COMMON PLEAS COURT
WASHINGTON COUNTY, OHIO

Betty J. Lemon	:	
Appellant	:	Case No. 11 AA 383
vs.	:	Judge Ed Lane
Director, Ohio Dept. of Job and Family Services, et al.	:	
Appellees	:	DECISION

On November 15, 2011, the Appellant, Betty L. Lemon, timely filed a Notice of Appeal in this action of the decision of the Review Commission affirming the decision of the director on redetermination. A certified copy of the transcript of the hearing before the hearing officer of April 24, 2011 has been filed on January 5, 2012 with the full copy of the Review Commission's file in this action. Pursuant to notice, the Court held a Case Management Conference on March 9, 2012. The Court entered a Journal Entry on March 9, 2012 establishing a briefing schedule in this matter and an Amended Entry on March 19, 2012 in this regard. The Court by its orders gave the Plaintiff until March 30, 2012 to file a brief and the Defendant, The Ohio Department of Job and Family Services, until April 30, 2012 to file its brief. The Plaintiff has not filed a brief, but has filed several letters and copies of previous filings in this matter with handwritten notes on them. The Appellee, Director, Ohio Department of Job and Family Services, timely filed a brief in this action on April 24, 2012.

Mrs. Lemon worked for Wal Mart at the Marietta store from November 13, 2002 until

voluntarily quitting her job on April 18, 2011. She was employed originally as a cashier. The initial determination in this matter allowed her unemployment compensations on the ground that she had become unemployed from Wal Mart due to lack of work. This determination was reversed following an appeal by Wal Mart. The director's redetermination decision was that Mrs. Lemon quit her employment and therefore was not eligible for unemployment benefits. That is the correct determination in this case. Essentially, Mrs. Lemon maintains that Wal Mart's witness at the hearing, store manager Mr. Dan Laughlin, lied and that her own subpoenaed witness, Willa Towner, also lied.

The determination of factual questions is primarily a matter for the hearing officer and the commission. Brown-Bockmeyer Co. V. Roach, (1947) 148 Ohio St. 511, 76 N.E.2d 79. As the trier of fact, the commission and its hearing officer are vested with the power to consider the evidence and believe or disbelieve the testimony of the witnesses. Deference should be given to the commission's determination of purely factual issues which concern the credibility of witnesses and the weight of the evidence.

It is clear in this case that on April 18, 2011 Mrs. Lemon quit Wal Mart in Marietta after she was informed that she was being assigned to work as a door greeter instead of a cashier. Mrs. Lemon testified that she physically could have "done the job" but "it was not my job." Despite having quit on April 18, 2011, Mrs. Lemon went back to Wal Mart the following day and tried to clock in for her regular shift. The time clock would not allow her to clock in as she had been removed from the system by Mr. Laughlin. Mrs. Lemon maintains that she was just overwhelmed with anxiety (about being a greeter) because it was a seven hour shift. She had done the greeting for maybe an hour to allow other employees to have lunch, but she had never

done a full shift as a door greeter. She maintains that she wasn't a door greeter. She maintains that she was not hired to be a door greeter. Mrs. Lemon acknowledged that being a door greeter would have been the same pay as the cashier's job that she had done for many years. She also testified that she did not want to work as a greeter because she would have to stand in one place for an entire shift except for a lunch break and her fifteen minute break. She thought that this would be overwhelming. She did not relate a physical condition, rather her anxiety.

Mr. Laughlin contested this testimony. He testified that the greeter position would have allowed more motion and movement than the cashier position. He testified that the cashiers basically stand in one place all day. Mr. Laughlin also testified that Mrs. Lemon was assigned to the greeter area the evening of April 18th, 2011 because someone had called off work or was on vacation and the position had to be filled. He testified that the policy at his store is that pretty much anybody that is a cashier can do the greeter assignment.

Mrs. Lemon also testified that she knew she should have talked to someone before she quit, but did not do so. She also admitted that she handled the situation wrong. Mr. Laughlin testified that he was present at the store when Mrs. Lemon quit. He was sitting in the assistant manager's office. Mrs. Lemon came to the door and she was upset and said they got her working as a people greeter and she was not going to do it, and she said she quit, clocked out and was gone. Mrs. Lemon quit. Instead of taking the abrupt action she did, Mrs. Lemon should have tried to discuss the problem of the greeter assignment with Mr. Laughlin. There is absolutely no evidence that Mrs. Lemon at any time attempted to discuss this with Mr. Laughlin. Generally, courts have found that an employee quits without just cause when he or she has on objection to working conditions, but does not notify the employer or give the employer an opportunity to

