision has factual support. Mr. Norman admitted that he missed work and training sessions on November 16, 18 and 19, 2010, though he doesn't remember why. He also admitted reporting for work on November 26, 2010 but leaving right away because he thought there were already enough resident security specialists at VOA and he didn't feel well. (hearing transcript at p.14 *et seq.*)

In addition, Mr. Norman admits that on November 27, 2010 he became convinced that VOA resident Mark Wilson had kicked in a back door to VOA and demanded to see Mr. Wilson's jacket. When Mr. Wilson refused, Mr. Norman began writing him up and the incident escalated as they traded profanities and insults. (transcript at 17 and 22-23). Mr. Norman admitted he had been trained in de-escalation of such confrontations by VOA. (transcript at 18). As it turned out, a different resident, Mr. Denny, was responsible for kicking in the door. (transcript at 20). The foregoing evidence supports the hearing officer's decision.


In conclusion, the court is persuaded that the decision of the Review Commission is lawful, reasonable and not against the manifest weight of the evidence.

Judgment Entry

It is therefore ordered:

1. The 7-21-11 decision of the Unemployment Compensation Review Commission is affirmed, and the 8-19-11 appeal of Hezekiah Norman from that decision is overruled.


2. Costs are assessed against the appellant.

  
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Judge James DeWeese

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Order was served according to local rules and sent by regular U.S. Mail this 9 day of February 2012 to the following:

Hezekiah Norman  
David Lefton  
Dennis Kresak

  
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Clerk of Courts

ATTORNEY GENERAL'S OFFICE  
FEB 13 2012  
HEALTH & HUMAN  
SERVICES SECTION