

IN THE COMMON PLEAS COURT OF FAIRFIELD COUNTY, OHIO

JACK E. WALLACE, :
Appellant, : Case No. 11 CV 1202
v. : Judge Berens
SHERIDAN FUNERAL HOME, INC., : JUDGMENT ENTRY
ET AL., :
Appellees. :

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FILED
DEBORAH SHALLEY
CLERK OF COURTS
FAIRFIELD CO. OHIO

This matter is before the Court on Appellant Jack Wallace’s appeal from the August 25, 2011 decision of the Ohio Unemployment Review Commission (“Commission”) denying unemployment benefits and the Commission’s October 27, 2011 decision disallowing Appellant’s Request for Review of the Decision. Appellant filed his appeal with the Court on November 28, 2011. The Commission then filed the record of the administrative proceedings with the Court on January 18, 2012. On May 24, 2012, Appellant filed a brief on the merits. Appellees Director, Ohio Department of Job and Family Services (“ODJFS”) and Sheridan Funeral Home filed responsive briefs on June 7, 2012 and June 11, 2012, respectively. Appellant filed a reply brief on June 20, 2012. The issue has been fully briefed and is ripe for review.

Standard of Review

The standard of review in this appeal is set forth in R.C. 4141.282(H), which states:

(H) REVIEW BY THE COURT OF COMMON PLEAS

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.

Therefore, unless the Court finds that the Commission's October 27, 2011 decision was "unlawful, unreasonable, or against the manifest weight of the evidence," the Court must affirm the hearing officer's determination. Alternatively stated, a decision of the Commission will not be overturned if it is supported by some competent, credible evidence. *See C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978). On review, the Court may not make findings of fact or evaluate the credibility of witnesses; it may decide only whether the administrative decision is supported by evidence. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). "[T]he administrative board functions as the trier of fact, and the courts shall limit their review to questions of law and manifest weight of the evidence." *Torgler v. Bag-N-Save Food, Inc.*, 5th Dist. No. 93AP040028, 1993 WL 471436 (Nov. 9, 1993). Thus, the fact that reasonable minds could come to a different conclusion is an insufficient basis for reversal. *Tzangas* at 697; *Struthers v. Morell*, 164 Ohio App. 3d 709, 2005-Ohio-6594, 843 N.E.2d 1231, ¶ 14 (7th Dist.) ("When the commission could have reasonably decided a just-cause issue either way, the courts have no authority to overrule that decision.").

Procedural and Factual Background

Appellant worked for Sheridan Funeral Home from March 2, 2002 until May 2, 2011. Appellant was primarily responsible for picking up deceased individuals from area facilities and hospitals and helping with funerals and monument sales. On May 1, 2011, Appellant was arrested and incarcerated after a domestic altercation. On May 2, 2011 Appellant failed to appear at work as scheduled due to his incarceration. Sheridan Funeral Home terminated

Appellant for failing to appear without providing sufficient notice. Following his discharge, Appellant filed for unemployment benefits with ODJFS, which originally allowed her claim. Sheridan Funeral Home subsequently submitted further information regarding Appellant's termination and requested ODJFS to reconsider its initial determination. On June 30, 2011, ODJFS affirmed its original decision, finding Appellant's discharge had been without "just cause."

Sheridan Funeral Home appealed to the Commission. Paulette Johnson, a Hearing Officer for the Commission conducted an oral hearing via telephone on August 24, 2011.

The Hearing Officer made the following findings of fact:

Claimant worked for Sheridan Funeral Home, Inc., from March 2, 2002 until May 2, 2011. On or about May 1, 2011, claimant was arrested for an alleged domestic violence altercation. The employer received a call from the local sheriff's department stating that one thousand dollars, in bail money, was required in order for claimant to be released from jail.

Claimant was scheduled to work on May 2, 2011. Claimant did not call the employer prior to his scheduled shift. Claimant did not report to work because he was incarcerated.

On May 2, 2011, the employer discharged claimant from his employment with Sheridan Funeral Home, Inc., for failure to report to work.

