

COMMON PLEAS COURT
MARION CO., OHIO

2012 MAR 27 PM 4:29

IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
JULIE M. KAGEL GENERAL DIVISION
CLERK OF COURTS

SHELLY R. LUTZ, :
Appellant, : Case No. 11-CV-0570
-vs- : JUDGE ROBERT S. DAVIDSON
DIRECTOR, OHIO DEPARTMENT :
OF JOB AND SERVICES, et al., : JOURNAL ENTRY
Appellees. :
:

FINAL APPEALABLE ORDER

This day this cause came on to be heard on the appeal filed by the Appellant, Shelly R. Lutz, regarding her adverse decision from the Ohio Unemployment Compensation Review Commission. The parties have outlined their positions in their memorandums. The Court has reviewed all of the submitted materials. In particular, the Court has reviewed the transcript of the proceedings held by the hearing officer, Jeffery O. Schaffner.

The review hearing officer found the following facts to be true:

1. The claimant was employed by Dr. Jerald "Bucky" Schmelzer for a period that began on October 15, 1999 and ended on July 12, 2010. She worked at the front desk of the dentist's office.

2. Dr. Schmelzer began to experience problems with the claimant's performance. He was receiving numerous personal telephone calls for the claimant at the place of business.

The claimant began to report to work late. She had child care issues that prevented her from reporting to work. In addition, the claimant was spending time at work addressing issues concerning her husband's business.

3. The claimant was put on notice that this was not acceptable. She was told that she had to decide whether she wanted to continue to work at the dentist's office or pursue other matters. After this warning, the claimant continued to report to work late. The employer continued to receive personal phone calls for the claimant at work.

4. On the date she was discharged, the claimant called the employer and informed him that she would be unable to work as she had child care issues. She said she had no one to watch her children. After this phone call, the employer felt he could no longer tolerate the claimant's actions. She had disregarded the warning concerning her attendance. At that point, she was terminated.

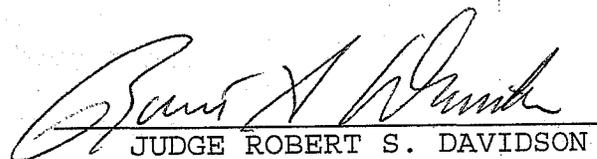
The Court is required to observe the standard of review set forth in Revised Code §4141.282(H) when considering appeals of decisions rendered by the Review Commission. That Section states: "If the Court finds that the decision of the Commission was unlawful, unreasonable or against the manifest weight of the evidence, it shall reverse, vacate or remand the matter to the Commission. Otherwise, the Court shall affirm the decision of the Commission." Although the Review Commission's decision should not be rubber-stamped, the reviewing Court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. The parties are not entitled to a trial *de novo*.

It appears, based on the Court's reading of the certified transcript of the record of proceedings in this matter, that the claimant was denied benefits on the grounds that she was discharged for just cause in connection with work. Just cause has been defined as "that which to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act". Peyton v. Sun TV, 1975 44 Ohio App.2d 10. In

this case, it appears that the employee was discharged because she, by her actions, demonstrated an unreasonable disregard for Dr. Schmelzer's best interest. This Court agrees that, when the totality of her employment record was reviewed, there was sufficient fault on the claimant's part to justify discharge.

Since this Court has found credible evidence to support the Review Commission's conclusion and, since this Court is not permitted to substitute its judgment for that of the Review Commission, this Court finds that the Review Commission's decision was not unlawful, unreasonable or against the manifest weight of the evidence. The decision of the Review Commission is therefore affirmed. Costs to be paid by the Appellant.

It is so ORDERED.


JUDGE ROBERT S. DAVIDSON

cc: Shelly R. Lutz, 95 Otterbein Dr., Lexington, OH 44903
David E. Lefton

HEALTH & HUMAN

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SERVICES SECTION