

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

MICHELLE VELEZ,	*	
	*	
Plaintiff-Appellant,	*	OPINION AND JUDGMENT
	*	ENTRY
vs.	*	
	*	CASE NO. 2011 CV 9269
MONTGOMERY COUNTY AUDITOR,	*	
et al.,	*	
	*	
Defendants-Appellees.	*	
	*	

Plaintiff-Appellant Michelle Velez [plaintiff] appeals from an order of the Ohio Unemployment Compensation Review Commission [UCRC] denying plaintiff's application for unemployment compensation benefits. Upon review of the briefs of the parties and the record filed herein, the Court finds that the decision of the UCRC is not unlawful, unreasonable or against the manifest weight of the evidence, and it will therefore be affirmed.

I. FACTS

Plaintiff began working for the Montgomery County Common Pleas Court [Employer] in January, 2008, as an adult probation officer. During the weekend of July 9-10, 2011, and while she was off work, plaintiff was cited for operating a motor vehicle while impaired by alcohol or drugs. [OVI charge] As a result of the OVI charge, plaintiff's driver's license was suspended, although it was plaintiff's understanding that she could later get driving privileges while the case was

pending. A requirement of plaintiff's position in the probation department was to maintain a valid driver's license.

On Monday, July 11, 2011, James Dare, the Assistant Court Administrator was notified by the Chief of Police of Vandalia, Ohio that plaintiff was stopped and cited for the OVI charge. The next morning, July 12, 2011, plaintiff advised Mr. Dare of the OVI proceeding. Mr. Dare then scheduled a meeting later in the afternoon with plaintiff, himself and Nancy Berkshire from Human Resources. Mr. Dare presented plaintiff with two documents at the meeting: (1) a pre-disciplinary hearing notice and (2) a letter of resignation prepared by Mr. Dare for plaintiff's signature. Mr. Dare explained to plaintiff that she had two options. Plaintiff could either proceed to a pre-disciplinary hearing or resign her employment. Mr. Dare did not indicate what the outcome of a pre-disciplinary hearing would be, but he and plaintiff both knew that having a valid driver's license was a condition of continued employment.

During the meeting, plaintiff asked Mr. Dare if she could have an attorney present. Mr. Dare advised plaintiff that she could not have an attorney at the meeting, but she was entitled to legal representation if she chose to have the pre-disciplinary hearing.

After about forty minutes at the meeting, plaintiff signed the resignation letter. Mr. Dare accepted plaintiff's resignation the same day. Three days later, on July 15, 2011, plaintiff submitted a written request to her employer that the resignation be rescinded. The rescission was not accepted.

Plaintiff filed an application for unemployment benefits. Her application was initially allowed, but that decision was subsequently vacated and plaintiff's

application was denied. Plaintiff appealed to the UCRC, and an evidentiary hearing was held on October 4, 2011. The Hearing Officer issued a decision on October 13, 2011, finding that plaintiff resigned her job without just cause. The UCRC denied plaintiff's request for review, and plaintiff filed a timely appeal to this Court.

II. STANDARD OF REVIEW

R.C. 4141.282(H) sets forth the duty of the Court of Common Pleas in reviewing a decision of the UCRC:

“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.”

Thus, a Common Pleas Court may reverse the UCRC only if it finds that the UCRC's conclusion was unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 1995-Ohio-206, 73 Ohio St.3d 694. “[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the [UCRC's] decision is supported by the evidence in the record.” *Id.* at 696. Because reasonable minds might reach different conclusions from the evidence presented at the hearing, such does not constitute a basis for the reversal of the UCRC's decision. *Id.* at 697, citing *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15.

III. ANALYSIS

R.C. 4141.29(D)(2)(a) provides that an individual is not entitled to be paid unemployment benefits if she “quit work without just cause or has been discharged for just cause.” The Supreme Court has defined just cause as that which to an ordinary

person is a justifiable reason for doing or not doing a particular act. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. The Supreme Court went on to state:

“The determination of what 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.*) *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223.” *Id.* at 17.

Plaintiff argues that she did not quit without just cause because “a resignation to avoid termination or to avoid disciplinary action is a ‘justifiable reason for’ resigning.” (Brief of Appellant, p. 5, see also. Reply Brief of Appellant, p. 5). Plaintiff maintains that her decision to sign the resignation letter and terminate her employment was justifiable and with just cause.

In her appeal, plaintiff disagrees with the finding of facts by the hearing officer. The testimony of plaintiff and Mr. Dare as to the discussions at the meeting differ in many respects, but the factual findings by the hearing officer are supported by the evidence. It is for the hearing officer to weigh the evidence and assess credibility, and the Court cannot substitute its judgment for that of the hearing officer. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518 (1947); *Bainbridge Township v. Stellato*, 11th Dist. No. 95-G-1936, 1996 Ohio Lexis 890.

At the meeting with Mr. Dare, plaintiff was advised that she could either have a pre-disciplinary hearing or voluntarily resign. Mr. Dare testified that he never told plaintiff that she would be fired if she chose not to resign. (Tr. p. 30). No one suggested that her employment would be terminated if she decided to have a pre-disciplinary hearing. Moreover, plaintiff was aware that a discharge was not inevitable, because she had

recently gone through such a proceeding and had not been discharged or disciplined. Thus, the record herein supports the hearing officer's determination that plaintiff voluntarily signed the letter of resignation.

To support her argument that she resigned with just cause, plaintiff cites the cases of *Daugherty v. Bureau of Emp. Serv.* 21 Ohio App.3d 1 (11th Dist. 1984) and *Robb v. Director, Ohio Dept. of Jobs and Fam. Ser.*, 11th Dist. No. 2002-L-060, 2003-Ohio-6972. The Court finds these cases to be distinguishable from the facts herein. In *Daugherty*, the court found just cause for the resignation because the claimant's supervisor told her to quit. In *Robb*, the court held that the claimant's resignation was not voluntary because the supervisor caused the claimant to believe that he would be fired if he did not resign. In the case sub judice, however, plaintiff was neither told to quit nor threatened with discharge. Rather, plaintiff was presented with two options and she chose to resign. There was no suggestion that had she not resigned, the pre-disciplinary process would have resulted in a discharge. Thus, unlike *Daugherty* and *Robb*, plaintiff's resignation was not forced or coerced.

The evidence in the record supports the hearing officer's finding that plaintiff voluntarily submitted her resignation after meeting with Mr. Dare. Accordingly, the decision of the UCRC is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the UCRC shall be affirmed.

IV. JUDGMENT ENTRY

It is therefore ORDERED, ADJUDGED, and DECREED that the decision of the Unemployment Compensation Review Commission is AFFIRMED.

Plaintiff shall be ordered to pay the costs of this action.

Judge Charles S. Wittenberg, by assignment



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

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AUDITOR
Case Number: 2011 CV 09269
Type: Decision

So Ordered

A handwritten signature in cursive script that reads "Charles Wittenberg".

Charles S. Wittenberg