

IN THE LICKING COUNTY COMMON PLEAS COURT

COMMON PLEAS COURT

2012 NOV -1 P 2:12

John D. Zarlino, :

Appellant, :

-vs- : Case No. 11 CV 01409

Bob Boyd Lincoln Mercury, Inc., et al., : Judge W. David Branstool

Appellee. :

FILED
CLERK OF COURTS

JUDGMENT ENTRY

This matter is before the Court on appeal pursuant to R.C. 4141.282 from a decision of the Ohio Unemployment Compensation Review Commission denying appellant unemployment benefits. For the reasons set forth below the decision of the Commission is affirmed.

Appellant was an employee of Bob Boyd Lincoln Mercury from December 12, 2002, until March 31, 2011. Appellant became an employee of Bob Boyd Motors on April 1, 2011 when he took a position as a salesperson at the company's Fiat dealership. Appellant was discharged from that position April 14, 2011. He was subsequently denied unemployment benefits. Appellant appealed this decision, and a hearing was held August 4, 2011 by a Hearing Officer for the Review Commission. The hearing officer upheld the denial of unemployment benefits finding that appellant was discharged for just cause in connection with his work. On September 21, 2011, the Commission denied appellant's request for further review, and appellant filed this appeal October 21, 2011.

Matt Bond testified at the hearing on behalf of appellees. Mr. Bond was the sales manager at the Fiat dealership. (Transcript at 7). He stated that he had written

appellant up for his job performance. *Id.* The write up included instructions to write down VIN numbers, not to take phone calls while dealing with a customer, not posting anything about the dealership on the internet, and helping customers find a car to suit their needs not just cars in the showroom among others. *Id.* at 7-10. Mr. Bond stated that appellant refused to sign the write up, told Mr. Bond to fire appellant, and walked out of Mr. Bond's office. *Id.* at 8, 10. Mr. Bond stated that appellant was discharged because he refused to sign the write-up and adhere to the company's policies. *Id.* at 11.

Appellant admitted that he would not sign the write-up. Appellant felt he had been wrongfully singled out by Mr. Bond. *Id.* at 20, 22. He stated he did not agree with some of the things in the write-up and that it was not factual. *Id.* at 17-19. Appellant was discharged by the owner, Bill Dawes, the day after he was written up by Mr. Bond. *Id.* at 23.

R.C. 4141.29(D)(2)(a) prohibits the payment of unemployment compensation if the employee "has been discharged for just cause in connection with the individual's work."

Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.

The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose is to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.

(Citations omitted). *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 17 (1985). Unemployment benefits exist to help those who find

evidence that appellant was approached about his job performance, and appellant refused to cooperate with his sales manager. This is sufficient evidence of fault on the part of appellant for his discharge. This "court cannot substitute its own findings of fact for those of the board." *Wilson v. Unemployment Compensation Bd. of Review*, 14 Ohio App.3d 309 (8th Dist.1984). A claimant must show he is "free from fault" for his termination. *Durgan v. Ohio Bur. of Emp. Serv.*, 110 Ohio App.3d 545, 551 (9th Dist.1996). Appellant has not met this burden.

For the reasons set forth above, the decision of the Commission is AFFIRMED.
Costs to appellant.

It is so ordered. There is no just cause for delay. This is a final appealable order.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



Judge W. David Branstool

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