

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

ROBERT C SCHAMEL,

CASE NO.: 2011 CV 09232

Plaintiff(s),

JUDGE DENNIS J. LANGER

-vs-

MICHAEL B COLBERT et al,

Defendant(s).

**FINAL AND APPEALABLE DECISION,
ORDER, AND ENTRY REMANDING THE
DECISION OF THE UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION**

This matter is before the Court on Appellant Robert C. Schamel's (hereinafter "Appellant"), administrative appeal from the Unemployment Compensation Review Commission's (hereinafter "UCRC") denial of Appellant's request for review of the Hearing Officer's *Corrected Decision* reversing the Ohio Department of Job and Family Services' (hereinafter "ODJFS") determination allowing Appellant unemployment compensation benefits. A written transcript of the administrative proceedings was filed on February 16, 2012. In accordance with the Local Rules, the Court issued a briefing schedule for administrative appeal briefs to be filed. See Docket. Appellant filed *Brief of Plaintiff-Appellant Robert C. Schamel* (hereinafter "*Appellant Brief*") on April 5, 2012. See Docket. Greene County Educational Service Center (hereinafter "GCESC") filed *Brief of Appellee Greene County Educational Service Center* (hereinafter "*Appellee Brief*") on May 21, 2012. *Id.* Appellant then filed *Reply Brief of Plaintiff-Appellant Robert C. Schamel* (hereinafter "*Appellant's Reply*") on June 4, 2012. *Id.* This matter is now properly before the Court pursuant to R.C. §4141.282.

I. FACTS AND PROCEDURAL HISTORY

This case arises out of a claim for unemployment compensation. Appellant was employed with GCESC as a teacher from August 2006 to June 2011 under separate contracts for each school year he was employed. See Commission File in Written Transcript. Prior to the expiration of his contract for the 2010 – 2011 school year, Appellant received a letter dated April 15, 2011 stating that GCESC’s Governing Board had approved a resolution not to reemploy Appellant at the expiration of his current contract as they had for the past previous four (4) school years. See Director’s File in Written Transcript. The letter further stated that the reason for GCESC Governing Board’s decision was “due to a reduction in force (RIF) due to loss of services and/or funding.” *Id.* The letter was signed by the President of GCESC’s Governing Board, as well as the Superintendent and Treasurer of GCESC. *Id.* On July 11, 2011, Appellant applied for unemployment compensation with ODJFS due to his “lack of work.” *Id.* On July 27, 2011, ODJFS approved Appellant’s application for unemployment compensation (hereinafter the “*Determination*”). On August 3, 2011, GCESC appealed the *Determination*, stating that Appellant’s employment records indicated that his termination was necessary because his supplemental teaching license had expired. *Id.* GCESC further stated that without such license, Appellant’s employment credentials did not rise to the required level to allow GCESC to retain his employment. *Id.* GCESC further stated that Appellant “would never do what was necessary [and] in the end he felt that he shouldn’t have to [obtain his special education license].” *Id.* On August 23, 2011, the ODJFS Director affirmed the *Determination* to approve Appellant’s application for unemployment compensation (hereinafter the “*Redetermination*”). *Id.*

On September 9, 2011, GCESC appealed the *Redetermination*, where on September 12, 2011 GCESC’s appeal was transferred to the UCRC. *Id.* A hearing was scheduled to be held telephonically by Hearing Officer Amy M. Ernie.¹ See Commission File in Written Transcript. Appellant failed to appear for this hearing. *Id.* Under direct examination by the Hearing Officer, GCESC’s Superintendent Terry Thomas (hereinafter “Mr. Thomas”) testified that the reason Appellant was terminated was because “[GCESC] had to do . . . some reductions in force and [Appellant] . . . hadn’t . . . completed additional certification

¹ From the transcript provided to the Court, there were four (4) levels of the administrative review process in this case. First, the claimant-employee applies to the ODJFS Director for unemployment compensation. Second, an appeal is made to the ODJFS Director for a redetermination. Third, an appeal may be made to the UCRC, where a Hearing

requirements to get his special education certification.” *Id.* Mr. Thomas further testified that Appellant had received a supplemental teaching license which allowed him to teach at GCESC for the past two (2) years without obtaining his special education license. *Id.* Mr. Thomas further testified that a supplemental teaching license is only renewable for two (2) consecutive years before a teacher is required to obtain their special education license. *Id.* Mr. Thomas further testified that because GCESC “had to make some cuts” and Appellant “didn’t have the proper certification”, GCESC was required to terminate his employment. *Id.* Mr. Thomas further testified that the reason for termination stated in the April 15, 2011 letter to Appellant was “just an error” and that “[GCESC] probably should’ve listed that [Appellant’s termination] was also . . . due to his lack of certification . . .” *Id.* Mr. Thomas further testified that Appellant was aware that he was required to obtain his special education license to continue his employment with GCESC. *Id.*

