

INVESTIGATIVE COURT OF COMMON PLEAS
IN THE MUNICIPAL JUDICIAL
SUMMIT COUNTY, OHIO

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INFOCISION MANAGEMENT CORP.)
Appellant,)
-vs-)
OHIO DEPARTMENT OF JOB AND)
FAMILY SERVICES et al.,)
Appellees.)

SUMMIT COUNTY
CLERK OF COURTS

CASE NO. CV 2011-10-5666
JUDGE THOMAS A. TEODOSIO

FINAL ORDER

This matter is before the Court on the appeal of InfoCision Management Corporation of the decision of the Unemployment Compensation Review Commission, dated June 28, 2011, reversing the Director’s redetermination decision that was issued on March 24, 2011, and disallowing the Claimant’s Application for Determination of Benefit Rights.

Appellee Linda Ward worked as a telemarketer for Appellant InfoCision Management Corporation from January 2002 through the date of her discharge on January 20, 2011. (Trans. p. 5). On January 19, 2011, Appellee gave incorrect information to a caller when she told the person that a donation could be made in tribute, or as a gift from another person. (Trans. p. 7). Though she could not find information about tribute donations in her script, she knew that the client had previously accepted tribute donations. (Trans. p. 12). After she got off of the phone with the donor, Appellee realized there was no “comment box” for her to write in the information for a tribute gift. (Trans. p. 15). After realizing the information she gave to the donor was not in the script, approximately one hour later Appellee received an inbound call to be transferred to the client, and Appellee used the opportunity to transfer herself to the client in order to address the mistake that had occurred. (Trans. p. 6, 12-13). She spoke to the client about her mistake and

asked if they could “send the person a car.” (Trans. p. 12). Appellee testified that communication between the telemarketers and the clients was not unusual. (Trans. p. 12). Appellee also testified that she thought her communication was harmless. (Trans. p. 14).

The testimony of Jennifer Haught, Senior Resources Coordinator, provides that Appellee had received and signed the most recent copy of company policy on April 27, 2010. (Trans. p. 5). The policy contains a provision prohibiting employees from contacting clients “for the purposes of obtaining further details or clarification of any information pertaining to the performance of the employee’s job duties.” (Tran. P. 6). Appellee had been previously disciplined for “using information in her script that should not have been used and trying to get people to join under I guess you could say a reason that we weren’t looking to have them join. We wanted to have them join to become a member of [the American Bar Association], not just to receive the actual benefits.” (Trans. p. 9). Ms. Haught also testified that the client subsequently contacted the account staff and was “upset . . . someone had contacted them directly, that it had not been handled with proper protocol.” (Trans. p. 8). Appellee was discharged for violating company policy by providing false information to a donor and by contacting the donor directly. (Trans. p. 6).

On February 10, 2011, the Ohio Department of Job and Family Services issued an initial determination holding that Appellee was discharged from her employment with just cause. In a redetermination decision issued on March 24, 2011, the decision was affirmed. After the appeal was transferred to the Ohio Unemployment Compensation Review Commission, the Hearing Officer conducted a telephonic evidentiary hearing on June 23, 2011. On June 28, 2011, the Ohio Unemployment Compensation Review Commission issued a decision holding that Appellant had been discharged from her employment without just cause, and was therefore eligible for unemployment compensation benefits. InfoCision now appeals said decision to this Court.

A court may reverse a "just cause" determination only if it unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Id.* The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's scope of review. *Lorain County v. State* (9th Dist. 2010), 2010 Ohio 1924. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Id.*

To be eligible for unemployment compensation benefits in Ohio, claimants must satisfy the criteria established pursuant to R.C. 4141.29(D)(2)(a), which provides that no individual may be paid benefits if discharge from employment was with just cause in connection with work. A party is entitled to unemployment benefits if she is terminated without just cause. *Klemencic v. Robinson Mem. Hosp.* (9th Dist. 2010), 2010 Ohio 5108. "The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision." *Id.* Traditionally, 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." *Id.* "The discharge of an employee is considered to be for just cause where the employee's conduct demonstrated some degree of fault such that the employee displayed an unreasonable disregard for his employer's best interests." *Lorain County v. State* (9th Dist. 2010), 2010 Ohio 1924. "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause." *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694.

Appellant's Assignment of Error argues that the Review Commission erred in ruling that Appellee was terminated from employment without just cause because the decision was not based

on credible evidence and was unlawful, unreasonable and against the manifest weight of the evidence. This Court disagrees.

In her Decision, the Hearing Officer found that the Appellee was discharged by Appellant without just cause. The Hearing Officer reasoned that the Appellant failed to establish that Appellee intended to violate company policy or that her conduct caused a detriment to the employer. The Hearing Officer found that Appellee's failure to confirm if a donation could be made in tribute to be a "common error" and there was no evidence of any intent on the part of Appellee to provide false information to the client. Furthermore, the Hearing Officer found that discussing the problem with the client during a subsequent call was "what a reasonable person might do" in order to correct the problem and "should not result in discharge." The Hearing Officer also found the Appellant's policy against contacting a client directly was not reasonable as applied to the Appellee's situation.

The Court finds there is credible evidence to support the Hearing Officer's Decision that Linda Ward was discharged from employment by InfoCision Management Corporation without just cause. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the Hearing Officer's decision and the resolution of factual questions is chiefly within the Review Commission's scope of review. This Court finds evidence in the record to support the findings of the Hearing Officer and therefore the Court cannot substitute its judgment.

There is evidence that the employee's conduct did not demonstrate a degree of fault such that the employee displayed an unreasonable disregard for his employer's best interests. There is evidence that Appellee did not intentionally misinform the donor and that her mistake was an error based upon previous experience which did not apply under the particular circumstances. There is no

evidence that Appellant was harmed by the mistake. The evidence further supports the finding that Appellee's actions were reasonable under the circumstances.

For the above stated reasons, this Court finds the Decision of the Hearing Officer is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Unemployment Compensation Review Commission, dated June 28, 2011, is AFFIRMED.

IT IS SO ORDERED.

JUDGE THOMAS A. TEODOSIO

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.

JUDGE THOMAS A. TEODOSIO

cc: Attorney Susan M. Sheffield
Attorney Kathleen M. Gadd