

**MAUREEN G. KELLY
CLERK OF COMMON PLEAS COURT
CLERK OF 11TH DISTRICT COURT OF APPEALS
25 N. PARK PLACE
PAINESVILLE, OHIO 44077**

CASE NO. 12CV000442

TO: LAUREL D MAZOROW ESQ
ASSISTANT ATTORNEY GENERAL
615 W. SUPERIOR AVE.
STATE OFFICE BLDG. 11TH FLOOR
CLEVELAND, OH 44113

**NOTICE OF FINAL APPEALABLE ORDER
QUARTZ SCIENTIFIC INC vs . OHIO STATE OF BUREAU OF UNEMPLOYMENT
COMP/DIRECTOR et al**

On **July 25, 2012** a Judgment Entry or Order was signed by a Judge of the Court of Common Pleas and filed in the above captioned case.

This **NOTICE** is being sent by the Clerk of Courts in compliance with state statute.

NOTE: The Clerk of Courts cannot advise you of the amount of time for appeal nor interpret the intent of this Notice. For further information or clarification please contact your attorney.

**MAUREEN G. KELLY
LAKE COUNTY CLERK OF COURTS**

CAROL A KILE 0055571 382 West Broad Street Elyria OH 44035
PAUL H. HENTEMANN ESQ 0007177 35000 KAISER COURT, SUITE 305 WILLOUGHBY OH 44094

IN THE COURT OF COMMON PLEAS
FILED LAKE COUNTY, OHIO

QUARTZ SCIENTIFIC, INC., PM 12 11)
2012 JUL 25)
Plaintiff MAUREEN G. KELLY)
LAKE CO.)
vs. CLERK OF COURT)
DIRECTOR, OHIO BUREAU OF)
UNEMPLOYMENT COMPENSATION,)
et al.,)
Defendants)

CASE NO. 12CV000442
JUDGE VINCENT A. CULOTTA
JUDGMENT ENTRY

This matter comes before the Court upon the timely Notice of Appeal filed by Quartz Scientific, Inc. following a February 15, 2012, decision of the Ohio Department of Unemployment Compensation Review Commission (hereinafter, Review Commission).

STATEMENT OF THE CASE

The Review Commission decision at issue herein reversed a November 10, 2011, re-determination decision affirming an initial decision by the Director of the Ohio Bureau of Unemployment Compensation that the claimant, Cynthia Manley, was not eligible for unemployment benefits because she was terminated from employment with Quartz Scientific, Inc. for just cause in connection with work. The claimant appealed the November 10, 2011, decision and on January 23, 2012, a decision was issued that reversed the Director's redetermination and held that the claimant was discharged without just cause, thus entitling her to unemployment benefits. The employer, Quartz Scientific, Inc., filed a request for review of the hearing officer's January 23, 2012, decision and that request was denied on February 15, 2012. Therefore, the employer now appeals to this Court.

As a preliminary matter, the Court notes that on April 5, 2012, Appellee filed a Certified Transcript of the Record of Proceedings. Thereafter, on June 8, 2012, after all briefing was completed, Appellee filed an Amended Certified Transcript of the Record of Proceedings. The June 8, 2012, record was filed without explanation and without seeking leave of Court. It was also filed well beyond the forty-five day period after the Notice of Appeal was filed as set forth in R.C. §4141.282(F). Thus, the Court considered only the Certified Transcript of the Record of

Proceedings filed on April 5, 2012, and did not consider the June 8, 2012, Amended Certified Transcript of the Record of Proceedings in rendering this decision.

APPELLANT, QUARTZ SCIENTIFIC, INC.'S , BRIEF

In its brief, the Appellant contends that the decision reversing the determination that Cynthia Manley was discharged from work for just cause is incorrect as the evidence in the record is clear that Cynthia Manley covertly “punched in” her son’s time card knowing that he was not at work. Specifically, Appellant relies upon Cynthia Manley’s statement at the time of the incident wherein she told Quartz Scientific employee Paula Weber that she would not do it again and would repay the money. Appellant also relies upon time cards and the statements made by two Quartz Scientific, Inc. employees regarding Cynthia Manley’s behavior. Appellant indicates that it is disturbed that the hearing officer did not consider the Cynthia Manley’s admission and the time cards during the review.

Appellant indicates its reliance upon *Nordonia Hills Bd. of Ed. v. Unemp. Comp. Bd. of Rev.* (1983), 11 Ohio App.3d 189. However, Appellant makes no specific arguments relative to the *Nordonia* case.

APPELLEES’ RESPONSES TO APPELLANT’S BRIEF

Appellee Director, Ohio Department of Job and Family Services (hereinafter, Director) has filed a brief in response to the Appellant’s Brief. Appellee Cynthia Manley has filed a Joinder in the Brief of Appellee Director, Ohio Department of Job and Family Services.

