

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

JASON E. HOLT,

Appellant,

-vs-

ADECCO USA, et al,

Appellees.

CASE NO. 2011 CV 07439

JUDGE STEVEN K. DANKOF

**FINAL AND APPEALABLE, DECISION,
ENTRY AND ORDER AFFIRMING THE
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION'S
DETERMINATION THAT APPELLANT
WAS FIRED FOR JUST CAUSE**

This matter is before the Court on Jason E. Holt's ("Holt") October 17, 2011 administrative appeal from a decision of the State of Ohio Unemployment Compensation Review Commission ("Review Commission"). On November 21, 2011, a written transcript of the administrative proceedings was filed. Holt's January 4, 2012 Brief was filed pursuant to the Court's November 29, 2011 Briefing Schedule. On January 18, 2012, the Brief of Appellee Director, Ohio Department of Job and Family Services ("ODJFS") was filed.¹ On January 30, 2012, Holt filed his Reply. This matter is now properly before the Court pursuant to R.C. 4141.282.

I. STATEMENT OF THE CASE

This case arises out of Holt's claim for unemployment compensation following the termination of his employment with Adecco. On April 15, 2011, Holt made a claim to ODJFS for unemployment.² On May 6, 2011, ODJFS disallowed Holt's application for unemployment compensation benefits, and issued a decision accordingly.³ On May 6, 2011, Holt appealed, seeking a redetermination from the Director of ODJFS. On

¹ The Court notes that Holt's former employer, Adecco, USA ("Adecco"), was served on February 8, 2012. Adecco has filed neither a notice of appearance or brief, apparently choosing to rely upon ODJFS' efforts herein.

² Determination of Unemployment Compensation Benefits, Dated May 6, 2011.

³ *Id.*

May 24, 2011, ODJFS' decision was affirmed⁴ and on June 13, 2011, Holt then appealed the redetermination whereupon ODJFS transferred the matter to the Unemployment Compensation Review Commission ("Review Commission").⁵

On July 22, 2011, the Review Commission sent its Notice of Telephonic Hearing set for August 4, 2011 at 8:15a.m.⁶ Holt called in for his hearing, conducted by Hearing Officer Brie A.F. Lewis ("Hearing Officer Lewis").⁷ Adecco was represented at the hearing by Amie Gallagher, and Amy McDonald ("McDonald") and Ryan McCormick ("McCormick") of Adecco testified as witnesses. On August 8, 2011, Hearing Officer Lewis issued a decision denying unemployment compensation, finding that Holt was discharged from employment with Adecco for just cause.⁸

On August 17, 2011, Holt requested review of Hearing Officer Lewis' decision, which appeal was denied by the Review Commission its decision mailed September 21, 2011. On October 17, 2011, Holt initiated the instant Administrative appeal to this Court.

At all relevant times, Holt was employed by Adecco, a provider of temporary services much like Manpower. At some point, Humana contracted with Adecco in order to fill a temporary Order/Entry position and Adecco assigned Holt to this task from November 22, 2010 through March 4, 2011.⁹ On March 4, 2011, Humana notified Adecco of possible "discrepancies" regarding Holt's claimed hours of work. The same date, Adecco's on-site supervisor, Greg Ross, informed Holt that his Humana assignment had terminated¹⁰ and Holt went to Adecco and spoke with McCormick to see if other positions were available.¹¹ McCormick told Holt that Humana had notified Adecco that he had reported time incorrectly, and the matter was being investigated.¹² On March 31, 2011, Holt spoke with McDonald and she explained that he was currently on "do not use status" for assignments because of Adecco's ongoing investigation into discrepancies relating to

⁴ Director's 5/24/11 Redetermination.

⁵ March 31, 2006 letter from Jennifer Howell Manager of Corporate Unemployment

⁶ From the transcript provided to the Court, there were four levels of the administrative review process in this case. First, Holt applied to the Director of ODJFS for unemployment compensation. Second, Holt appealed to the same Director for redetermination. Third, Holt appealed to the Review Commission, whereupon Hearing Officer Lewis conducted the aforementioned hearing and denied Holt's request for unemployment compensation (this will be referred to as the "hearing officer level"). Finally, Holt appealed again to the Review Commission for review of Hearing Officer Lewis' denial. See Ohio Rev. Code § 4141.281.

⁷ August 8, 2011, Decision of State of Ohio, Unemployment Compensation Review Commission.

⁸ *Id.*

⁹ August 4, 2011 Hearing Tr., p. 5, Ll. 20-23, p.20, Ll.21-26, p.21, Ll.-9.

¹⁰ Tr. P. 21, Ll. 10-11.

