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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED
7-25-12

CASSIEMARIE GIBSON,)	CASE NO. CV-11-765940
Appellant,)	
v.)	JUDGE MICHAEL K. ASTRAB
DIRECTOR, OHIO DEPT OF JOB &)	
FAMILY SERVICES, et al.)	OPINION AND JUDGMENT ENTRY
Appellees.)	

CASE SUMMARY

Cassiemarie Gibson (Appellant) worked as a paramedic for Appellee Mobil Martin, Inc. The Appellant was terminated from her employment and filed an Application for Determination of Benefit Rights on 2/28/11. Her Application was allowed based upon a finding that she was separated from employment with Mobil Martin, Inc. under non-disqualifying conditions as of 2/18/11. That decision was not appealed. She filed weekly claims after initially filing her Application.

A Director's Redetermination, issued 4/14/11, held that the Appellant was discharged by Mobil Martin, Inc. for just cause in connection with her work on 2/18/11. Her benefit rights were suspended until she became reemployed in six weeks of covered employment, earned wages equal to \$1,290 or more, and was otherwise eligible. The Redetermination further held that the Appellant was overpaid benefits in the amount of \$342.00 for the week ending 3/12/11 and she was ordered to repay that amount to ODJFS.

The Appellant filed a timely appeal of the Director's Redetermination. Jurisdiction was thereafter transferred to the Ohio Unemployment Review Commission. On 6/23/11 a hearing was held via telephone with hearing officer Shane Griest. The Appellant appeared and offered testimony. Mobil Martin, Inc. did not appear.

The Unemployment Review Commission, in a Decision issued 6/30/11, found that the Appellant was discharged for just cause, as follows:

Claimant was discharged by Mobil Martin on 3/1/11 due to her failure to maintain a valid driver's license. Without a valid driver's license, claimant was unable to perform the paramedic duties of her position. While the evidence and testimony presented establishes that the employer initially told claimant they

would attempt to find work for her that did not require holding a valid driver's license, the evidence and testimony presented also establishes that the employer was unable to find any work of that sort. It has not been shown that the employer was required to find work for claimant that did not require a valid driver's license. Given her failure to maintain the license necessary for the performance of her job duties, it must be found that claimant engaged in fault that will serve to suspend her employment compensation benefit rights. Claimant was discharged by Mobil Martin, Inc. for just cause in connection with work on March 1, 2011.

The Commission also found that the Appellant was overpaid benefits:

An individual who within three years of the end of the individual's benefit year or within six months after the determination under which the individual was credited with a waiting period or paid benefits, whichever is later, has been paid benefits, or credited with a waiting week to which the individual was not entitled, shall have the claim canceled. Benefits that are overpaid shall be repaid to the department, or withheld from future benefits, unless the overpayment results from a clerical error in a decision, or an error in an employer's report...Claimant's benefit rights have been suspended based upon a finding of a disqualifying separation on March 1, 2011. Therefore, claimant was not eligible for benefits for the week ending March 12, 2011 and it must be found that she was overpaid benefits for that week.

On 7/7/11, the Appellant filed a Request for Review of the UCRC decision. On 9/7/11 a final Decision was issued by the full UCRC that disallowed the Request for Review filed by the Appellant.

The instant appeal, filed 10/5/11, follows from the Decision of the UCRC. In her pro se appeal, the Appellant listed the following Assignments of Error:

1. The hearing officer's factual findings was [*sic*] not supported by the record and therefore the UCRC's decision for denying unemployment benefits was in error.
2. The hearing officer's determination was not supported by the law or the record and therefore the UCRC's decision for denying unemployment benefits was in error.
3. The decision of the review commission is erroneous in that it is unlawful, unreasonable and against the manifested [*sic*] weight of the evidence.

FACTUAL SUMMARY

As this Court is not charged with making factual determinations, *the following factual summary is derived primarily from the 6/30/11 Decision of the UCRC:*

The Appellant began employment with Mobil Martin, Inc. on August 26, 2006. She last served as a paramedic and dispatcher. On 2/18/11, Appellant had an interaction with a law enforcement officer. As a result of that interaction, the officer requested that Appellant take a Breathalyzer test, to which the Appellant refused. Due to her refusal, an Administrative License Suspension was placed on her driver's license, as mandated by Ohio law.

The Appellant informed her employer of the situation, and as a valid driver's license is required for her work as a paramedic, the employer did not schedule the Appellant to work following her disclosure. Appellant's supervisors indicated that they would try to find work for her that did not involve holding a valid driver's license.

The Appellant did not work for Mobil Martin, Inc. from 2/18/11 through 3/1/11. The Ohio Department of Job and Family Services dealt with that suspension by allowing her Application for Determination of Benefit Rights. That decision was not appealed.