solve the problem. Digiannantoni v. Wedgewater Animal Hosp., 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist. 1996). A determination of just cause depends not on whether notice was given, but on whether an ordinarily intelligent person in the same factual scenario would have given notice. Digiannantoni, at 309 citing Irvine v. Unemployment Compensation Board, (1985) 19 Ohio St.3d 15, 17, 482 N.E.2d 587, quoting Payton v. Sun T.V., 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist. 1975). The only disparity in the testimony is that Mrs. Lemon testified that she went to Wal Mart the day after she quit to see Mr. Laughlin and apologize. However, Mr. Laughlin testified otherwise. According to Mr. Laughlin, had Mrs. Lemon come to talk to him about her overreacting and told him that she had made a mistake and lost her cool, he would have reinstated her. However, she came into his office on April 19, 2011 to advise him that she was unable to check in for work and that she spun out of the office where Mr. Laughlin was sitting and slammed the door when Mr. Laughlin told her that she could not punch in because she had quit.

It is especially important to this court in reviewing this matter that Mrs. Lemon subpoenaed Mrs. Willa Towner as her witness. However, Mrs. Towner's testimony supported the version of Mr. Laughlin as to what happened on the day after Mrs. Lemon quit. Mrs. Towner testified Mr. Laughlin told Mrs. Lemon that she quit, Mrs. Lemon disagreed and just walked out. Mrs. Towner further testified that Lemon slammed the door to Mr. Laughlin's office as she walked out and went up to the font of the store and she was getting the other associates involved in the situation. Mrs. Towner asked her to please leave the other associates alone because they did not need to be involved. Mrs. Lemon never disputed the testimony of Mrs. Towner regarding her slamming the door. Mrs. Lemon also admitted that she talked to Mr. Laughlin and Mrs.

Towner. She denied that she was talking to other associates. The overwhelming evidence demonstrates that Mrs. Lemon gave her employer, Wal Mart Stores in Marietta, no notice concerning her objection to working as a greeter. In fact, she had covered this position before. Wal Mart was given no opportunity to resolve the situation. Mrs. Lemon simply quit. She was clearly physically able to work as a greeter. She simply did not feel obligated to do that job. She acted adversely and impulsively on the day she quit. These actions continued into the day after she quit.

The standard of review for this Court is set forth in Section 4141.282(H) of the Ohio Revised Code which states that:

> "If the court finds that the decision 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 such decision."

This strict standard of review was reiterated in the leading case on Ohio unemployment compensation, Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv., (1995), 73 Ohio St.3d 694, 653 N.E.2d 1207. The Ohio Supreme Court in Tzangas specified 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." Id. at 697. Although the Commission's decision should not be "rubber-stamped," a reviewing court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. Kilgore v. Board of Rev., 2 Ohio App.2d 69, 206 N.E.2d 423 (4th Dist. 1965). The parties are not entitled to a trial *de novo*.

Lemon was denied benefits on the ground that she quit employment with Wal Mart without just cause. RC. 4141.29(C)(2)(a). R.C. 4141.29(D)(20(a) provides in pertinent part that:

(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 * * *.

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 v. Unemployment Compensation Board *supra* quoting Peyton v. Sun T.V. (1975), *supra*; see also Williams v. Ohio Sept. of Job and Family Servs., (2011), 129 Ohio St.3d 332, 951 N.E.2d 1031. Each case must be considered on its particular merits. Tzangas at 698 (citation omitted).

An employee quits without just cause when he or she had an objection to working conditions but does not notify his or her employer of such objection or give the employer an opportunity to solve the problem. Digiannantoni at 307. Generally, an ordinary intelligent person will not quit over an objection to working conditions without bringing the objection to the attention of the employer, asking for a solution, and giving the employer a chance to implement a solution. Digiannantoni *supra*, citing Irvine, *supra*, and Harmony v. Ohio Bur. of Emp. Serv. (March 28, 1990), 1990 Ohio App. LEXIS 1432 (5th Dist.), unreported.

The decision of the review commission is supported by overwhelming credible evidence going to the essential elements of this controversy and cannot be reversed by this Court as against the manifest weight of the evidence. C.E. Morris v. Foley Construction Co., (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. Even if reasonable minds might reach different conclusions based upon the facts, that cannot be the basis for reversal of a review commission decision. Craig v Bureau of Unemployment Compensation, 83 Ohio App. 248, 83 N.E.2d 628 (1st Dist. 1948).

The Review Commission's decision to disallow Mrs. Lemon's application for unemployment benefits was lawful, reasonable, and consistent with the manifest weight of the evidence. For all of the reasons set forth herein above, the appeal of Betty L. Lemon is hereby denied. The Decision of The Board of Review is affirmed. All costs associated with this action shall be assessed against the Appellant.

ENTER AS OF DATE OF FILING:

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Judge Ed Lane

c: Attorney Sutter
Mrs. Lemon