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JUN 5 2012

TOLEDO, OHIO

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

DONALD E. STOKES,	:	Case No. 2011-CV-0345
Appellant	:	Judge Tygh M. Tone
vs.	:	OPINION AND JUDGMENT ENTRY
J and J SALES AND SERVICE JENKINS SALES, et al	:	
Appellees	:	

FILED COURT
 OHIO
 COMMON PLEAS
 ERIE COUNTY, OHIO
 2012 MAY -4 AM 10:32
 LUVADA S. WILSON
 CLERK OF COURTS

 This matter is before the Court on Appellant's administrative appeal from the Ohio Unemployment Compensation Review Commission's January 26, 2011 final decision denying unemployment benefits to Appellant. This Court **AFFIRMS** the Decision of the Ohio Unemployment Compensation Review Commission.

STATEMENT OF THE CASE

Appellant Donald E. Stokes filed an Application for Determination of Benefit Rights claiming he was unemployed for lack of work. The director allowed the application.

The Director issued a Redetermination, which reversed the initial determination on September 15, 2010. Director found Appellant quit work with Appellee J&J Sales and Service ("J&J") without just cause.

Appellant field an appeal from the Redetermination on October 4, 2010. On January 24, 2011, a telephone hearing was held before Hearing Officer Tonya Brady from the Unemployment Compensation Review Commission. Appellant appeared and offered testimony. Crystal Keller was a witness for Appellant.

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On January 26, 2011, the hearing officer affirmed the Director's September 15, 2010 Redetermination. On April 27, 2011, Appellant's request for final administrative review was denied.

Appellant filed his R.C. 4141.282 administrative appeal seeking reversal of the Review Commission's final decision.

STATEMENT OF THE FACTS

Appellant was employed by Appellee J&J Sales from July 8, 2010 until August 2, 2010. Appellant and Tony Itzo, assistant service manager of J&J, attended a racing event on July 31, 2010, to work a display booth for J&J. Appellant brought his cornhole set. Around 11:00pm, Mr. Itzo, who was observed by Appellant to be highly intoxicated, began using Appellant's cornhole boards as a dirt-bike launching ramp. Mr. Itzo, appellant, and appellant's fiancé then had a heated exchange. According to Appellant, Mr. Itzo stated that he didn't have to work for him and did not need him anymore. The only additional contact Appellant had with Mr. Itzo was the following Monday, August 2, 2010, when Appellant came to J&J, picked up his tools, and left. According to Appellant, he left numerous voicemails to Dan Jenkins, the owner of J&J, but his messages were not returned. Appellant testified that Dan Jenkins was not present at J&J when Appellant came to collect his tools.

At the Unemployment Compensation Review Commission's hearing, Appellant appeared and offered testimony, Crystal Keller was a witness for Appellant, and J&J did not call in. In a letter opposing Appellant's unemployment claim, Mr. Itzo and Jamie Silardi, J&J's office manager, asserted that Appellant quit work on August 2, 2010, without notice.

STANDARD OF REVIEW

The standard of review for the Common Pleas Court when considering appeals of decisions rendered by the Review Commission is set forth in R.C. 4141.282(H):

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The determination of just cause is a factual question and thus “is primarily within the province of the referee and board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence.” *Irvin v. Unemp. Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). “Thus, a reviewing court may not make factual findings or determine a witness’s credibility and must affirm the commission’s finding if some competent, credible evidence in the record supports it.” *Williams v. Ohio Department of Job and Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶20. As a court of limited power, this court cannot reverse the Review Commission’s decision simply because reasonable minds might reach different conclusions. *Irvin* at 18.

ARGUMENTS

Appellant’s Argument

Appellant argues that there is not any credible, competent evidence in the record to support the Hearing officer’s factual findings that the Appellant did not try to talk to Mr. Itzo or anyone else in management on August 2, 2010, or that Appellant quit his job on August 2, 2010. According to Appellant, Mr. Itzo perceived himself as a superior when he made the statement that Appellant did not have to work for him nor need him

anymore. Appellant claims that he did engage in a conversation with Mr. Itzo at work on August 2, 2010, but Mr. Itzo walked away while Appellant gathered his belongings. Mr. Itzo did not recant his prior statement, apologize for his behavior, or ask Appellant to remain at work. Also, Appellant made several attempts to contact Dan Jenkins in order to resolve the issue, but his calls were not returned.

Further, if it is determined that Appellant quit, there is no competent, credible evidence on the record that he did so without just cause. Appellant discussed the working condition problem with Mr. Itzo and made several calls to J&J'S owner. Thus, Appellant quit with just cause because he notified his employer of the problem before quitting and thus gave his employer an opportunity to remedy it.

