

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

TINA GRAY,

CASE NO.: 2012 CV 02185

Appellant,

JUDGE MARY WISEMAN

-vs-

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES, *et al.*,

**DECISION, ORDER AND ENTRY ON
ADMINISTRATIVE APPEAL**

Appellees.

FINAL APPEALABLE ORDER

This matter is before the Court on Appellant Tina Gray's appeal from a January 25, 2012 decision of the Ohio Unemployment Compensation Review Commission ["the Commission"], disallowing Appellant's entitlement to unemployment compensation benefits. The record before this Court includes a copy of the proceedings before the Commission, including the Director's and Commission's file contents and a hearing transcript ["Tr."], all filed on October 31, 2011; the *Brief of Appellant* ["*Appellant's Brief*"], filed on June 25, 2012; and the *Brief of Appellee, Director, Ohio Department of Job and Family Services* ["*Appellee's Brief*"], filed on July 24, 2012.

For the reasons that follow, the January 25, 2012 decision of Appellee Director, Ohio Department of Job and Family Services ["ODJFS"], is AFFIRMED.

FACTUAL & PROCEDURAL BACKGROUND/THE PARTIES' CLAIMS

Appellant is an asbestos abatement worker who worked for Summit Environmental Services ["Summit"] from September 20, 2011, to October 7, 2011. (Tr. p. 6). Appellant testified that her union president encouraged her and other union members working at Summit to apply for another

job opportunity because the work being performed for Summit would be ending. (Tr. pp. 7-8). She also testified that she told her supervisor at Summit that she would be leaving for a different job, and that the company should call her if that would pose a problem. (Tr. p. 8). Summit called the union hall to request replacement workers after Appellant and two co-workers left the Summit job. (Tr. pp. 9, 10-11).

On October 11, 2011, Appellant began her new job at Elite Environmental and Safety ["Elite"]. (Tr. p. 6). Three days later, on October 14, 2011, Appellant was laid off by Elite. (Tr. p. 6).

Appellant previously had filed for unemployment compensation benefits on January 26, 2011. In a Determination of Unemployment Compensation Benefits dated November 7, 2011, Appellee disallowed Appellant's ongoing claim, based on a finding that Appellant had quit her job at Summit to accept other work and did not requalify under her employment at Elite. (See Director's File, Determination #223690083-1). The Director's Redetermination on Appellant's appeal affirmed that prior disallowance and ordered Appellant to repay one week of benefits that already had been paid. (See *id.*, Redetermination dated December 8, 2011).

On Appellant's subsequent appeal from that redetermination, ODJFS transferred jurisdiction to the Commission pursuant to Ohio R.C. § 4141.281. (See *id.*, Transfer to UC Review Commission). During a telephone hearing held on January 19, 2012, Summit's owner testified that Summit had two pending projects lasting from two to six weeks on which Appellant could have continued to work after October 7, 2012, and that Summit had not laid off any employees during that time period. (Tr. pp. 9-11). Appellant indicated that there had been "miscommunication," and that she had left Summit based on an impression that work would not be available for her there. (Tr. pp. 10-11). The hearing officer issued a decision affirming the Redetermination. (See *Appellee's Brief*, Exh. 1 [Decision dated January 25, 2012]). The Commission denied Appellant's

request for further review of that adverse decision. (See Commission File, Request for Review dated January 28, 2012; Decision Disallowing Request for Review dated February 22, 2012).

On March 21, 2012, Appellant filed her Notice of Appeal in this Court, seeking review of the final decision disallowing her application for unemployment compensation benefits. Appellant argues that a fellow former Summit employee, Herman Smith, was awarded benefits based on a finding that he “had good cause to refuse employment with Summit.” (*Appellant’s Brief*, p. 4). Appellant suggests that the same finding should apply to her benefits request. Urging that she “was laid off through no fault of her own” (*id.*), Appellant contends that she should be awarded benefits because she, too, “had good cause to refuse employment with Summit.” (*Id.*, p. 5).

In responding to Appellant’s appeal, Appellee argues that this Court must affirm the Commission’s decision because that decision “was not unlawful, unreasonable, or against the manifest weight of the evidence.” (*Appellee’s Brief*, p. 1). Appellee asserts that the Commission reasonably determined that Appellant quit her job at Summit without just cause, and that her three days of employment at Elite was insufficient to remove her disqualification from benefits. (*Id.*, pp. 6-7). Additionally, Appellee contends that ODJFS’s contrary decision regarding Herman Smith’s entitlement to benefits has no precedential value with respect to Appellant because Mr. Smith’s case was decided after Appellant’s, and that such contrary decision is irrelevant to this Court’s limited review of the Commission’s decision for error. (*Id.*, pp. 7-8). Maintaining that “[t]here is credible evidence to support the decision of the Hearing Officer,” Appellee submits that the Commission’s decision should be affirmed. (*Id.*, pp. 8-9).

