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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

RICHLAND COUNTY, OHIO SHERIFF :

Case No. 2012 -CV- 0054 D

Appellant,

v.

**DECISION ON
ADMINISTRATIVE APPEAL**

HUEY H. SMITH II, et al.,

Appellees.

This employment termination case is before the court of common pleas upon the January 17, 2012 administrative appeal of Appellant Richland County, Ohio Sheriff J. Steve Sheldon (hereinafter "RCSO") from the November 16, 2011 decision of the Unemployment Compensation Review Commission. That decision held that Huey H. Smith II (hereinafter "Mr. Smith") was terminated from his employment by Appellant RSCO without just cause; therefore, Mr. Smith was entitled to unemployment compensation benefits.

The court has reviewed the November 16, 2011 decision of the Unemployment Compensation Review Commission upon the certified record and transcript provided by the commission. The court has also reviewed the merit briefs of the parties and the relevant Ohio law.

Journalized on the court's
docket on 7-31-12

B.S.

Deputy Clerk

FACTUAL DISCUSSION

This case concerns Mr. Smith's claim for unemployment compensation following his termination from RSCO on August 10, 2011. This court is constrained by law to accept the findings of fact as determined by the Unemployment Compensation Review Commission, unless it finds them to be against the manifest weight of the evidence. The Unemployment Compensation Review Commission made the following findings of fact:

Claimant (Mr. Smith) was employed by Richland County from January 17, 2008 to August 10, 2011, as a Corrections Officer. On January 26, 2011, claimant assisted in the restraint of a disruptive juvenile inmate. The inmate was placed in a restraint chair, transported to the recreation room, and shackled to a post in the middle of the room. The bay doors were opened, exposing the inmate to extremely cold weather. The inmate was left alone in the room for several hours. The inmate was eventually discovered by an employee, after that employee heard the inmate screaming.

The employer conducted a thorough investigation, including interviews of several employees. Officer John Jones reported that he had received a call from claimant directing him to open the bay doors. Claimant denied knowledge that the inmate had been placed in the rec room, and denied ordering that the bay doors be opened. No other employees reported that claimant gave the order to open the doors. Claimant was discharged from employment on August 10, 2011. (Parenthetical insertion added).

The decision of the Unemployment Compensation Review Commission addressed the issue: "Was claimant discharged by Richland County Auditor¹ without just cause in connection with work?" The reasoning section of the decision states:

Claimant was discharged on August 10, 2011, for his involvement in the improper treatment of an inmate on January 26, 2011. Specifically, the employer contends that claimant committed misconduct when he ordered

¹ The Richland County Auditor's Office is named as the employer in all the proceedings below before the Ohio Department of Job and Family Services and the Unemployment Compensation Review Commission. Mr. Smith was actually employed by the Richland County Sheriff's Office and the instant appeal was filed by the Richland County, Ohio Sheriff J. Steve Sheldon.

the bay doors to be opened.

Mr. Bosko did not personally witness the telephone call in question between the claimant and Officer Jones. As such, the employer's evidence regarding this conversation is hearsay under the rules of evidence. While hearsay evidence is admissible in administrative proceedings before the Unemployment Compensation Review Commission, it is given less weight by the Hearing Officer than the sworn testimony of a credible witness.

Claimant provided sworn testimony that he participated in restraining the inmate per protocol, but was not aware that the inmate had been taken to the recreation room and did not order Officer Jones to open the doors. The employer did not present first-hand testimony from Mr. Jones to confirm the allegations that claimant gave him that order. The Hearing Officer finds claimant's testimony on the matter to be more credible than the hearsay testimony offered by the employer. The employer has not provided sufficient evidence to show that claimant was responsible for ordering the doors to be opened.

Based upon the evidence presented in this matter, the Hearing Officer finds that it has not been established that claimant committed sufficient misconduct to justify his discharge. Under these circumstances, the Hearing Officer finds that claimant was discharged by the employer without just cause in connection with work.

LEGAL DISCUSSION

In an administrative appeal of a decision of the Unemployment Compensation Review Commission, the common pleas court shall hear the appeal on the certified record provided by the commission.² 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.³ Otherwise, the court will affirm the decision of the Commission.⁴

A reviewing court is not permitted to make factual findings or determine the

² O.R.C. § 4141.282(H).

³ *Id.*

⁴ *Id.*

credibility of witnesses; rather, the court's duty is to determine whether the commission's decision is supported by the evidence in the record.⁵ This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio.⁶ The court must review the commission's decision *sub judice* and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. A judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence.⁷ Where the commission might reasonably decide either way, the courts have no authority to change the commission's decision.⁸

Unemployment compensation can be denied if the claimant was discharged for just cause.⁹ "Just cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."¹⁰

This court may not make factual findings or determine the credibility of witnesses; rather, the court's duty is to determine whether the commission's decision is supported by the evidence in the record. The Unemployment Compensation Review Commission heard the testimony of RSCO Captain Eric Bosko, who conducted the internal investigation and testified on behalf of the employer, RSCO; Mr. Smith; and Gary Mills, a union representative who testified on behalf of Mr. Smith. The court finds no manifest

⁵ See *Risinger v. Kroger Co.*, 2010 Ohio 3271 at ¶12 (5th Dist.), citing *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 233 N.E.2d 582; *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69, 206 N.E.2d 423.

⁶ *Risinger v. Kroger Co.*, 2010 Ohio 3271.

⁷ *Risinger v. Kroger Co.*, 2010 Ohio 3271 citing *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

⁸ *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 18, 482 N.E.2d 587.

⁹ R.C. 4141.29(D)(2)(a).

¹⁰ *Risinger v. Kroger Co.*, 2010 Ohio 3271 at ¶12 (5th Dist.), citing *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 17, 19 Ohio B. 12, 482 N.E.2d 587, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.

error in the Hearing Officer giving less weight and credibility to the hearsay testimony of Captain Bosko than to the sworn testimony of Mr. Smith. Therefore, the court finds that the commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence. The court finds that Mr. Smith was discharged by RSCO without just cause in connection with work; therefore, Mr. Smith is entitled to unemployment compensation benefits.

IT IS THEREFORE ORDERED that

1. The November 16, 2011 decision of the Unemployment Compensation Review Commission is affirmed.
2. Costs of this appeal are taxed to Appellant.


JUDGE JAMES DEWEESE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment Entry was served according to local rules and sent by regular U.S. Mail this _____ day of July, 2012 to the following:

Jeffrey A. Stankunas
Huey H. Smith II
David E. Lefton

Deputy Clerk