¹¹ Tr. P. 21, Ll. 13-26, P. 22. Ll. 1-15.

his claimed hours of work at Humana.¹³ McDonald testified that Holt called in sometime later, and that she informed him that Adecco had verified that he had received pay for time that he had not worked.¹⁴

Throughout this case, Holt has contended that he never falsified his time records, and that Humana would not have approved compensation for hours he did not work. The Review Commission disagreed and found that Holt was discharged for just cause in falsifying his time records based upon testimony and evidence adduced at the August 4, 2011 hearing.

Stated simply, Holt argues ODJFS erred in holding that he falsified his time records thereby justifying his termination for cause resulting in a denial of unemployment compensation

II. STANDARD OF REVIEW

This Court, sitting in an appellate capacity, has a limited power of review and cannot make factual findings or determine the credibility of witnesses.¹⁵ This Court's role is to determine whether the Review Commission's decision is supported by the evidence in the record.¹⁶ In short, the Review Commission's decision cannot be reversed because reasonable minds might have reached a different conclusion.¹⁷ Rather, this Court could reverse, vacate, or modify the Review Commission's determination that Holt was terminated for just cause *only* if "the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence."¹⁸ This Court has no authority to upset the Review Commission's decisions on close questions, i.e., where the Review Commission might reasonably have decided another way.¹⁹ Indeed, this Court could only reverse the Review Commission's decision were it clearly unreasonable in light of essentially undisputed evidence adduced at the administrative hearing.²⁰

III. LAW AND ANALYSIS

"Just cause", in the statutory sense, is that which an ordinarily intelligent person would find justified doing or not doing a particular act.²¹ And "just cause" determinations must be consistent with the legislative

¹² Tr. P.30, Ll. 8-14.

¹³ Tr. P. 9, Ll.12-19.

¹⁴ *Id.*

¹⁵ *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ R.C. 4141.282; see also *Irvine*, 19 Ohio St.3d at 17-18; *Tzangas v. Admr., Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, at paragraph one of the syllabus.

¹⁹ *Irvine*, 19 Ohio St.3d at 18.

²⁰ O.R.C. 2506.04, and *Madison Township Bd. Of Trs. v. Donohoo*, (1994) Ohio App. LEXIS 4595.

²¹ *Irvine*, 19 Ohio St.3d at 17.

purpose underlying the Unemployment Compensation Act²² which is to provide financial assistance to an individual who had worked, was able and willing to work, but was without employment *through no fault of his own*.²³ The Act's purpose is not to protect employees from themselves, but rather to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune's whim, but is instead directly responsible for his own predicament.²⁴

And Holt must bear the burden of proving his entitlement to unemployment compensation benefits under R.C. 4141.29 (D)(2)(a).²⁵

Holt's appeal here is not well-taken.

Adecco provided records demonstrating that Holt's log in and out times on his Humana computer did not comport with his claimed hours of work he submitted to Adecco and for which he was paid.²⁶ Indeed, during the weeks of February 20, February 27 and March 6, 2011 alone, Holt billed Adecco for 7.5 hours of work that he did not perform.

Importantly, a document entitled "Commitment Sheet" electronically signed by Holt on July 7, 2010 contains the following acknowledgment "(c) I *will be terminated* from Adecco if I engage in the following conduct ... *submitting time that I did not work*" (emphasis added). And, of course, during the Review Commission's hearing, Holt admitted he could be terminated for falsifying his records.²⁷

When confronted with the discrepancy between his log in and out times on Human's computer and the time cards he submitted to Adecco for payment, Holt could not remember when he was actually at work on a given date²⁸, nor did he provide any credible evidence that his Adecco timecards were in any way inaccurate or altered.

Simply put, there is ample evidence in the record that supporting the Review Commission's decision that Adecco terminated Holt for just cause, thereby properly denying his unemployment compensation claim.

²² *Id.*

²³ *Id.*, citing *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35.

²⁴ *Tzangas*, 73 Ohio St.3d 694, 697-698, 1995-Ohio-206, 5653 N.E.2d 1207.

²⁵ *Irvine*, 19 Ohio St.3d at 5.

²⁶ See Transcript, Part A, Director's File.

²⁷ Hr. Tr. P. 27, Ll. 22-24.

IV. CONCLUSION

For the reasons detailed herein, the Court hereby **AFFIRMS** the Unemployment Compensation Review Commission's decision to deny unemployment compensation to Appellant Jason E. Holt.

SO ORDERED:

JUDGE STEVEN K. DANKOF

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²⁸ Hr. Tr. P. 27, Ll. 3-21.



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Title: JASON E HOLT vs ADECCO USA

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Type: Order:

So Ordered

Steven K. Dankof