On October 19, 2011, the Hearing Officer issued her *Decision* reversing the ODJFS Director’s *Redetermination*. *Id.* On October 24, 2011, the Hearing Officer issued her *Corrected Decision* but stayed the *Decision’s* effect in reversing the ODJFS Director’s *Redetermination*. *Id.* Both the *Decision* and *Corrected Decision* contained numerous factual errors recognized by both Appellant and GCESC. See *Appellant Brief*; see also *Appellee Brief*. On November 10, 2011, Appellant requested the UCRC review the Hearing Officer’s *Corrected Decision*. See Commission File in Written Transcript. On November 30, 2011, the UCRC denied Appellant’s request for review. *Id.* Appellant now seeks reversal of the denial of his application for unemployment compensation benefits.

II. LAW AND ANALYSIS

A. STANDARD OF REVIEW

A common pleas court sitting in an appellate capacity has a limited power of review. *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587, 590 (1985). On review of purely factual questions, a court is limited to determining whether a UCRC decision is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207, 1210 (1995), citing *Irvine*, 19 Ohio St. at 18-19, 482 N.E.2d at 590. A court is not permitted to make its own factual findings or to determine the credibility of witnesses. *Irvine*, 19 Ohio

Officer holds an on the record hearing and issues a decision. And fourth, an appeal can be made to the UCRC for review of the Hearing Officer’s decision. See R.C. § 4141.281.

St.3d. at 18, 482 N.E.2d at 590. A UCRC decision cannot be reversed based on the fact that reasonable minds might reach different conclusions. *Id.* A court may reverse, vacate, or modify a UCRC decision if “the decision . . . was unlawful, unreasonable, or against the manifest weight of the evidence.” R.C. § 4141.282(H); see also *Irvine*, 19 Ohio St.3d at 17-18, 482 N.E.2d at 590. Courts have no authority to upset UCRC decisions on close questions (i.e., where the UCRC might reasonably decide either way). *Id.* However, a court has the duty to determine whether the UCRC decision is supported by the evidence in the record. *Id.*

B. JUST CAUSE

An employee has the burden of proving that he is entitled to unemployment compensation benefits under R.C. § 4141.29 because he was discharged without just cause. *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d at 590. R.C. § 4141.29(D)(2)(a) provides that “[n]otwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions: . . . [f]or the duration of the individual’s unemployment if the director finds that . . . (a) [t]he individual . . . has been discharged for just cause in connection with the individual’s work.” Just cause, in the statutory sense, “is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d at 590. Just cause determinations must be consistent with the legislative purpose underlying the Unemployment Compensation Act. *Id.* The purpose of the Act is to provide financial assistance to an individual who had worked, was able and willing to work, but was without employment through no fault of his own. *Id.*, citing *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76, 79 (1980). “The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control.” *Tzangas*, 73 Ohio St.3d at 697-698, 653 N.E.2d at 1210.

When an employee is at fault, he “is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament.” *Id.* The question of fault can only be evaluated upon consideration of the particular facts of each case. *Id.* at 698. Fault is not limited “to willful or heedless disregard of a duty or a violation of an employer’s instructions.” *Id.* When employment is expressly conditioned upon obtaining or maintaining a license or certification and an employee agrees to the condition and afforded a reasonable opportunity to obtain or maintain the license or certification, an employee’s failure to comply with that condition is just cause for termination for unemployment compensation purposes. *Williams v. Ohio Dep’t of*

Job & Family Servs., 129 Ohio St.3d. 332, 337, 951 N.E.2d 1031, 1037 (1985). A court's review of the fairness of an employment policy is limited to a determination of whether the employee received notice of the policy, whether it could be understood by the average person, and whether there was a rational basis for the policy. *Id.*

Appellant argues that he was not at fault for his termination, where the only justification for his termination came from GCESC's letter to him dated April 15, 2011, which stated his termination was due to "a reduction in force (RIF) due to loss in services and/or funding." See *Appellant's Brief*. In support, Appellant relies on *LaChappelle v. Director, Ohio Department of Job and Family Services*, which held that a determination of just cause cannot be based on a reason that was not stated by the employer as a justification for termination. 184 Ohio App. 3d 166, 171, 2009-Ohio-3399, 920 N.E.2d 155, 159-160, ¶ 19 (6th Dist). Appellant argues that under *LaChappelle*, the UCRC was not permitted to consider any other justifiable reason for Appellant's termination other than the reasons stated by the employer in April 15, 2011 letter. See *Appellant's Brief*. Appellant argues that, assuming *arguendo*, that if the UCRC appropriately considered the licensing issue for Appellant's termination, the UCRC decision is against the manifest weight of the evidence, or lack thereof. *Id.* Appellant argues that without evidence of express conditions to his employment, notice of such conditions, or time afforded to meet such conditions, no basis for just cause in Appellant's termination can be found and therefore, the UCRC erred in denying Appellant unemployment compensation.

