

FILED

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

2012 APR 30 P 4: 26

ROBERT CROUSER,)	
)	CASE NO. 2011-CV-996
Appellant,)	CAROL A. MEAD
)	CLERK OF COURTS
v.)	COMMON PLEAS COURT
)	ASHTABULA CO. OH
LINCARE, INC., et al.,)	
)	JUDGE ALFRED W. MACKEY
Appellees.)	<u>JUDGMENT ENTRY</u>
)	

This matter came on for consideration of the above-captioned appeal, taken from a decision rendered by the Ohio Unemployment Compensation Review Commission ("UCRC"). The Court considered the appellate record and the briefs of the parties.

Upon reviewing an appeal from a UCRC decision, the Court may only reverse, vacate, or modify a decision which is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). Otherwise, the Court must affirm the UCRC decision.

Robert Crouser, Appellant herein, was employed by Appellee, Lincare, Inc. ("Lincare"), as a manager from June, 2000 until April 26, 2011, when he was discharged for violating the company's sexual harassment policy. Appellant's initial application for unemployment compensation benefits was allowed by the Director of the Ohio Department of Jobs and Family Services, whereupon Lincare appealed. The Director affirmed the decision to allow benefits, finding that Appellant had been discharged without just cause.

Lincare then appealed the Director's decision to the UCRC, which conducted a hearing on the matter. Upon hearing the evidence, the hearing officer reversed the Director's decision and disallowed Appellant's benefits, finding that Appellant had been

discharged with just cause. On October 5, 2011, the UCRC disallowed Appellant's request for review of the hearing officer's decision, and the appeal at bar ensued.

During the August 17, 2011 hearing, Appellant's supervisor, District Manager June Fiorilli, testified that Appellant was discharged from employment for sexual harassment which constituted a violation of company policy. Ms. Fiorilli testified that during her investigation of the sexual harassment claim, she interviewed all the Lincare employees under Appellant's supervision. Five of the six employees interviewed indicated that they had witnessed Appellant sexually harassing a subordinate employee named Christa Keller.

Ms. Fiorilli learned that Appellant frequently called Ms. Keller "Cupcake" in front of other staff members. Staff members also informed Ms. Fiorilli that while Appellant and Ms. Keller were driving to a company meeting together, Appellant stopped the vehicle and urinated outside. Staff members reported that Appellant blew in Ms. Keller's ear at the copy machine, and sent her a text message containing an image of a police officer receiving oral sex from an arrestee.

Ms. Fiorilli also interviewed Ms. Keller, who indicated that the statements of her co-workers were true. Ms. Keller advised that she felt Appellant's behavior was inappropriate, and that she did not wish to continue working with him. Upon concluding her investigation, Ms. Fiorilli reported her findings to Lincare's human resources department, which made the decision to discharge Appellant.

During his testimony, Appellant acknowledged having received Lincare's employee handbook, which contained a policy prohibiting sexual harassment. Appellant admitted having called Ms. Keller "Cupcake", admitted stopping to urinate outside a vehicle in which he and Ms. Keller had been travelling, and admitted to sending her the above-referenced

text message. However, Appellant denied having blown in Ms. Keller's ear.

Appellant further testified that he did not believe his behavior constituted sexual harassment, and was not intended as such. Appellant testified that he did not think Ms. Keller would find the pornographic text message offensive because it was intended as a joke, and Ms. Keller had previously exchanged similar text messages with him. Appellant indicated that this type of behavior, including vulgar language, were common amongst his staff.

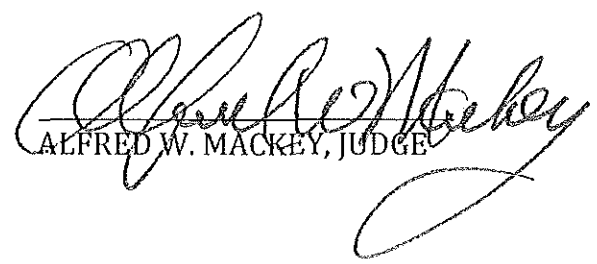
In reversing the Director's decision to allow benefits, the hearing officer reasoned that as a supervisor, Appellant should have understood both the sexual harassment policy and the impropriety of his admitted conduct. This Court agrees with the hearing officer's reasoning. The Court does not find the UCRC's October 5, 2011 disallowance of Appellant's request for review to be unlawful, unreasonable, or against the manifest weight of the evidence, and accordingly, the disallowance is hereby **AFFIRMED**.

Costs are hereby assessed to Appellant, Robert Crouser.

IT IS SO ORDERED.

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this Judgment and its date of entry upon the journal upon the following: **Matthew M. Ries, Esq.; Caryn M. Groedel, Esq.; Mechelle Zarou, Esq.; Serena L. Lipski, Esq.; and Susan M. Sheffield, Esq.**

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ALFRED W. MACKAY, JUDGE