LAW & ANALYSIS

Standard of Review on Appeals from Unemployment Compensation Review Commission

Pursuant to Ohio R.C. § 4141.282(A), any interested party may appeal a final decision of the Commission to an Ohio court of common pleas. In reviewing such decisions,

The court shall hear the appeal on the certified record provided by the commission. 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. Otherwise, the court shall affirm the decision of the commission.

R.C. § 4141.282(H). Because a reviewing court thus “may reverse the [Commission’s] determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence,” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 697, 1995-Ohio-206, 653 N.E.2d 1207 (1995), that court may not make factual findings or determine witness credibility. *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 18, 482 N.E.2d 587 (1985); see also *Tzangas*, 73 Ohio St. 3d at 696 (factual questions solely within Commission’s province). Accordingly, a reviewing court may not reverse the Commission’s decision simply because “reasonable minds might reach different conclusions.” *Irvine*, 19 Ohio St. 3d at 18. Where there is “significant evidence to support both parties’ arguments,” the court may not disrupt a hearing officer’s conclusions regarding witness credibility. See *David A. Bennett, D.D.S. v. Director, Ohio Dep’t of Job & Family Servs.*, 10th Dist. No. 11AP-1029, 2012-Ohio-2327, ¶¶18-19.

Eligibility for Unemployment Compensation Benefits

According to the statute providing for unemployment compensation benefits, no individual may be paid such benefits if “[t]he individual quit work without just cause.” R.C. § 4141.29(D)(2)(a). In certain well-defined circumstances, however, that disqualification may be lifted – specifically, “an individual who voluntarily quits work” to accept other employment,

(2) . . . where the individual obtains such employment while still employed or commences such employment within seven calendar days after the last day of employment with the prior employer, and subsequent to the last day of the employment with the prior employer, works three weeks in the new employment and earns wages equal to one and one-half times the individual’s average weekly wage or one hundred eighty dollars, whichever is less;

(3) Shall . . . remove the disqualification imposed by [Section 4141.29(D)(2)(a)] and shall be deemed to have fully complied [with eligibility requirements].

R.C. § 4141.291(A) (emphasis added).

“The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case,” and thus “is primarily within the province of” the Commission. *Irvine*, 19 Ohio St. 3d at 17. The Ohio Supreme Court there defined “just cause” as “that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Id.* The claimant bears the burden of establishing he or she had just cause for quitting a job. *Id.*

Although at least one Ohio appellate court has held that quitting to accept other employment after being notified that one’s job “was coming to an end” does not constitute a quit without just cause, see *Holbrook v. Board of Review*, 22 Ohio App. 3d 88, 90, 489 N.E.2d 298 (11th Dist. 1985), the appellate court for this district has held explicitly that leaving a job voluntarily “in order to take another constitutes a quit without just cause under R.C. 4141.29(D)(2)(a).” *Rice v. Keg & Cork*, 2nd Dist. No. CA 2193, 1986 Ohio App. LEXIS 7739, at *13 (Jul. 31, 1986). Indeed, in so holding, the Court in *Rice* specifically acknowledged the decision in *Holbrook*, *supra* (see *id.*), yet continued to repeat its own holding to the contrary, as follows:

we hold that when a worker quits a job, whether full-time or part-time, in order to take another job, and that worker then fails to satisfy the requirements of R.C. 4141.291(A)(2), that worker has quit without just cause under R.C. 4141.29(D)(2)(a) and becomes ineligible to receive benefits.

1986 Ohio App. LEXIS 7739, at *18.

Application of Relevant Law to Appellant’s Claim

Here, the hearing officer for the Commission specifically found that Appellant quit her job with Summit to accept a job with Elite, and that her mere three days of employment at Elite did not remove the disqualification from benefits. (See *Appellee’s Brief*, Exh. 1). Under the standard of review applicable to this case, this Court cannot say that such decision is “unlawful, unreasonable, or against the manifest weight of the evidence.” See R.C. § 4141.282(H); *Tzangas*, 73 Ohio St. 3d at 697.

The abbreviated argument advanced by Appellant in her brief to this Court appears to be two-fold: 1) that Appellant had just cause for leaving her job at Summit, which she believed to be ending, for what she believed would be longer-term work at Elite, and 2) that this Court should adopt as preferable the reasoning employed by the Commission in its contrary decision on the unemployment compensation benefits claim of Appellant's former co-worker, Herman Smith. (See *Appellant's Brief*, pp. 4-5). Neither contention is well taken.

