

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
GENERAL DIVISION**

STEVE C. SCHOLL,		CASE NO. 11CVF07-09098
Appellant,		JUDGE SHEERAN
vs.		
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,		
Appellees.		

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**DECISION AND JUDGMENT ENTRY AFFIRMING DECISION OF OHIO  
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION  
AND  
NOTICE OF FINAL APPEALABLE ORDER**

**SHEERAN, J.**

This case is a Revised Code 4141.282 administrative appeal, by Steve C. Scholl (Appellant), from a “Decision Disallowing Request for Review” issued by the Ohio Unemployment Compensation Review Commission on June 22, 2011. The record that the Commission has certified to the Court reflects the following facts, which are undisputed.

**Facts**

Appellant was employed by G&J Pepsi-Cola Bottling Company North Division (Company), in Columbus, Ohio, from March 30, 2009 to September 24, 2010, as a “Utility Trainee.” *Employer’s Response to Request for Separation Information, Oct. 13, 2010.* Appellant was trained to perform five different positions within the Sales Department, in order to provide coverage for the employees who normally performed those positions, while they were off work due to vacations, injuries, and illnesses. *Id.* Appellant was trained to drive several

different vehicles, including 53-foot tractor-trailer semis and side-loader trucks, and to deliver, sell, and merchandise the Company's products to customer locations. *Id.* Appellant was responsible for ensuring that all Company assets, including money bags, customer keys, and keys to vending machines, were safe and secured. *Id.*

Appellant was provided with a copy of the Company's "Employee Guide," and he acknowledged its receipt, in writing, on January 21, 2010. *Transcript (T.) 19-20.*

The Employee Guide contained "Standards of Conduct," as follows:

In order to operate our business at the high levels we strive to maintain, it is necessary to establish certain conduct levels that assure the protection and well being of all employees. Listing all forms of behavior that are considered unacceptable in the workplace is not possible. However, violation of any terms, conditions and policies set forth in this Guide or elsewhere, or **conduct that interferes with operations, discredits or is detrimental to the interest of the Company**, \*\*\* will not be tolerated and will be handled in accordance with the Company's Corrective Action Process. This includes, but is not limited to \*\*\* unsatisfactory performance of duties[.] (Emphasis added.) *Employer's Response to Request for Separation Information, Oct. 13, 2010.*

The "Corrective Action Process," contained in the Employee Guide, provided:

It is the goal of G&J Pepsi-Cola Bottling Company to treat employees in a fair and consistent manner based on individual circumstances. This is why we support the use of a progressive Corrective Action process to address conduct issues such as poor work performance \*\*\*and to encourage employees to become more productive workers and adapt their behavior to Company standards and expectations. **In the event that an employee does not follow the guidelines and policies set forth in this guide or by his supervisor or manager, the following corrective action steps will usually be taken to correct the employee's performance problems.**

#### STEP ONE: VERBAL WARNING

The supervisor will meet with the employee to discuss the performance issue and the corrective action necessary to fix the problem. The employee will be advised that the discussion is considered a verbal warning and documentation of the verbal warning will be placed in the employee's personnel file.

#### STEP TWO: WRITTEN WARNING

Supervisor will meet with the employee to discuss performance issue, the corrective action necessary to fix the problem and will issue a formal written

warning memo to document the problem as well as the action that needs to be taken to correct the problem.

#### STEP THREE: FINAL WRITTEN WARNING

Supervisor will meet with the employee to discuss performance issue. The employee will receive a final written warning memo to document the problem, as well as the action that needs to be taken to correct the problem, and the employee may receive a disciplinary suspension without pay.

#### STEP FOUR: TERMINATION OF EMPLOYMENT

Continued performance issues that occur after a final written warning has been issued may result in the employee being suspended from employment pending investigation into the performance issue by the Human Resources Manager. A meeting may be held with the employee regarding the investigation and at that time, the employee's employment may be terminated if in the opinion of management, the facts support the decision.