On 3/1/11, the Appellant was contacted by staff from Mobil Martin, Inc. regarding her employment status with the company. The employer noted that they were unable to find any work for her that did not require a valid driver's license. At that point Appellant was informed that she was being discharged due to the loss of her driver's license.

The Appellant's Application for Determination of Benefit Rights was allowed based upon a finding of a non-disqualifying separation in mid-February of 2011. After her Application was allowed, Appellant filed a weekly claim for the week ending 3/12/11. She initially received benefits for that week in the amount of \$342.00.

OPINION OF THE COURT

The Court notes that the Appellant has elected to proceed in this matter in a pro se fashion. It is the position and policy of this Court, in accordance with established law, that pro se litigants are bound by the same rules and procedures as those litigants who retain counsel and are not to be accorded greater rights and are responsible for accepting the results of their own mistakes and errors. *See, Meyers v. First Nat'l Bank of Cincinnati* (1981), 3 Ohio App.3d 209; *Tisdale v. Javitch, Block & Rathbone*, 2003 WL 22971032 (Ohio App.8th Dist.).

Pursuant to R.C. 4141.282 (A), an appeal from the final decision from the Unemployment Compensation Review Commission (UCRC) can be made to the Court of Common Pleas within thirty days of the issuance of the written decision. R.C. 4141.282. Once the appeal has been made within an appropriate time period, the court must affirm the decision of the UCRC unless it finds that decision "was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282.

For a decision to be unlawful, unreasonable, or against the manifest weight of the evidence, it must go beyond "reasonable minds [reaching] different conclusions." *Fischer v. Bill Lake Buick*, 2006 Ohio 457, ¶ 24. The decision must be "totally lacking in competent, credible evidence to support it" in order to be reversed by a reviewing court. *Id.* When the UCRC "might reasonably decide either way, [the Court has] no authority to upset the agency's decision." *Id.*; *See also, Irvine*, 19 Ohio St. 3d at 18.

When determining whether the decision by the UCRC should be overturned for error, it should be kept in mind that the UCRC is the trier of fact. *See, Fischer*, 2006 Ohio 457, ¶ 24 (8th Dist. 2006). It is the main duty of the Court of Common Pleas to "determine whether the decision of the board is supported by evidence in the record." *Irvine v. State Unemployment Compensation Bd. Of Review*, 19 Ohio St. 3d 15, 18 (1985). The Court is "not permitted to make factual findings or to determine the credibility of witnesses"; its role is contained merely to determining "whether the board's decision is supported by the evidence in the record." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St. 3d 694, 596 (1995).

When making a claim for unemployment compensation benefits under R.C. 4141.29, "the claimant has the burden of proving her entitlement." *Irvine*, 19 Ohio St. 3d at 17. The

claimant does this by admitting evidence showing that there was no just cause for her dismissal. *Id.* If the claimant fails to meet the burden of proof, then it can be determined that there was just cause for her dismissal, and she may not collect benefits. *Id.* If the claimant does not meet the burden of proving that there was no just cause, then the UCRC's decision must be upheld for not being unlawful, unreasonable, or against the manifest weight of the evidence.

1. **The termination of the Appellant for failure to maintain a driver's license is considered "just cause" under R.C. 4141.29(D)(2)(a), making the Appellant ineligible to receive unemployment benefits.**

Under R.C. 4141.29 (D)(2)(a), an employee that has "been discharged for just cause in connection with the individual's work" is not eligible for unemployment benefits for the entirety of their time of unemployment. R.C. 4141.29(D)(2)(a).

When determining just cause, "each case must be considered upon its particular merits" and "the determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case." *Irvine*, 19 Ohio St. at 17. Generally speaking, just cause exists where there "is a justifiable reason for doing or not doing a particular act." *Id.*

When considering whether there was just cause for the discharge of the employee, fault on the part of the employee can be a just cause for dismissal. *See, Tzangas*, 73 Ohio St. 3d at 697. Fault can be a result of (1) an employee's own actions resulting in the dismissal; and (2) the employee's failure to maintain reasonably expected licenses. *See, Id.*; *See also, Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St. 3d 332, 336 (2011).

- a. The Appellant is at fault for her termination because her license suspension was a direct result of her Breathalyzer refusal.

When determining just cause for termination, "fault on behalf of the employee is an essential component of just cause termination". *Tzangas*, 73 Ohio St. 3d at 694. The purpose of the Unemployment Compensation Act, as stated by the Supreme Court of Ohio, is to protect the employee "from economic forces over which they have no control." *Id.* at 697. Once an employee has been determined to be at fault for his own termination, "he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament." *Id.* at 697-8.