GCESC argues that Appellant was advised that he was required to obtain "certain educational requirements" to retain his employment. See *Appellee's Brief*. Appellee argues that the Ohio Department of Education permitted Appellant to teach at GCESC beginning during the 2009 – 2010 school year under a supplemental teaching license that allocated Appellant "a two [2] -year grace period" to obtain his special education license to remain employed with GCESC. *Id.* GCESC argues that because Appellant did not obtain his special education license to remain employed within two (2) years of receiving his supplemental license, he was ineligible to be employed with GCESC. *Id.* GCESC argues that the reasons for termination stated in its April 15, 2011 letter to Appellant were incorrect, as testified by Mr. Thomas during the hearing conducted by Hearing Officer Amy M. Ermie. *Id.* GCESC argues that Appellant's employee file consists of "reflected notations about his lack of appropriate licensure, and on [Appellant's] final evaluation,

[Appellant's] supervisor stated that [Appellant] would not be rehired due to this lack of the same." *Id.* GCESC relies on the Hearing Officer's *Corrected Decision* that Appellant was terminated for his failure to obtain a special education license and not the reason originally stated in its April 15, 2011 letter to Appellant. *Id.* In support, GCESC relies on *Durgan v. Ohio Bureau of Employment Services*, which held that if there is evidence to support the UCRC's findings, a reviewing court cannot substitute its own findings of fact for those of the UCRC. 110 Ohio App.3d 545, 551, 674 N.E.2d 1208, 1212 (9th Dist. 1996), citing *Wilson v. Unemployment Comp. Bd. of Rev.* 14 Ohio App.3d 309, 310, 471 N.E.2d 168, 170 (8th Dist. 1984). GCESC further argues that the Court's review must be narrow and limited to reviewing merely the evidence on the record. See *Appellee's Brief*.

The Court first addresses whether subsequent justifications for the termination of employment by an employer are reviewable on appeal by the UCRC in determining just cause. The Court finds that Appellant's reliance on *LaChappelle* contains only a partial understanding of the law. R.C. § 4141.29 (D)(2)(a) contains the requirement that an employee be "discharged for just cause in connection with his work." In determining just cause, under R.C. § 4141.281, the Hearing Officer and UCRC are to "give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs," and take into "consider[ation] all of the evidence." The Court finds that the UCRC cannot disregard the originally stated reason an employer has given for termination, where the ultimate determination to be made from the evidence is the reason or reasons-in-fact the employer terminated the employee. If that reason or reasons-in-fact constitute just cause, compensation may be denied. Ohio law is clear that the UCRC "cannot consider any other justifiable reason for the discharge than the reason or reasons stated by the employer or the actual reason for discharge." *LaChappelle*, 184 Ohio App.3d at 171, 2009-Ohio-3399, 920 N.E.2d at 159-160, ¶ 19, citing *Provost v. J.C. Penney Co., Inc.*, 1998 Ohio App. LEXIS 4590 at *6 (6th Dist. 1998). The grounds upon which an employee was terminated are not immaterial if they were indeed the grounds relied upon by the employer as the reason or reasons-in-fact for his termination. Therefore, the Court finds that UCRC must properly examine all reasons stated by GCESC for Appellant's termination on the record and consider any evidentiary foundation in support of such reasons.

Prior to the expiration of his contract for the 2010 – 2011 school year, Appellant received the April 15, 2011 letter stating that GCESC would not reemploy him at the expiration of his current contract "due to a

reduction in force (RIF) due to loss of services and/or funding.” See Director’s File in Written Transcript. However, on appeal from the *Determination and Redetermination*, as well as on appeal to the Hearing Officer and UCRC, GCESC stated that Appellant’s termination was necessary because his supplemental teaching license had expired and thus Appellant’s employment credentials were not at the required level for GCESC to retain his employment. *Id.*; see also Commission File in Written Transcript. Therefore, the Court must determine whether the reasons stated by GCESC constitute just cause for Appellant’s termination and whether there is evidentiary foundation in support of such reasons.