The Company reserves the right to administer appropriate disciplinary action for all forms of poor work performance \*\*\*. **Each situation will be addressed on an individual basis. Depending on the severity of the situation as determined by management, any or all steps of this process may be skipped or repeated.**

\*\*\* (Emphasis added.) *T. 5-6.*

Appellant understood that an employee could be discharged in accordance with the four-step Corrective Action Process. *T. 20.*

#### November 30, 2009 Incident and Written Warning on December 23, 2009

One of Appellant's responsibilities was to travel to customer locations and fill the customers' vending machines with the Company's products. *T. 6.* On November 30, 2009, Appellant forgot to take the keys to a customer's vending machines with him when he left the Company's facility, and he did not realize that he had forgotten the keys until he arrived at the customer location, so a manager had to drive the keys to Appellant, costing the Company "major time and expense." *T. 6, 8, 20-21.* On November 30, 2009, Appellant did not have enough gas in his delivery truck, and he ran out of gas on the way back to the Company's facility, so one of the Company's mechanics had to deliver gas to Appellant so he could drive back to the facility. *T. 6-7, 20, 22-23.* On November 30, 2009, Appellant did not turn in two money bags to the

cashier when he returned to the Company's facility, having left them in the delivery truck he had been driving. *T. 6-7, 20-22.* The money bags were found the next day by another driver. *T. 21.*

As a result of the incident on November 30, 2009, Appellant was issued a written warning on December 23, 2009. *T. 6-7, 20.* The written warning stated:

This memo is to confirm our discussion on December 9, 2009 about your work performance issues while running combo route 114 on November 30, 2009 as listed below:

- You did not take Full Service route keys at the start of the day. As a result, one of our managers had to drive to Lancaster to take you the keys so you could service the Full Service accounts.

\*\*\*

- Failed to turn in 2 collection bags to settlement at the end of his shift.
- Did not check fuel level before leaving the plant at the start of the day, and ran out of fuel on the way back to the plant.

The effect of this poor performance on our business is so serious that you must show an immediate correction.

\*\*\*

I am counting on you to solve this problem and perform effectively in every area of your job. However, if your performance issues continue, you will be subject to further disciplinary action, up to and including termination of employment.  
*Employer's Response to Request for Separation Information, Oct. 13, 2010.*

December 14, 2009 Incident and Verbal Warning on February 18, 2010

When Appellant made deliveries to customers, he was responsible for printing an invoice of the product delivered, and reconciling that invoice with the customer's accounting of the product delivered. *T. 7.* On December 14, 2009, Appellant delivered product to a Meijer's store, but the store recorded four cases fewer than Appellant's delivery invoice, so there was a four-case discrepancy. *T. 7-8, 20.* As a result, the Meijer's store did not pay for those four cases, causing the Company to sustain a loss of \$32.80. *T. 8.*

As a result of the incident on December 14, 2009, Appellant received a verbal warning on February 18, 2010. *T. 7-9, 20.* The memorandum documenting the verbal warning stated:

This memo is to confirm our discussion on 2/18/10 about your recent issue with a discrepancy in the number of cases our invoice showed were delivered to Meijer and the number of cases that Meijer's Store Receiving Statement showed were received.

\*\*\*

On 12/14/09, you failed to verify that the "Mpack" Number matched our invoice, which resulted in Meijer receiving 4 cases of free product, resulting in a financial loss to the company of \$32.80.

The effect of this problem on our business is so serious that you must show an immediate correction. \*\*\*

I am counting on you to solve this problem, however if there are further work performance issues, it may result in further disciplinary action, up to and including termination of employment. *Employer's Response to Request for Separation Information, Oct. 13, 2010.*

March 26, 2010 Incident and Final Written Warning on April 15, 2010

On March 26, 2010, Appellant did not turn in a money bag to the cashier at the Company's facility at the end of his shift. *T. 9, 20, 25-26.* Even though the cashier advised Appellant that he was short one money bag, he refused to return to his delivery truck to look for the missing money bag, and he did not advise his supervisor about the missing money bag. *T. 9, 20, 25.* Instead, Appellant simply left work for the day. *T. 9, 20.* Another employee found the missing money bag in the cab of the truck at the start of the next shift. *T. 9-10, 25.* At the hearing below, Appellant admitted that he was an "idiot" for his conduct and that he behaved as he did because he "was having issues with" the cashier. *T. 25-26.*

As a result of the incident on March 26, 2010, Appellant received a final written warning on April 15, 2010. *T. 9-10, 18, 20.* The final written warning stated:

This memo is to confirm our conversation on April 2, 2010 about your recent performance issues.