Also, according to Appellant Appellee's brief relies upon unsworn hearsay statements as to contested facts. Appellant claims that the April 23, 2010, letter from the employer opposing Appellant's unemployment claim may be considered at the examiner level, but Appellant's right to a fair hearing was violated when such materials were given deference over the live testimony of Appellant at the hearing. Appellant testified that he had a conversation with Mr. Itzo, Mr. Itzo acknowledge the conversation occurred at the races on Saturday, and Mr. Itzo gave no indication that he expected Appellant to continue working at J&J.

Appellee's Argument

Appellee argues that the letter signed by Mr. Itzo and Ms. Silardi and the employer-information form signed by Ms. Silardi are evidence that Appellant came to work on August 2, 2010, and, without notice, picked up his tools and left. In regard to Appellant's claim that Mr. Itzo, while intoxicated, fired him, Appellant had an obligation

to make reasonable attempts to resolve his problem with Mr. Itzo. However, Appellant did not clarify what happened nor did he give Mr. Itzo an opportunity to discuss the heated exchange. Further, although Appellant contacted Mr. Jenkins, he admitted that Mr. Jenkins was unavailable over the weekend and yet quit on Monday. Thus, Appellant failed to give Mr. Jenkins a reasonable opportunity to return Appellant's voicemail.

Further, J&J argues that hearsay is permitted for R.C. 4141 unemployment compensation administrative proceedings and appeals.

ANALYSIS

4141.29 (D)(2)(a) provides in pertinent part:

(D) 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 * * *

"Just Cause" is determined on a case by case basis. The Ohio Supreme Court has stated that "essentially, each case must be considered upon its particular merits.

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." *Irvin v.*

Unemployment comp. Bd. Of Review, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985) quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975). Also, the legislative purpose underlying the Unemployment Compensation Act must be considered when determining just cause. The Act's purpose is "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, quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980).

A claimant has the burden to prove she is entitled to unemployment compensation as well as the grounds for just cause to quit. *Irvine* at 17.

*Whether the Record Contains Competent, Credible Evidence that
Appellant Claimant Quit With Just Cause*

Appellant claims that he quit with just cause because he attempted to discuss the matter with Mr. Ittzo and made several calls to J&J's owner. "As a general rule, an ordinarily intelligent employee will not quit his or her job over a problem with working conditions without first bringing that problem to his or her employer's attention, requesting that it be solved, and thus giving the employer an opportunity to correct it." *Digiannantoni v. Wedgewater Animal Hosp.*, 109 Ohio App.3d 300, 308, 671 N.E.2d 1378 (10th Dist. 1996) citing *Irvin v. Unemployment comp. Bd. Of Review*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985).

Thus, Appellant should have made reasonable attempts to resolve the problem with Mr. Itzo and/or Mr. Jenkins prior to quitting. Although Appellant stated that he made several phone calls to the J&J owner, Mr. Jenkins, he did not give Mr. Jenkins a reasonable amount of time to resolve the problem. The altercation occurred on Saturday and Appellant quit on the following Monday. When Appellant quit on the following Monday he knew that Mr. Jenkins was not present. Thus, Appellant did not give Mr. Jenkins a reasonable amount of time to resolve the problem.

Further, Appellant claims that unsworn hearsay evidence cannot outweigh the live testimony of Appellant. However, the issue of whether the hearing officer incorrectly weighed hearsay evidence over nonhearsay evidence is not pertinent to this appeal as Appellant's own sworn testimony establishes that Appellant quit without just cause.

CONCLUSION

The decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The Hearing Officer's determination that Appellant did not quit with just cause is based upon competent, credible evidence. Although Appellant notified J&J's owner, Mr. Jenkins, of his altercation with Mr. Itzo, Appellant failed to give Mr. Jenkins a reasonable amount of time to remedy the problem.

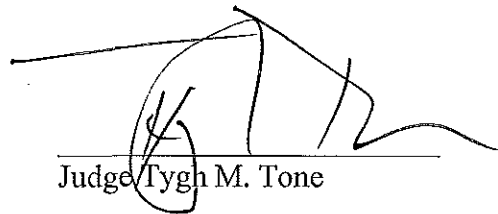
JUDGMENT ENTRY

IT IS ORDERED that Donald E. Stokes, is not entitled to and is not eligible to receive unemployment compensation benefits.

IT IS ORDERED that the decision of the Unemployment Compensation Review Commission is affirmed.

It is further ORDERED that there is no just reason for delay pursuant to Civil Rule 54(B).

5/2/12
Date



Judge Tygh M. Tone