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COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

WILMA J. MCCABE,

CLERK OF COURTS

Appellant,

CASE NO. 11 CVF-05-6558

v.

JUDGE TIMOTHY S. HORTON

DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES, et al.,

Appellees.

**DECISION AND ENTRY**  
**AFFIRMING THE DECISION DISALLOWING REQUEST FOR**  
**REVIEW AS MAILED ON APRIL 27, 2011**  
**AND**  
**DECISION AND ENTRY**  
**DENYING THE APPELLANT'S REQUEST FOR AN ORAL**  
**ARGUMENT AS CONTAINED WITHIN APPELLANT'S BRIEF**

HORTON, JUDGE

The above-styled case is before the Court on an appeal of the Decision Disallowing Request for Review issued by the Unemployment Compensation Review Commission ("Commission") that terminated Wilma J. McCabe's ("Appellant") administrative appeal. The Commission dismissed the Appellant's appeal by its Decision mailed April 27, 2011. In this appeal, the Appellant named the Ohio Department of Job and Family Services ("Appellee") and Appellant's former employer, Brookdale Senior Living Communities, Inc, and Thomas & Thorngren, Inc. ("Employer")

By an Agreed Entry of August 8, 2011, both the Appellant and the Appellee were given 7 additional days to be added to their respective deadlines in order for them to file their Briefs. Said Entry did not extend the scheduling order's deadline concerning a Reply Brief. The Appellant filed her Brief on August 11, 2011. The Appellee filed its Brief on August 25, 2011. The docket does not reflect that the Appellant filed or asked for leave to file a Reply. The Employer has not made an appearance in this appeal.

After a review of the pleadings, briefings, and certified record, this Court holds that the Commission's Decision Disallowing Request for Review of April 27, 2011 is **AFFIRMED**.

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**II. STATEMENT OF THE FACTS:**

Appellant claims that she was not terminated for good cause. However, the Hearing Officer arrived at a different conclusion. The following language comes from the Hearing Officer's Decision:<sup>1</sup>

**Brookdale Senior Living Communities Inc. employed claimant as a Staff Nurse at Sterling House from February 12, 2008 to July 15, 2010. On September 1, 2009, claimant received an initial corrective action because she was disrespectful to another nurse. Claimant was disciplined again on September 11, 2009 because she committed a medication error.**

Please note the following testimony from Tracy Loy at the hearing conducted on February 22, 2011:

**Um transcription med errors when she was transcribing uh medications onto the medication administration record. There were several errors and um failure to follow safe nursing practices and discharging medications from a resident. Um Uh she discontinued medications without a doctor's authorization. (H. Tr. P. 6, L. 18 – 22)**

The Employer's witness established that the Appellant had made several transcription errors and those errors led Appellant's Employer to terminate the Appellant.

From the testimony, the Hearing Officer found the following facts.

**During a monthly audit on July 9, 2010, the employer discovered multiple medication errors resulting from**

**claimant's failure to transfer all of the required information into the Medication Administration Record hereinafter MAR. At the time, claimant was the nurse who was responsible for transferring patient drug information into the MAR. Claimant was also responsible for verifying that the information she transferred into the MAR was accurate and complete. The MAR is the legal record of all drugs administered to and treatment received by a patient at a nursing home or rehabilitation facility by a nurse. Nurses and other healthcare staff rely upon the MAR to determine if and how a drug should be administered to a patient. A MAR that is either incomplete or contains incorrect information, can jeopardize a patient's health and safety because the nurse will not know how medication should be administered. Claimant had at least twenty years of experience transferring patient information into the MAR.**

The Decision was upheld by the Commission on April 27, 2011.

Appellant timely appealed that Decision to this Court and the matter has now been briefed. The Court has conducted a review of the pleadings; briefs and certified record. This appeal is ready for a determination.

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<sup>1</sup> The darker text in this Decision is a 'copy image' from the certified record.

