

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

RONALD GOODING, : Case No: A1109704

Appellant, : Judge Metz

v. :

EMS/CONTRACT SWEEPERS & : MAGISTRATE'S DECISION
EQUIPMENT CO., et al., :

Appellees.



RENDERED THIS 13th DAY OF APRIL, 2012.

D97197425

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") October 13, 2011 Decision reversing the July 22, 2011 Ohio Department of Job and Family Services' ("ODJFS") Redetermination that claimant Ronald Gooding ("Gooding") was discharged by EMS/Contract Sweepers & Equipment Co. ("EMS"), from his position without just cause.¹ This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' filed briefs on October 28, 2011.

BACKGROUND

Gooding worked for EMS from November 6, 2008 to April 11, 2011 as a mechanic.² On April 11, 2011, Gooding resigned from his position because of "harassment and discrimination."³ Specifically, Gooding claims that because of age

¹ / *In re claim of Ronald D. Gooding, H-2011025760.*

² / *Id.*

³ / Brief of Appellant, at 1-2.

discrimination aimed at him by the conduct of his supervisor, Tony Diacont (“Diacont”), he withdrew from his employment with “just cause”.⁴

Upon Gooding’s application for unemployment benefits, the ODJFS Director issued a Redetermination on September 2, 2011 finding that Gooding quit his job at EMS with just cause.⁵ EMS appealed the Redetermination on September 9, 2011.⁶ On October 11, 2011, the Review Commission conducted a hearing on the appeal.⁷ Following that hearing, the Review Commission issued a decision reversing the Redetermination, and finding that Gooding quit his job without just cause on October 13, 2011.⁸ Gooding appealed the Decision of the Review Commission to this Court, seeking reversal of his disqualification for unemployment benefits.⁹

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was “unlawful, unreasonable, or against the manifest weight of the evidence”, it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.¹⁰ Otherwise, the court shall affirm the decision.¹¹ The reviewing court must follow this same standard in assessing just cause determinations.¹² The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and

⁴ / *Id.* at 3-5.

⁵ / *In re claim of Ronald D. Gooding, H-2011025760.*

⁶ / *Id.*

⁷ / *Id.*

⁸ / *Id.*

⁹ / Brief of Appellee, at 2.

¹⁰ / Ohio Rev. Code § 4141.282(H) (West 2008).

¹¹ / *Id.*

¹² / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.¹³

JUST CAUSE

The Ohio Revised Code states:

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 unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.]¹⁴

Each just cause determination must be based upon the merits of the particular case.¹⁵

'Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.' ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists “ ‘to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis *sic.*) *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 123, 199 N.E.2d 3, 5. “ ‘The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.’ ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 52, 399 N.E.2d 76, 79. Thus, while a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.

The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control.

¹³ / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).

¹⁴ / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).

¹⁵ / *Irvine*, *supra*, at 17.

When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.¹⁶

DISCUSSION

Gooding argues that the Review Commission's decision is contrary to law because it did not construe R.C. §4141.29 liberally in favor of Gooding and failed to consider the totality of the hostile work environment created by Gooding's supervisor.¹⁷ Specifically, Gooding asserts that a younger supervisor only permitting an employee to use the restroom during regularly scheduled breaks would cause an ordinarily intelligent person to believe quitting would be with "just cause".¹⁸ Gooding also argues that the decision of the Review Commission is against the manifest weight of the evidence because it was based upon a finding that Gooding "did nothing in furtherance of resolving his problems...other than talking directly to (Diacont)."¹⁹ According to Gooding, this finding ignores the letter that Gooding sent to EMS Vice President William J. Miller on April 11, 2011, outlining the alleged harassment and discrimination.²⁰

The EMS and ODJFS responded by arguing that the Review Commission finding was not unlawful, unreasonable, or against the manifest weight of the evidence.²¹ Specifically, they argue that an ordinarily intelligent person would have utilized the procedures that the EMS had in place before quitting employment.²² The ODJFS cited authority for this proposition in Ohio precedent, stating "...employees experiencing

¹⁶ / *Tzangas*, supra, at 697-98.

¹⁷ / Brief of Appellant, at 3-4.

¹⁸ / *Id.*

¹⁹ / *Id.*

²⁰ / *Id.*

²¹ / Brief of Appellee, at 6-9.

²² / *Id.*

problems in their working conditions must notify the employer of the problem, request it be resolved, and give the employer an opportunity to solve the problem before a court will find just for quitting work.”²³ The ODJFS and EMS also argue assert that there is no evidence in the record of Gooding’s age, no evidence in the record that Gooding was replaced by a younger person, or that Gooding’s treatment was motivate by age-discriminatory reasons.²⁴

The court finds that the Review Commission’s October 13, 2011 Decision finding Gooding quit his job without just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the court finds that Gooding’s appeal is not well-taken.

DECISION

The unemployment compensation appeal of Appellant Ronald D. Gooding is DENIED. The findings of the Unemployment Compensation Review Commission are AFFIRMED IN FULL. If this Decision is adopted by the trial Court, Claimant must comply fully with the October 13, 2011 Decision of the Unemployment Compensation Review Commission.



MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate’s Decision must be filed within fourteen days of the filing date of the Magistrate’s Decision. A party shall not assign as error on appeal the court’s adoption of any factual finding of fact or legal conclusion, whether or not

²³ / *Id.* (citing *King V. State Farm Mt. Auto Ins. Co.*, 112 Ohio App. 3d 664, 669-670, 679.)

²⁴ / *Id.*

specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

Robin A. Jarvis, Esq.
Assistant Attorney General
1600 Carew Tower
441 Vine Street
Cincinnati, OH 45202

Brian P. Gillan, Esq.
Attorney for Appellant
525 Vine Street, 6th Floor
Cincinnati, OH 45202

Amy L. Keegan, Esq.
Attorney for EMS
1900 Chemed Center
255 East Fifth Street
Cincinnati, OH 45202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 4/16/12 Deputy Clerk: [Signature]