

FILED BUTLER CO.  
COURT OF COMMON PLEAS

JUN 01 2012

MARY L. SWAIN  
CLERK OF COURTS

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

NICHOLAS DELOATCH, : CASE NO. CV2011 10 3565  
Appellant : JUDGE SPAETH  
vs. : **DECISION AND ENTRY**  
SEATON CORP. d/b/a STAFF :  
MANAGEMENT, et al :  
Appellees. :

This matter came before this Court from an appeal as a result of an Ohio Unemployment Compensation Review Commission (hereinafter "Review Commission") decision denying unemployment compensation benefits to Appellant, Nicholas Deloatch (hereinafter "Deloatch"), a former employee of Seaton Corp. d/b/a Staff Management (hereinafter "Staff Management"). Deloatch filed his memorandum in favor of his appeal to obtain unemployment benefits on October 11, 2011. Appellee, Staff Management, filed its brief on April 30, 2012. Deloatch filed a pro se "Redirect to Last Lawyers Filings" on April 19, 2012. This Court has considered the applicable law as well as the memorandums filed in support of, and in opposition to, the motion.

In this case *sub judice*, Deloatch filed for unemployment compensation benefits on April 4, 2011. On April 25, 2011, the Ohio Department of Job and Family Services (hereinafter "ODJFS") issued a Determination of Unemployment Compensation Benefits (hereinafter "Determination") allowing benefits to Deloatch. Staff

Management filed a timely appeal from the Determination. On June 7, 2011, ODJFS issued a Redetermination which affirmed the initial Determination. Staff Management filed an appeal from the Redetermination. ODJFS transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission (hereinafter "Review Commission").

A hearing was conducted on August 16, 2011. The hearing officer held that Deloatch was discharged by Staff Management with just cause. See Appellee's Exhibit B. Deloatch then appealed to this Court, seeking reversal of the decision disallowing unemployment compensation benefits.

Deloatch was employed by Staff Management from November 12, 2009 until his termination on April 1, 2011 as a temporary employee for Staff Management's client, CEVA Logistics (hereinafter "CEVA"). See Transcript of Testimony, Appellee's Exhibit A, p. 6. On March 31, 2011, CEVA informed Staff Management that in the course of its regular video surveillance it had taped Deloatch handing his badge to a CEVA employee in the lunch room, and allowing that CEVA employee to clock him into work. See Appellee's Ex. A, pp. 6-7; Ex. B, p. 3. Deloatch admitted that he had another employee clock in for him. Id., at 8-9; 14-15. On April 1, 2011, Deloatch was terminated by Staff Management for violating company policy by falsifying his time records. Id. at 6-8; see also Appellee's Exs C and D.

The Unemployment Compensation Review Commission's determination of whether a claimant was discharged with just cause is appealable to the court of common pleas: "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." R.C. 4141. 282( H). This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15,18, 482 N.E.2d 587. 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. *Id.* In other words, a reviewing court may not reverse the commission's decision simply because "reasonable minds might reach different conclusions." *Id.*

Staff Management contends that Deloatch attended an orientation and was provided with a document titled "Rules of Conduct". *Appellee's Ex. A, 7-8; Ex. B, 3.* A copy of Staff Management's Rules of Conduct were signed by Deloatch. *Appellee's Ex. C.* Staff Management's Rules of Conduct expressly state, "the listed breaches of reasonable conduct cannot be tolerated and **may result in discharge.**" (emphasis added) *Id.* Included in the list of breaches of conduct that may result in discharge is "[f]alsification of timekeeping records." *Id.*

Although it is not defined by statute, the Supreme Court of Ohio has stated that "just cause" is "that which, to an ordinarily intelligent person, is a justifiable reason for

doing or not doing a particular act.’ ” *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 335 N.e.2d 751. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings* (1991), 58 Ohio St.3d 206, 207, 569 N.E.2d 489. “[W]hat constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act’s purpose is ‘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, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 199 N.E.2d 3.

However, the Ohio Supreme Court has cautioned, “The Act does not exist to protect employees from themselves, but 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 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.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697-98, 653 N.E.2d 1207.

Fault on an employee’s part is an essential component of a just-cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a

violation of an employer's instructions. *Id.* at 698. Unsuitability for a position constitutes fault sufficient to support a just-cause discharge. "An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position." *Id.* at paragraph four of syllabus.

In this case, CEVA informed Staff Management that in the course of its regular video surveillance it had taped Deloatch handing his badge to a CEVA employee in the lunch room, and allowed that CEVA employee to clock Deloatch into work. *Appellee's Ex. A, 6; Ex. B, 3.* The incident occurred on March 22, 2011. When questioned about the incident by a Senior Account Manager for Staff Management, Deloatch admitted that he handed his badge to another employee and had that employee clock in for him. *Appellee's Ex. A, 7. see also, Id.* at 8-9, 14-15. On April 1, 2011, Deloatch was terminated by Staff Management for violating company policy by falsifying his time records. *Id.* at 6-8. see also, Exs. C and D.


Finding that Deloatch's discharge was with just cause is consistent with the purpose of the Unemployment Compensation Act. "The act 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." *Salzl v. Gibson Greeting Cards, Inc.*(1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76.

There were no outside economic factors influencing Deloatch's termination. Ohio Courts have consistently held that falsification of time records by an employee constitute just cause for termination. See Ferreri v. Milford Exempted Village School Dist. Bd. of Edn., 2008 WL 3893214 (Ohio App. 12 Dist.), 2008-Ohio-4314; Payton v. Board of Review, 1997 WL 304412 (Ohio App. 10 Dist.); Britenriker v. Rivello, 2011 WL 2739600 (Ohio App. 6 Dist.). Deloatch violated this rule when he had another employee swipe his timecard for him prior to returning to work. Failing to abide by Staff Management's policy against falsification of time records was sufficient to establish fault as it was defined in *Tzangas*.

Therefore, this Court finds that the review commission's decision to deny Deloatch unemployment benefits was not unlawful, unreasonable, or against the manifest weight of the evidence.

**IT IS THEREFORE ORDERED ADJUDGED AND DECREED**, that the decision of the Review Commission was not unreasonable, unlawful or against the manifest weight of the evidence. The decision of the Review Commission is **AFFIRMED. SO ORDERED.**

ENTER,



Keith M. Spaeth, Judge

cc:

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