### **III. STANDARD OF REVIEW:**

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. R.C. 4141.282(II) provides:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkouski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission’s decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.*(1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer’s and the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkouski v. Buckeye Potato Chips, Id.*, at 162.

From within this framework, this Court will render its decision.

### **IV. ANALYSIS:**

The main contention between the parties concerns whether or not the Appellant was terminated for just cause. R.C. 4141.29.29(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 . . .

Appellee asserts that the findings of the Hearing Officer clearly have established just cause. Please note the following definition of 'just cause':

Unemployment compensation can be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just cause" is defined as "that which, to an ordinarily 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, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. The *Irvine* court at 17 further stated "each case must be considered upon its particular merits." In reviewing such a determination, we are not permitted to reinterpret the facts or put our "spin" to the facts. *Taralla v. Union Hospital Association, Inc.*, 2011-Ohio-4006 at ¶10.

The Hearing Officer found that there was a failure of the Appellant to accurately complete the Medication Administration Records (hereinafter referred to as a MAR). That finding was consistent with the evidence at the hearing.

Furthermore, the Appellant really never contested that she failed to perform the task of filling out the MARs correctly. She merely asserts allegations or arguments that her failure should not have resulted in her being discharged. Appellant claims that her Employer's complaints over the MARs were just a pretext that gave her Employer grounds to retaliate against her. Appellant had apparently previously filed a Workman's Compensation claim during her employment. However, no evidence was advanced to support that. Allegations were the only thing noted from this Court's review of the hearing transcript.

A review of Appellant's testimony shows a tacit admission that she violated her Employer's policies but she felt it was irrelevant due to the fact that no patient had been harmed. She does not appear to be concerned with the error because she was certain that others would do the right thing.

The Hearing Officer seemed to have a hard time getting the Appellant to understand that the fact that no one was harmed had nothing to do with the question at hand; i.e., did she fill out the MARs correctly.

Please note the following from the Hearing Officer's Decision:

**The evidence presented establishes claimant failed to transfer all of the required drug information into the MAR. The MAR is the legal record of the drugs that are administered to and treatment received by a patient in a healthcare facility. It is critical that the MAR contain accurate and complete information because nurses rely upon the MAR to administer drugs to patients. Claimant's failure to transfer all of the information into the MAR jeopardized patient health and safety. She also exposed the employer to liability for any medication errors that resulted from her failure to transfer all of the required information into the MAR. As an experienced nurse, claimant should have understood that the MAR must be accurate and complete. Under the evidence presented in this matter, the Hearing Officer finds that claimant's actions constitute fault sufficient to support a discharge for just cause in connection with work. Accordingly, claimant's discharge is supported by reliable, probative, and substantial evidence. Therefore, Brookdale Senior Living Communities Inc. discharged claimant for just cause in connection with work.**

Upon review and consideration of the documents, Briefs and the certified record, this Court holds that the decision of the Appellee was lawful, reasonable, and was not against the manifest weight of the evidence. Therefore the Commission's Decision of April 27, 2011 is hereby, **AFFIRMED**.

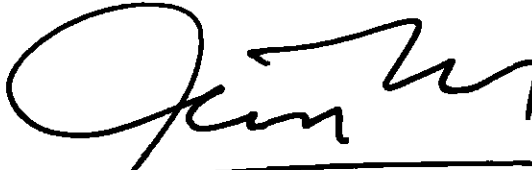
**V. APPELLANT'S MOTION FOR AN ORAL ARGUMENT:**

Contained within the Appellant's Brief was a request to have the opportunity to conduct an oral argument. This Court's decision as to the merits of the Appellant's appeal has rendered said request **MOOT**.

**VI. DECISION:**

The Commission's Decision Disallowing Request for Review of April 27, 2011 is **AFFIRMED**.

**THIS IS A FINAL APPEALABLE ORDER.**

  
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Judge T. Horton

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