On December 23, 2009, you received a written warning, the second step of our discipline process for several work performance issues you had while running a Combo route on November 30, 2009. \*\*\* You also received a verbal warning on February 18, 2010 for not verifying our invoice and the Mpack number at Meijer, which resulted in Meijer receiving 4 free cases of product. At each of these times we discussed your performance with you and you agreed to correct the problem.

Since then, your performance issues have continued. On March 26, 2010, you ran Route 104 and did not turn in one of the money bags to the settlement room. The cashier told you that you were settling in with one bag missing. You told her that you thought she was incorrect. You did not return to the truck to check for the missing money bag and did not notify a supervisor of the potential error. On March 29, 2010 another Utility Trainee who was running Route 104 discovered the missing money bag in the cab of the truck.

\*\*\*

I am counting on you to solve this problem and perform effectively in every area of your job. However, if there are future instances of this nature, you will be subject to further disciplinary action, up to and including termination of employment. *Employer's Response to Request for Separation Information, Oct. 13, 2010.*

July 30, 2010 Incident and Final Written Warning on August 24, 2010

On July 30, 2010, Appellant was delivering product to a customer, at a time when the customer's business was closed, so Appellant signed out a key to the customer's premises to deliver the product. *T. 10, 21, 26-27.* Appellant was obligated to keep the customer's key on his person at all times. *T. 10.* When Appellant returned to the Company's facility at the end of his shift he forgot to return the customer's key. *T. 10-11, 21, 26-27.* The following day, at the start of the next shift, another employee found the customer's key in the cup holder of the truck that Appellant had been driving. *T. 10-11, 27.* Appellant admitted that he forgot that he put the key in the cup holder. *T. 10, 26-27.*

As a result of the incident on July 30, 2010, Appellant received a second final written warning and a three-day disciplinary suspension without pay on August 24, 2010. *T. 10-11, 18, 20, 27.* The final written warning stated:

This memo is to confirm today's discussion about your recent performance issues.

On December 23, 2009, you received a written warning, the second step of our discipline process for several work performance issues you had while running a Combo route on November 30, 2009. \*\*\* You received a verbal warning on February 18, 2010 for not verifying our invoice and the Mpack number at Meijer, which resulted in Meijer receiving 4 free cases of product. You received a final written warning on April 15, 2010 for failing to turn in a money bag to the settlement room on March 26, 2010. \*\*\*

Since then, your work performance issues have continued. \*\*\* On July 30, 2010, you ran Tel-Sell Route 135 and signed out customer key #83 to deliver product for an account. You did not sign the key back in at the end of your route and the key was missing. On August 2, 2010 another driver discovered the key in the cup holder of the vehicle and turned it in. When I discussed the situation with you, you admitted that you forgot the key in the cup holder.

Your current performance level is unacceptable and as a result of these continued work performance issues, you are being issued a final written warning. You will also serve a three day disciplinary suspension without pay on September 14, 15, & 16, 2010. \*\*\*

I am counting on you to solve these problems and perform effectively in every area of your job. However, if there are future work performance issues, your employment will be terminated. *Employer's Response to Request for Separation Information, Oct. 13, 2010.*

On August 24, 2010, Appellant's supervisor had a "stern conversation" with Appellant and informed him that, if there were any more work performance issues, his employment would be terminated. *T. 11, 15.*

