

FILED
COMMON PLEAS COURT
DARKE COUNTY, OHIO

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DEPARTMENT OF
JOB & FAMILY SERVICES
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IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

SHAWNA M. MOBLEY	:	CASE NO. 11-CV-00714
	:	
Appellant,	:	
	:	
vs.	:	JONATHAN P. HEIN, Judge
	:	
KREMER FAMILY FARMS, INC., et. al.	:	
	:	DECISION - Review of
Appellees.	:	Administrative Agency

This matter came before the Court pursuant to the Notice of Appeal of Appellant filed November 16, 2011 and the Briefing Schedule filed on February 2, 2012. The issues are ready for adjudication.

Case Facts

Initially, the Court agrees with the Department of Job and Family Services that references on page four of the Statement of Facts filed March 8, 2012 should be stricken. The records of litigation in Darke County involving Kremer Family Farms was not provided to the hearing officer during the administrative adjudication process. As such, they are not considered herein and the motion to strike is granted.

Shawna Mobley resigned her employment from Kremer Family Farms on April 11, 2011 and provided an e-mail explanation to her employer that the following reasons existed: (1) notice by the bank that her pay check for March 31, 2011 would not clear due to non-sufficient funds in the employer's bank account; and (2) failure to receive her pay check on April 8, 2011.

Upon filing her claim for unemployment, the employer challenged the claim since it had not received an advance notice of the termination. The employer claims that Ms. Mobley was not mistreated nor laid-off.

Legal Analysis

In reviewing the decision of an administrative agency, the Court must determine whether the decision by the agency was based upon a "preponderance of substantial, reliable and probative evidence." See R.C. 2506.04; *Sell v. Adams Twp. Board of Zoning Appeals* (December 22, 2000), Darke App. No. 1518. Further, based upon the record as submitted, the Court should presume that the agency's decision was reasonable and valid and should give deference to the decision. *Amser Corp. v. Village of Brooklyn Heights* (May 6, 1993), Cuyahoga. App. No. 62140; *In Re: Application of Watkins* (February 18, 2000), Montgomery App. No. 17723.

The recent Franklin County Court of Appeals decision in *Brooks v. Ohio State Department of Job & Family Services* 2009-Ohio-817, is instructive: "The court may reverse, vacate, modify, or remand the decision to the commission only if the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. Otherwise, the court must affirm the commission's decision."

In this case, the Court must determine whether the employee left her job for "just cause." There is no statutory definition of "just cause" which, instead, has been defined by the Supreme Court of Ohio as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board of Review* (1985), 19 Ohio St.3d 15. In the context of the employer terminating employment, just cause has been defined to be "conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." *Carter v. Univ. of Toledo*, 2008-

Ohio-1958 (6th Dist. No. L-07-1260).

When taken together, the above cases require the circumstances of the employment relationship to be considered when deciding the reasonableness or proper justification of the employee when leaving employment.

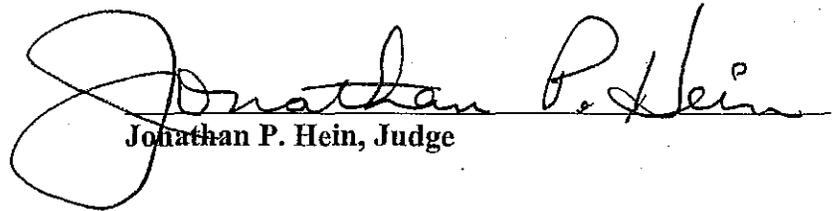
Decision

The Court finds that the agency's decision to deny benefits was unreasonable. Specifically, the employer was aware that employees had not been paid for March 31, 2011. When the next pay check one week later was not provided, and three more days lapsed without payment, it is reasonable to conclude that an employee need not further consider continuing employment or otherwise specifically demand payment for past wages. While it is true that Ms. Mobley submitted her immediate resignation on April 11, 2011, the circumstances and conditions of employment that were breached were solely within the control of the employer. Kremer Family Farms alone possessed the duty to pay wages; it was aware of the condition which caused Ms. Mobley to end her employment. What further notice did Kremer Family Farms need? Ten days lapsed from date of first non-payment (March 31, 2011) until date of resignation (April 11, 2011). A reasonable person might work one week for an employer who cannot make weekly payroll, but it is unreasonable to require an employee to work the second week without pay and also give additional notice of the desire to receive their weekly pay check.

Finally, the Court notes that it is immaterial whether Ms. Mobley on April 19, 2011 received \$2,612.04 after she ended her employment. After she ended her employment on April 11, 2011 for just cause, any remedial payments by the employer would simply pertain to civil damages for unpaid wages. Whether received for past wages and reimbursements or as a gift, such facts are not consequential. Also, her desire to not talk with her employer after April 11, 2011 are similarly

immaterial. Such gestures may be helpful to understand the cordiality of the parties, but are beyond the scope of determining "just cause" as it existed on April 11, 2011.

IT IS THEREFORE ORDERED AND DECREED that the decision of The Ohio Department of Job and Family Services is reversed. Appellant's appeal is granted. Final Appealable Order. Costs to the Appellant.



Jonathan P. Hein, Judge

cc: Eric H. Brand, Attorney for Appellant (via fax)
Joshua Koltak, Attorney for Kremer Family Farms (via fax)
Robin Jarvis, Ass't. Attorney General for ODJFS (via fax)

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