In holding against Appellant, the Commission's hearing officer apparently did not accept Appellant's position that her departure from Summit was with just cause because she believed that she was about to be laid off from that job. The record contains evidence sufficient to support that determination from a factual standpoint, as Summit's owner testified that no employees were laid off by Summit during the relevant time frame, and that Summit continued to have work available for Appellant to perform after October 7, 2012. (Tr. pp. 9-11). Although Appellant attributed her acceptance of a new job to "miscommunication" with Summit supervisors (see Tr. pp. 10-11), the hearing officer reasonably could have found the testimony of Summit's owner to be more credible on that issue. Affording appropriate deference to that credibility assessment, see *Irvine*, 19 Ohio St. 3d at 18; *Tzangas*, 73 Ohio St. 3d at 696; *Bennett, D.D.S.*, 2012-Ohio-2327, ¶¶18-19, this Court cannot say that reasonable minds would be unable to conclude that Appellant lacked just cause to quit her job at Summit. The Commission's decision thus cannot be reversed as being against the manifest weight of the evidence. See R.C. § 4141.282(H); *Tzangas*, 73 Ohio St. 3d at 697.

Moreover, from a legal standpoint, binding precedent in this appellate district dictates that an individual's decision to "quit[] a job . . . in order to take another job" constitutes a "quit without just cause under R.C. 4141.29(D)(2)(a)," rendering that person "ineligible to receive benefits." *Rice*, 1986 Ohio App. LEXIS 7739, at *13, *18. Given that court's express acknowledgment and apparent rejection of the holding in *Holbrook*, 22 Ohio App. 3d at 90, this Court has no legal basis for recognizing an exception even where the departing employee believed that she was about to be

laid off. See *id.* Accordingly, the Commission's determination as to that issue was neither unlawful nor unreasonable as a matter of law, and cannot be reversed on that basis. See R.C. § 4141.282(H); *Tzangas*, 73 Ohio St. 3d at 697.

As Appellant does not even argue that her brief (three day) tenure at Elite serves to remove the disqualification imposed by R.C. § 4141.29(D)(2)(a) (see *Appellant's Brief*), and as the facts of record also indicate that Appellant cannot satisfy R.C. § 4141.291(A)(2)'s requirement that an individual "work[] three weeks in the new employment" in order to remove such disqualification, Section 4141.291 does not alter Appellant's disqualification from unemployment compensation benefits.

Finally, the Commission's inconsistent determination in the case of Appellant's former co-worker does not dissuade this Court from these conclusions. A copy of the Commission's decision regarding the claim of Herman G. Smith is attached among the last exhibits contained in the administrative record, and confirms that the Commission there found that Mr. Smith had "good cause" for refusing continued work at Summit in favor of a new job at Elite that "was supposed to last for 6 weeks." (See Commission's File, Decision #H-1012001904). Despite that contrary administrative determination, this Court remains bound by the Second District's holding that leaving one job to take another is a "quit without just cause under R.C. 4141.29(D)(2)(a)." See *Rice*, 1986 Ohio App. LEXIS 7739, at *13, *18. Additionally, as Appellee aptly observes, the administrative decision on Mr. Smith's claim both postdates the decision re Appellant and appears to have been rendered in the absence of opposing testimony on behalf of Summit, the employer. (See *Appellee's Brief*, pp. 7-8). For all of these reasons, the decision on Mr. Smith's claim does not warrant reversal of the Commission's decision disallowing Appellant's unemployment compensation claim.

CONCLUSION

Based on the Commission hearing officer's credibility determinations and the decision in *Rice v. Keg & Cork*, 2nd Dist. No. CA 2193, 1986 Ohio App. LEXIS 7739, at *13, *18 (Jul. 31, 1986), as well as for the other reasons set forth above, this Court determines that Appellee's final decision affirming the disallowance of Appellant's unemployment compensation claim and her obligation to repay benefits paid is not unlawful, unreasonable, or against the manifest weight of the evidence as contemplated by R.C. § 4141.282(H). Accordingly, the Director's January 25, 2012 decision is AFFIRMED.

THIS IS A FINAL APPEALABLE ORDER UNDER CIV.R. 58. PURSUANT TO APP.R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE MARY WISEMAN

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Case Title: TINA GRAY vs OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES
Case Number: 2012 CV 02185
Type: Order:

So Ordered

A handwritten signature in black ink that reads "Mary Wiseman". The signature is written in a cursive style with a large, looped "y" and "o".

Mary Wiseman