When determining the fault of the employee as to his termination, the court must consider “the particular facts of each case.” *Id.* at 678. After the court’s consideration of the facts, “if an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause.” *Id.*

In this case, the Appellant argues that she was not at fault for the OVI license suspension that she received and was subsequently terminated for. She also argues that she was terminated by Appellee Mobil Martin due to lack of work not requiring a valid driver’s license, into which she states the Appellee told her they would place her. However, the Appellant failed to produce evidence during the phone hearing with UCRC hearing officer and, as this Court is not the trier of fact and is not to consider the case *de novo*, the court must consider only the facts that have been set forth by the hearing officer in the UCRC’s decision.

The hearing officer found that on February 18th, 2011, the Appellant refused to take a Breathalyzer test. Because of this refusal, the Appellant’s driver’s license was automatically suspended. After the Appellant informed her employer, Mobil Martin, that her license was suspended, her employer told her that they would try to find her work that did not require a valid driver’s license. After finding that they did not have an alternate position for the Appellant, the Appellee then discharged the Appellant due to her license suspension.

As stated above, the burden of proof is on the claimant in a UCRC hearing. While the Appellant alleges that the real reason for her termination was lack of work, she fails to provide any evidence of this to the hearing officer. Additionally, the reason for the Appellant’s license suspension was determined to be a refusal to take a breathalyzer test. The suspension was a foreseeable result of the Appellant’s own behavior, making her “no longer the victim of fortune’s whims”, as stated in *Tzangas*. As determined by the Supreme Court of Ohio in *Tzangas*, Unemployment Compensation Act is not meant to shield employees terminated for the creation of a predicament. Instead, it is meant to cushion those terminated without fault in their termination.

In this case, the defendant is at fault for her dismissal due to her own actions.

- b. The Appellant is at fault for her dismissal because Mobil Martin made its licensure conditions known and reasonable and the Appellant failed to comply with the conditions.

Fault on the part of the employee is “not limited to willful or heedless disregard of a duty or a violation of an employer’s instructions.” *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St. 3d 332, 336 (2011). When determining fault, the court may also find the employee at fault when “(1) the employee does not perform the required work; (2) the employer made known its expectations of the employee at the time of hiring; (3) the expectations were reasonable; and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.” *Id.*

Further, in *Williams*, the Supreme Court of Ohio held that:

“When employment is expressly conditioned upon obtaining or maintaining a license of certification and an employee agrees to the condition and as afforded a reasonable opportunity to obtain or maintain the license or certification, and employee’s failure to comply with that condition is just cause for termination.”
Id.

Before her employment began, the Appellant signed her assent to the employee handbook, where it was stated that the failure to retain the required state licenses could result in her termination. As a paramedic, the requirement that the Appellant retain required licenses was reasonable and the Appellant did not submit evidence to prove that the requirements of the job changed substantially since the date of her own hiring. This case is reminiscent of the Supreme Court of Ohio’s holding in *Williams*, a case in which an employee was given a promotion with the knowledge that she would have to have and maintain certain licensure. Similar to *Williams*, the Appellant was aware of her obligation to maintain certain licenses in order to continue working with the Appellee, and without them, she was at risk of termination.

Mobil Martin made its expectations regarding licensure clear, reasonable, and acceptable to the Appellant. The Appellant’s termination following the suspension of her driver’s license was a reasonable and foreseeable result of her own actions. As such, fault on the part of the Appellant can be found in her failure to maintain required licensures, a fact clearly set forth in the record in this matter.

After determining that there was fault on the part of the Appellant in (1) her own actions being the driving force for her license suspension, and (2) her failure to maintain reasonable and expected licenses, it is apparent that there was just cause in the dismissal of the Appellant from her position.

CONCLUSION

In conclusion, this Court AFFIRMS the decision of the UCRC. The Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence because the UCRC correctly found "just cause" in the dismissal of the Appellant in that (1) Appellant was at fault in causing the dismissal and (2) the Appellant was at fault in failing to maintain necessary licenses. Because there was just cause for dismissal of the Appellant, under R.C. 4141.29 (D)(2)(a), the Appellant is not entitled to unemployment benefits.

Additionally, two of the Appellant's notices of error are in regards to the factual findings of the UCRC. This Court may not question the UCRC as the trier of fact, especially concerning facts that the Appellant failed to establish with evidence during the hearing. As such, those errors must be, and are, dismissed.

The Appellant is further Ordered, as per the UCRC decision, to repay \$342.00 to ODJFS forthwith pursuant to that agency's policies for accepting payment.

DECISION AFFIRMED.

IT IS SO ORDERED. FINAL.

Costs taxed to Appellant.



JUDGE MICHAEL K. ASTRAB

7/24/12

DATE

CERTIFICATE OF SERVICE

The Clerk of Courts is directed to send a copy of this Opinion to counsel of record for the parties:

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JUDGE MICHAEL K. ASTRAB

7/24/12
DATE