Based on those findings of fact, the Hearing Officer concluded that Appellant was discharged for just cause because he failed to report to work without affording his employer any prior notice.

Law & Analysis

A claimant is not eligible for unemployment benefits if "the individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.]" R.C. 4141.29(D)(2)(a). "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." *Peyton v. Sun*

T.V. & Appliances, 44 Ohio App. 2d 10, 12, 335 N.E.2d 751 (Ohio Ct. App. 10 Dist. 1975). The “unique factual considerations” of a particular case is essential to the determination of just cause and is left to primarily to the province of the trier of fact. *Stark Area Regional Transit Auth. v. Ohio Dept. of Job & Family Svcs.*, 187 Ohio App. 3d 413, 2010-Ohio-2142, 932 N.E.2d 396, ¶20.

Further, the Ohio Supreme Court has emphasized, “Fault on behalf of the employee is an essential component of a just cause termination.” *Tzangas*, 73 Ohio St. 3d 694, 653 N.E.2d 1207 (1995), paragraph two of the syllabus. In the context of an unemployment determination, an employee is at fault when: “(1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.” *Id.* at paragraph four of the syllabus.

Appellant argues that the Hearing Officer’s decision was against the manifest weight of the evidence and contrary to law. First, Appellant asserts that “simply failing to come to work is not a justification for a ‘just cause’ termination.” Appellees ODJFS and Sheridan Funeral Home argue that Appellant had a history of failing to report for work, and was put on notice that one more “no-call-no-show” would warrant immediate discharge. Appellant refutes the characterization of his absence as a “no-call-no-show,” as he claims the call from the Sheriff’s Office requesting bail constituted adequate notice of his absence.

While acknowledging the call from the sheriff’s department, the Hearing Officer proceeded to make the following finding of fact: “The Claimant did not call the employer prior to his scheduled shift.” The Hearing Officer further reasoned that Appellant knew or should have

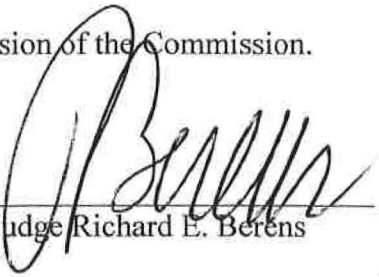
known that his failure to come to work, without providing such notice, would result in his discharge. *See* Decision of Paulette Johnson, Hearing Officer, August 25, 2011. Although it was not made an explicit finding of fact, the Hearing Officer clearly concluded that the call from the Sheriff's Office regarding Appellant's incarceration and terms of bail did not constitute "notice" of his absence from work on May 2, 2012. Mr. Sheridan, owner of Sheridan Funeral Homes testified that it was important for him to know when his employees were not going to report to work in order to arrange adequate coverage. Mr. Sheridan also testified that he had warned Appellant in the past, following several Monday absences, that his next "no-call-no-show" would result in Appellant's termination from work. Therefore, "[o]n May 2, 2011, the employer discharged claimant from his employment with Sheridan Funeral Home, Inc., for failure to report to work." Decision of Paulette Johnson, Hearing Officer, August 25, 2011.

Second, Appellant argues that the true reason for Appellant's discharge was not absence without notice, but rather publicity concerns regarding the domestic violence altercation. Although there was some evidence in the record, including Mr. Sheridan's own testimony, from which the conclusion that Appellant's discharge may have been motivated in part by Appellant's arrest and consequent charges, the Court may not weigh the evidence or make findings of fact. The finding that Appellant was discharged "from his employment with Sheridan Funeral Home, Inc., for failure to report to work" was based on the Hearing Officer's evaluation (and rejection) of evidence, and this Court is without the power to disturb it.

Based on the findings of fact and the evidence before the Hearing Officer, the Court finds that the decision from which Appellant appeals was supported by competent, credible evidence and was not unlawful, unreasonable, or against the manifest weight of the evidence.

For the foregoing reasons, the Court must **AFFIRM** the decision of the Commission.

IT IS SO ORDERED.



Judge Richard E. Berens

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