#### September 3, 2010 Incident

On September 3, 2010, Appellant accepted a check from a cash-only customer. *T. 11-12, 16, 27-28.* The customer was a cash-only customer because the customer had bounced checks in the past. *T. 12.* The fact that the customer was a cash-only customer was noted in the hand-held

computer that Appellant carried with him on his delivery route. *T. 12.* Appellant later told his supervisor that he did not see that information on the hand-held computer. *T. 19, 28.* However, the invoice that Appellant printed for the customer, at the time of delivery, also stated that it was a cash-only customer. *Employer's Response to Request for Separation Information, Oct. 13, 2010.*

#### September 10, 2010 Incident

On September 10, 2010, Appellant delivered product to a Giant Eagle store. *T. 12-13.* Appellant was also scheduled to pick up ten cases of outdated or damaged product from the store and return it to the Company's facility. *T. 12-15, 30.* Although Appellant issued a credit document for the ten cases of product, he forgot to pick up the product and return it to the Company's facility. *T. 12, 14, 30.* The next day, therefore, another driver had to go to the Giant Eagle store to pick up the product that Appellant had forgotten, resulting in extra labor costs and fuel costs to the Company. *T. 14-15. T. 15.* Appellant did not offer any explanation why he did not pick up the product. *T. 19.*

As a result of the incidents on September 3, 2010 and September 10, 2010, the Company's Human Resources (HR) Manager reviewed all of Appellant's work performance issues with the Company's Vice President/General Manager, who was the only person in the Company authorized to terminate an employee. *T. 13.* Having reviewed Appellant's work performance issues, the Vice President/General Manager authorized the termination of Appellant's employment. *Employer's Response to Request for Separation Information, Oct. 13, 2010.*



September 24, 2010 Termination

From November 30, 2009 to September 10, 2010, Appellant had six work performance incidents and received four corrective actions. *T. 18-19, 32.* On September 24, 2010, therefore, the HR Manager and the Distribution Manager met with Appellant and notified him that his employment was terminated due to repetitive work performance issues and his exhaustion of the company's Corrective Action Process. *T. 5, 16.*

**Proceedings Before Ohio Department of Job and Family Services and  
Ohio Unemployment Compensation Review Commission**

On September 29, 2010, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning September 26, 2010 and ending September 24, 2011.

In an initial Determination issued on October 20, 2010, ODJFS allowed Appellant's application, having concluded that he was discharged from his employment without just cause in connection with work. On November 10, 2010, the Company appealed the initial Determination. In a Director's Redetermination issued on November 30, 2010, the Director affirmed the initial Determination.

On December 17, 2010, the Company appealed the Director's Redetermination to the Ohio Unemployment Compensation Review Commission. On December 23, 2010, the Director of ODJFS transferred jurisdiction to the Commission.

On March 29, 2011, a Hearing Officer conducted a telephone hearing on the appeal. Appellant appeared *pro se* and testified. The Company was represented by its Employee Relations Supervisor, Katherine M. Dunham, who also testified. The witnesses' testimony is reflected in the recitation of the undisputed facts, above.

In a Decision mailed on April 4, 2011, the Hearing Officer reversed the November 30, 2010 Director's Redetermination and disallowed Appellant's application for unemployment compensation benefits, having concluded that Appellant was discharged from his employment for just cause in connection with work. The Hearing Officer provided the following reasoning:

Claimant received numerous changes to improve his work performance. Despite repeated warnings, he continued making errors. Based upon the evidence presented in this matter, the Hearing Officer finds that claimant committed sufficient misconduct to justify his discharge. Under these circumstances, the Hearing Officer finds that claimant was discharged by Pepsi for just cause in connection with work. Based upon this finding, claimant received benefits to which he was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services.

On April 25, 2011, Appellant filed a Request for Review with the Commission.

On June 22, 2011, the Commission mailed a "Decision Disallowing Request for Review" to Appellant.

On July 22, 2011, Appellant appealed the Commission's Decision to this Court.

#### **Standards of Appellate Review**

Revised Code 4141.282 governs unemployment compensation appeals to the court of common pleas. *Houser v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶6. More specifically, the statute provides:

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.

R.C. 4141.282(H).