Appellee Director contends that the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence and should be affirmed. Appellee Director notes that where competent, credible evidence supports the Review Commission’s decision, this Court should not substitute its judgment for that of the Review Commission. See R.C. §4141.282(H). Appellee Director further notes that a decision supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence. See *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159. Appellee Director then argues that competent, credible evidence in the record supports the Review Commissions’ decision that Appellant was discharged without just cause. Appellee Director notes that this Court cannot reverse the Review Commission’s decision merely because

reasonable minds might reach a different conclusion. See *Tzangas, Plakas & Mannos v. Ohio Bur. Of Employ. Serv.* (1995), 73 Ohio St.3d 693.

As support, Appellee Director notes that the Review Commission found that the parties presented differing testimony regarding the circumstances leading to Ms. Manley's separation from her employment. Appellee notes that the hearing officer found that while the employer claimed that Ms. Manley was discharged for punching her son in at the employer's time clock even though he was not actually at work, Ms. Manley provided credible, first-hand testimony to dispute those allegations. Appellee maintains that the Review Commission could not find that Ms. Manley engaged in fault or misconduct that would serve to suspend her unemployment compensation benefit rights. Thus, the Review Commission found that Ms. Manley was discharged without just cause in connection with work for the purposes of unemployment compensation benefits.

Appellee Director notes that Appellant Quartz Scientific, Inc.'s assertion that the hearing officer did not consider an alleged statement by the claimant Cynthia Manley regarding whether she punched in her son on the time clock when he was not working is mere speculation without any support in the record.

Appellee notes that the Review Commission is specifically authorized and required by law to weigh the evidence and judge the credibility of the testimony presented by the parties. Further, the reviewing court cannot reverse the decision of the Review Commission just because it interprets the evidence differently than the Commission. See *Id.*

The Appellant did not file a response to the Appellee's brief.

COURT'S ANALYSIS AND CONCLUSION

Pursuant to R.C. §4141.282(H):

The Court shall hear the appeal upon receipt of the certified record provided by the commission. 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 the decision of the commission.

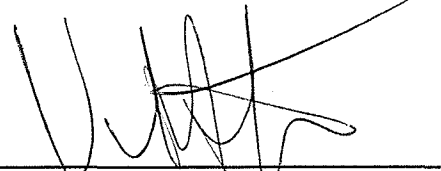
The Court cannot substitute its own judgment for that of the Board of Review. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511. Ordinarily, the court should defer to the

agency's resolution of purely factual issues which depend on the credibility of witnesses or the relative weight of conflicting evidence. *Angekovski* (1983), 11 Ohio App.3d at 161; *Brown-Brockmeyer*, 148 Ohio St. at 518. For such issues, the common pleas court should affirm the agency's findings if they have support from some competent, credible evidence. *Id.*; *Bernard v. Administrator* (1983), 9 Ohio App.3d 277, 279.

Upon consideration of the record as well as the briefs of the parties, the Court finds that the decision of the Review Commission was supported by competent, credible evidence and is not contrary to law. Specifically, the record provides evidence indicating that Quartz Scientific, Inc. terminated Cynthia Manley for clocking in another employee on its time clock based upon allegations made by two factory employees who were not present at the hearing as well as the testimony of one employee, Christopher Atwell, who believed he saw Ms. Manley clock in twice. The record also indicates that Quartz Scientific, Inc. maintained that Cynthia Manley admitted doing so and promised to pay back any monies that Quartz Scientific overpaid. The record also provides the testimony of Cynthia Manley who denied making such statements and who denied punching in another employee on the time clock. Ms. Manley provided an alternate explanation as to why the other employee, who happened to be her son, clocked in at the same time she did on some occasions. That is, they sometimes rode to work together in the same vehicle. Further, the record indicates that Mr. Atwell admitted that he did not know where Cynthia Manley's son was at all times within the Quartz Scientific building and grounds. The hearing officer determined that for the purposes of unemployment compensation benefits, Cynthia Manley was not terminated for just cause in connection with work. Quartz Scientific, Inc.'s claim that the hearing officer did not consider Cynthia Manley's statement that she "would not do it again" is pure speculation. The record reveals that there was testimony by one side that Ms. Manley admitted punching in her son at the employer's time clock although he was not at work. However, there was also testimony by Cynthia Manley at the hearing that she did not admit that she clocked in her son. The hearing officer in this case made a determination regarding the veracity of the witnesses and chose to believe Cynthia Manley. It is not for this Court to determine the credibility of the witnesses and to conclude that the hearing officer's determination is incorrect. The Court finds that the hearing officer's final determination that Appellant was eligible to receive unemployment benefits pursuant to R.C. §4141.29(G) is supported by the manifest weight of the evidence and is not contrary to law or unreasonable.

WHEREFORE, the decision of the Ohio Department of Unemployment Compensation Review Commission dated January 23, 2012, is hereby affirmed. Costs to the Appellant.

IT IS SO ORDERED.



VINCENT A. CULOTTA, JUDGE

Copies:

Paul H. Hentemann, Esq.
Laurel D. Mazorow, Esq.
Carol A. Kile, Esq.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R. 58 (B)