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**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

2012 MAY 15
COURT OF COMMON PLEAS
STARK COUNTY, OHIO

Edward Pellegrine,) Case No. 2012CV00349: 94
Plaintiff/Appellant,) Judge Lee Sinclair
vs.) JUDGMENT ENTRY
Director, Ohio Department of)
Job & Family Services,)
Defendant/Appellee.)

This matter came before the Court upon appeal by the plaintiff/appellant, Edward Pellegrine (hereinafter "Pellegrine"), of a decision rendered by the defendant/appellee, Director, Ohio Department of Job & Family Services (hereinafter "ODJFS"), via the Unemployment Compensation Review Commission, on January 4, 2012, affirming a staff hearing officer's December 8, 2011, determination that he quit his employment with Downtown Ford Lincoln Mercury, Inc. (hereinafter "Downtown Ford") without just cause. Pellegrine and ODJFS have submitted briefs on the issues presented by the instant appeal.

Unemployment compensation appeals are error proceedings, not proceedings *de novo*. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 13-14. Under R.C. 4141.28(O)(1), a reviewing court may reverse a decision of the Review Commission only if it determines that the administrative determination is "unlawful, unreasonable or against the manifest weight of the evidence." *MacMillian v. Unemployment Compensation Board of Review* (1983), 10 Ohio App.3d 290, at syllabus. A reviewing court is not permitted to weigh the evidence and substitute its judgment for that of the hearing officer, as the determination of purely factual questions and issues of credibility are primarily within the province of the hearing officer. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d

41. The duty of the reviewing court with regard to the weight of the evidence, therefore, is to determine whether the decision is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services* (1995), 73 Ohio St.3d 694, 1995-Ohio-206.

R.C. 4141.29 (D)(2)(a) provides, in part, as follows:

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 with the individual's work.

"Just cause" for the purposes of the above statute has been defined as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act."

Irvine v. Unemployment Compensation Board (1985), 19 Ohio St.3d 15, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10.

Upon review of the transcript, the Court finds that there is sufficient evidence contained therein to support the findings of the Hearing Officer. Specifically, evidence in the record supports that Pellegrine quit the day following notice by Betsi Staugh that he was going to be taken out of the "on lot" rotation for potential sales due to inconsistent work hours. The evidence presented at the hearing demonstrated that it was vital to materializing a sale that the salesperson handling the sale maintain consistent hours to answer follow-up questions by the customer. Pellegrine did not consult with Downtown Ford about other accommodations for potential sales, nor did he attempt to work without being included in the rotation to see if his income was, in fact, affected by such change. Further, there was no evidence that Pellegrine's income would be cut by 30% if he was

taken out of the rotation; rather, there was only evidence that the mere potential of income was cut. This Court finds that such evidence supports the Hearing Officer's determination that Pellegrine left his employment without "just cause." This Court cannot substitute its own judgment on such factual matters. Accordingly, upon review of the transcript, the Court finds that, while this Court may have come to a different conclusion, the Hearing Officer's decision was lawfully made, was reasonable, and was supported by sufficient and credible evidence.

For the reasons set forth herein, as well as those set forth in the brief submitted by ODJFS, the Court, hereby, **AFFIRMS** the Review Commission's decision that Pellegrine quit his employment with Downtown Ford without just cause.

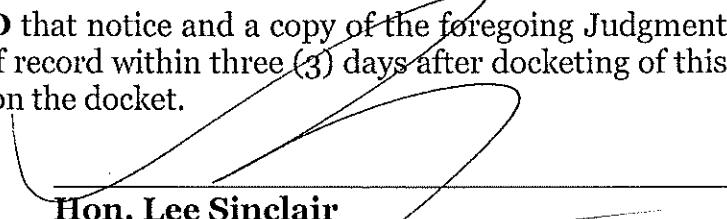
IT IS SO ORDERED.



Hon. Lee Sinclair

**NOTICE TO THE CLERK:
FINAL APPEALABLE ORDER
Case No. 2012CV00349**

IT IS HEREBY ORDERED that notice and a copy of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



Hon. Lee Sinclair