

DANIEL M. HORRIGAN

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SUMMIT COUNTY
CLERK OF COURTS IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

COUNTY OF SUMMIT ALCOHOL)	CASE NO. CV 2010-11-7569
DRUG ADDICTION AND MENTAL)	
HEALTH SERVICES BOARD)	JUDGE AMY CORRIGALL JONES
)	
Plaintiff/Appellant)	
)	
-vs-)	
)	
)	<u>ORDER</u>
SHARON L. REITER, ET AL.,)	
)	
Defendants/Appellees)	Final and Appealable

Plaintiff-Appellant, Summit County Alcohol, Drug Addiction & Mental Health Services Board (ADM Board or Appellant), filed this administrative appeal from the decision of the Ohio Unemployment Compensation Review Commission pursuant to Ohio Revised Code § 4141.282(H).

The transcript of proceedings was timely filed and the briefing is now complete.

The facts of the case are as follows. Appellee Sharon L. Reiter was employed by Appellant ADM Board until on or about November 23, 2009. The issue in this case is whether Appellee was terminated on November 23, 2009 at 2:00 p.m. or whether Appellee abandoned her position by failing to report to work on November 24, 2009 and therefore was terminated.

This matter was initiated by Reiter's November 28, 2009 application for unemployment compensation benefits. The Ohio Department of Job and Family Services (ODJFS) issued a

December 17, 2009 Determination of Unemployment Compensation Benefits, which *allowed* benefits to Reiter. On January 17, 2010, the ADM Board appealed the ODJFS Determination. On February 11, 2010, ODJFS issued a Director's Redetermination which affirmed the initial Determination. On March 4, 2010, the ADM Board appealed the Director's Redetermination. On March 23, 2010, the Commission issued a notice that the appeal was transferred by the Director to the Review Commission. A hearing was held before the Review Commission on April 28, 2010. The Hearing Officer's Decision issued on May 26, 2010 resolved the issue: "Was Reiter discharged by the ADM Board with just cause in connection with work." The Hearing Officer determined:

Given Claimant's conduct on November 23, 2009 and her failure to report to work or contact the employer regarding her absence on November 24, 2009, Claimant's supervisors concluded that she had abandoned her position. Claimant was discharged by [the ADM Board] on November 24, 2009 based upon the conclusion of job abandonment.

Reiter submitted a Request for Review to the Commission. Reiter's Request was granted and the Commission issued a notice that a decision would be made on a review of the record. No further hearing was held. On October 13, 2010, the Commission issued its Decision, *reversing* the Hearing Officer's May 26, 2010 Decision, finding that Reiter was discharged without just cause. The Commission concluded: "The Claimant refused to sign a warning presented to her on November 23, 2009. Claimant was informed that her actions represented insubordination ... Claimant's refusal to sign a document presented to her on that date does not represent sufficient fault or misconduct to warrant disqualification for unemployment benefits."

ADM Board filed a Notice of Appeal in this case, asserting that the October 13, 2010 decision of the Commission is unlawful, unreasonable or against the manifest weight of the

evidence. ADM Board asserts that a review of the transcript establishes that the Commission should be reversed because the evidence establishes that Reiter abandoned her position by not presenting to work on November 24, 2009 and therefore she was terminated.

Reiter and ODJFS filed briefs in opposition, asserting that the record before the Court supports the decision of the Commission and that this Court should not reverse that decision.

The role of the court of common pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

Upon appeal, a court may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code

§4141.282(H); *Tzangas, supra*; *Irvine, supra*. If the evidence supports the Review Commission's conclusion, a reviewing court may not substitute its own findings of fact. *Durgan v Ohio Bur. Of Emp. Serv.* (1996), 110 Ohio App.3d 545 at 551.

In this case, the issue becomes whether Reiter was terminated as of November 23, 2009 or whether she was terminated after she did not present for work on November 24, 2009. The testimony of the representative of the ADM Board seeks to establish their position; however, the documents presented in the record belie that testimony. The Board of Directors Meeting Minutes held on December 8, 2009 contain a resolution which states the "Board of Directors affirms the action of the executive director in terminating the employment of Sharon Reiter effective 2:00 PM November 23, 2009."

Under Ohio law, "Where conflicting testimony exists, the Ohio Unemployment Compensation Review Commission, not the court, resolves the conflicts and determines the credibility of the witnesses." *Cottrell v Dir., Ohio Dep't of Job & Family Services*, 2006 Ohio 793. After a thorough review of the record, the court finds that there was competent, credible evidence to support the conclusions made below as to the above four requirements.

The record contains sufficient credible evidence that Appellee Sharon Reiter was discharged by her employer without just cause on November 23, 2009 on or about 2:00 p.m. Therefore, Reiter did not abandon her position by failing to appear for work on November 24, 2009 as she had already been terminated. The court is unable to find that the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence.

The decision of the Ohio Unemployment Compensation Review Commission is **AFFIRMED**. This administrative appeal is **DISMISSED** with prejudice.

This shall serve as a final appealable order. There is no just cause for delay.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to be 'AJC', written over a horizontal line.

Judge Amy Corrigan Jones

CC: Attorney Lisa Kainec
Attorney Brian Williams
Attorney Laurel Blum Mazorow