The Court finds that GSESC’s stated reason of “a reduction in force (RIF) due to loss of services and/or funding” for Appellant’s termination in its April 15, 2011 letter to Appellant did not constitute just cause. In considering the merits of this case in conjunction with the legislative purpose underlying the Unemployment Compensation Act, the April 15, 2011 letter to Appellant demonstrates that Appellant became involuntarily unemployed because of adverse economic forces and/or business conditions identified by the President of GCESC’s Governing Board and GCESC’s Superintendent and Treasurer. See Director’s File in Written Transcript. The record further indicates that Appellant was willing to continue work, where because of the April 15, 2011 letter to Appellant, Appellant was terminated by GSESC through no fault of his own. *Id.*

The Court further finds that the Hearing Officer’s *Corrected Decision* was not supported by the evidence in the record. GCESC argues that under the Court’s standard of review, it is not permitted to substitute its own findings of fact for those of the UCRC as long as “some evidentiary support is found[.]” See *Appellee’s Brief*, citing *Durgan*, 110 Ohio App.3d at 551, 674 N.E.2d at 1212. However, GCESC’s reliance on *Durgan* contains only a partial understanding of the Court’s standard of review. The Ohio Supreme Court has held that “[t]here is . . . not a slide-rule definition of just cause [where] [e]ssentially, each case must be considered upon its particular merits.” *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d at 590, citing *Peyton v. Sun T.V.*, 44 Ohio App. 2d 10, 12, 335 N.E.2d 751, 752 (10th Dist. 1975). The Ohio Supreme Court has further held that a court reviewing UCRC decisions has the “duty to determine whether the [UCRC] decision is supported by the evidence in the record.” *Tzangas*, 73 Ohio St. 3d at 696, 653 N.E.2d at 1210. The Court finds that the evidentiary record in this case was deficient, where the Hearing Officer failed

to properly weigh the evidence, and lack thereof, to justify her decision in denying Appellant unemployment compensation.

In its requests for appeal of the *Determination* and *Redetermination*, GCESC stated that its employment records for Appellant indicated that Appellant's termination was necessary because his supplemental teaching license had expired. See Director's File in Written Transcript. GCESC's claims were subsequently corroborated in Mr. Thomas's examination by Hearing Officer Amy M. Ermie, having testified that there were notations in Appellant's employment file evidencing that Appellant had notice that he was required to obtain his special education license by the end of the 2010 -2011 school year. See Commission File in Written Transcript. GCESC throughout this case has profoundly relied upon the existence of Appellant's employment records as evidence of just cause to terminate his employment without ever establishing an evidentiary basis for such records. The Court finds that because GCESC has relied upon the existence of Appellant's employment files in disputing the reason-in-fact for Appellant's termination, such records must necessarily be reviewed by UCRC to adequately determine whether GCESC had just cause to terminate Appellant's employment.

Furthermore, in applying the factors which constitute fault sufficient to support a termination for just cause to the instant matter, the Court finds that the evidentiary record fails to reflect whether notice of Appellant's requirement to obtain his special education license by the end of the 2010 – 2011 school year was given to Appellant. The record in this case fails to demonstrate any clear evidence that Appellant's employment with GCESC was conditioned upon obtaining his special education license, nor does the record demonstrate clear evidence that Appellant agreed to such a condition after having been employed with GCESC without such a condition for the first three (3) years of his employment. The record also fails to demonstrate clear evidence that Appellant was afforded a reasonable opportunity to obtain his special education license. The Court cannot ignore such deficiencies in the record.

The Court further finds that it was unreasonable for UCRC to deny Appellant's request for review of the Hearing Officer's *Corrected Decision*. Both Appellant and GCESC have recognized that the *Decision* and *Corrected Decision* contain numerous factual errors and evident discrepancies concerning the evidentiary record in this case. See *Appellant Brief*; see also *Appellee Brief*. However, it is not apparent whether UCRC's denial of Appellant's request for review was made in reliance of such evident

discrepancies. The Court cannot ignore the Hearing Officer's repeated failures to properly reflect the findings of fact in the record, and the basis thereof.

III. CONCLUSION

The Court finds that the record affirmatively establishes that the Hearing Officer's denial of Appellant's unemployment compensation was unreasonable and not supported by the manifest weight of the evidence in this case. While a determination of just cause should take all evidence into consideration and hinges on the reason-in-fact for termination, the evidence in the record does not support a finding that Appellant was terminated for just cause. There is no clear evidence that Appellant was given notice of the requirements, or that he was provided with an opportunity to comply with those requirements. Therefore, this matter is remanded to the UCRC for a new hearing with prior written notice to Appellant. After further consideration of the record and establishing the necessary evidence that GCESC has relied upon in this case, the Hearing Officer shall make a factual determination as to whether GCESC had just cause in terminating Appellant, and as a result, whether the Hearing Officer's reversal of the *Redetermination* allowing Appellant unemployment compensation benefits was proper.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. LANGER

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Type: Decision Remanding Admin. Agency Decision

So Ordered

Dennis J. Langer