This is the standard of review for unemployment compensation appeals. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 696 (1995). In reviewing a Commission decision, a trial court is not permitted to make factual findings or determine the

credibility of the witnesses. *Id.*, citing *Irvine v. State Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17-18 (1985). Similarly, a trial court may not substitute its judgment on such issues for that of the Commission. *McCarthy v. Connectronics Corp.*, 183 Ohio App. 3d 248, 2009-Ohio-3392, ¶16 (6th Dist.), citing *Irvine* at 18. Instead, a trial court must “determine whether the decision of the [Commission] is supported by the evidence in the record.” *Irvine* at 18.

Judgments that are supported by some competent, credible evidence on the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, at the syllabus (1978).

### Analysis

An individual is not eligible for unemployment compensation benefits if the individual “has been discharged for just cause in connection with the individual’s work[.]” R.C. 4141.29(D)(2)(a). In the statutory sense, “just cause” has been defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine* at 17. Whether or not just cause exists depends on the factual considerations of each particular case. *Irvine v. State Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d at 17. In the context of unemployment compensation cases, an employer has just cause to fire an employee only when the employee is culpable or at fault. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3 at 698. For the employee’s conduct to constitute fault, the employee, by his or her actions, must demonstrate an unreasonable disregard for the employer’s best interests. *Kiikka v. Adm., Ohio Bur. of Emp. Servs.*, 21 Ohio App. 3d 168, 169 (8th Dist. 1985). A finding of fault is essential to a just cause determination, because the purpose of the Unemployment Compensation Act is to provide subsistence compensation to workers who become involuntarily

separated from their work through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St. 2d 35, 39 (1980).

In support of this appeal, Appellant argues that the Commission's June 22, 2011 Decision is against the manifest weight of the evidence. The Court must disagree.

In an eight-month period (November 30, 2009 to July 30, 2010), Appellant had four work performance incidents. In that eight-month period, Appellant forgot to take keys to a customer location, failed to have adequate fuel in his delivery truck, failed to turn in money bags (twice), failed to reconcile a delivery invoice with a customer accounting, and forgot to return a customer's key. As a result of Appellant's work performance issues, he received four corrective actions. On August 24, 2010, when Appellant received his fourth corrective action, his supervisor had a "stern conversation" with him and informed Appellant that, if there were any more work performance issues, his employment would be terminated. *T. 11, 15*. Less than two weeks later, on September 3, 2010, Appellant accepted the check from the cash-only customer. One week after that incident, on September 10, 2010, Appellant forgot to pick up ten cases of product from a customer location. On September 24, 2010, consistent with the supervisor's statement on August 24, 2010, the Company terminated Appellant's employment due to his work performance issues and his exhaustion of the Company's Corrective Action Process.

The Court finds that there is competent, credible evidence that Appellant was discharged from his employment for just cause in connection with work, due to Appellant's demonstrated, unreasonable disregard for his employer's best interests. Appellant did not perform his duties in a satisfactory manner, and he thereby engaged in "conduct that \*\*\* [was] detrimental to the interest of the Company[.]" See *Employee Guide*.

**Conclusion**

Having considered the record that the Commission has certified, the Court finds that the Commission's June 22, 2011 "Decision Disallowing Request for Review" is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Decision is hereby **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry.

It is so **ORDERED**.

Electronically signed by:

JUDGE PATRICK E. SHEERAN

Copies to:

ROBERT D. NOBLE, ESQ. (0041020), Counsel for Appellant, 261 S. Front St., Columbus, OH 43215

YVONNE TERTEL, AAG (0019033), Counsel for Appellee Director, Ohio Department of Job and Family Services, 30 E. Broad St., Fl. 26, Columbus, OH 43215-3400

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Franklin County Court of Common Pleas

**Date:** 06-08-2012  
**Case Title:** STEVE C SCHOLL -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR  
**Case Number:** 11CV009098  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "Patrick E. Sheeran", is written over a circular, textured seal or stamp.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 11CV009098

Case Style: STEVE C SCHOLL -VS- OHIO STATE DEPT JOB FAMILY SERVICES  
DIRECTOR

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes