

ENTERED  
OCT 26 2012

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

DIANE DIPPOLD, : Case No. A 1110540  
Plaintiff, : Judge Robert C. Winkler  
-v- : ENTRY ADOPTING  
BARRINGTON OF OAKLEY, : MAGISTRATE'S DECISION  
LLC, :  
Defendant. :



This matter came before the court on Appellant's, Diane Dippold, Objections to the Magistrate's Decision of June 15<sup>th</sup>, 2012, affirming the decision of the Unemployment Compensation Review Commission.

The court has reviewed the Transcript of Proceedings, Administrative Record, Appellant's Brief, Appellee's, ODJFS's, and Barrington of Oakley's Briefs, Law of Ohio, and arguments of counsel.

The court finds Appellant's, Diane Dippold, Objections to be not well-taken.

Accordingly, The Magistrate's Decision of June 15<sup>th</sup>, 2012, is hereby ADOPTED by the court.

IT IS SO ORDERED.

FOR COURT USE ONLY  
S.C. 10  
Line #: \_\_\_\_\_

COURT OF COMMON PLEAS  
ENTERED  
*Robert C. Winkler*  
Judge Robert C. Winkler  
THE CLERK SHALL SERVE NOTICE  
TO PARTIES PURSUANT TO CIVIL  
RULE 58 WHICH SHALL BE TYPED  
AS COSTS HEREIN. Date

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3074 Madison Rd  
Cincinnati, OH 45209

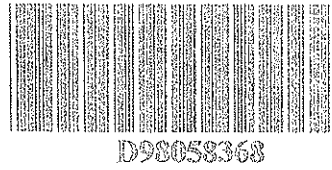
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COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

DIANE DIPPOLD, : Case No. A1110540  
Appellant, : Judge Winkler  
v. :  
BARRINGTON OF OAKLEY, et al., : MACISTRATE'S DECISION  
Appellees. :



RENDERED THIS 15<sup>th</sup> DAY OF JUNE, 2012.

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") October 26, 2011 Decision reversing the August 11, 2012 Ohio Department of Job and Family Services' ("ODJFS") Redetermination that claimant Diane R. Dippold ("Dippold") was discharged from her position with Barrington of Oakley LLC ("Barrington") without just cause.<sup>1</sup> This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' filed briefs on May 4, 2012.

BACKGROUND

Dippold was employed by Barrington as a Resident Care Coordinator from July 31, 2009 through June 6, 2011.<sup>2</sup> On ~~March~~<sup>May</sup> 31, 2011, Dippold left work early due to her belief that Barrington failed to take certain requested safety precautions, including implementing twenty-four-hour security at the facility.<sup>3</sup> Unbeknownst to Dippold, Barrington contracted with a security company to patrol the parking lot at certain times a

<sup>1</sup> / In re claim of Diane R. Dippold, H-2011024194.  
<sup>2</sup> / id.  
<sup>3</sup> / id.

day at the expense of several thousand dollars a month.<sup>4</sup> Dippold did not return to her employment.<sup>5</sup> Barrington discharged Dippold from her employment on June 6, 2011.<sup>6</sup>

Dippold filed an Application for Determination of Benefit Rights.<sup>7</sup> The ODJFS Director issued a Redetermination on August 11, 2011 finding that Dippold was discharged from her employment with Barrington without just cause.<sup>8</sup> Barrington appealed the Redetermination on August 26, 2011.<sup>9</sup> ODJFS transferred jurisdiction to the Review Commission on September 1, 2011.<sup>10</sup> The Review Commission heard the appeal on two separate occasions, September 28, 2011, and October 21, 2011.<sup>11</sup> Following those hearings, the Review Commission issued a decision on October 26, 2011 reversing the ODJFS Redetermination and finding that Dippold was discharged from her employment with just cause.<sup>12</sup> Dippold appealed the Decision of the Review Commission to this Court, seeking reversal of his disqualification for unemployment benefits.<sup>13</sup>

#### STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was “unlawful, unreasonable, or against the manifest weight of the evidence”, it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.<sup>14</sup>

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<sup>4</sup> / *Id.*

<sup>5</sup> / *Id.*

<sup>6</sup> / *Id.*

<sup>7</sup> / *Id.*

<sup>8</sup> / *Id.*

<sup>9</sup> / *Id.*

<sup>10</sup> / *Id.*

<sup>11</sup> / *Id.*

<sup>12</sup> / *Id.*

<sup>13</sup> / Brief of Appellant, filed on February 29, 2012.

<sup>14</sup> / Ohio Rev. Code § 4141.282(H) (West 2008).

Otherwise, the court shall affirm the decision.<sup>15</sup> The reviewing court must follow this same standard in assessing just cause determinations.<sup>16</sup> The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.<sup>17</sup>

### JUST CAUSE

The Ohio Revised Code states:

Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions: \* \* \*

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work[.]<sup>18</sup>

Each just cause determination must be based upon the merits of the particular case.<sup>19</sup>

'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.' " *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists " '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.' " (Emphasis *sic.*) *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 123, 199 N.E.2d 3, 5. " 'The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.' " *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Salzl v.*

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<sup>15</sup> / *Id.*

<sup>16</sup> / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

<sup>17</sup> / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).

<sup>18</sup> / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).

<sup>19</sup> / *Irvine*, *supra*, at 17.

*Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 52, 399 N.E.2d 76, 79. Thus, while a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.

The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. 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. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.<sup>20</sup>

### DISCUSSION

Dippold argues that the Decision of the Review Commission should be reversed because she reasonably refused to work under unsafe conditions and was fired for it.<sup>21</sup>

Dippold supports its contention with *Taylor v. Bd. Of Review*, in which the Ohio Eighth Appellate District held in pertinent part:

An employee has just cause to quit...where he is threatened with physical harm by a fellow employee who has already beaten him on a prior occasion and the complaining employee has reported that threat to his employer who does not or is unable to take appropriate steps to alleviate the genuine and reasonable fear of the employee who has quit his job.<sup>22</sup>

Dippold asserts that she was not required to wait until the violent intruder attacked her before she could be reasonably in fear of physical assault, and considering the overall circumstances she was justified in fearing for her safety.<sup>23</sup>

ODJFS and Barrington argue that Dippold was fired with just cause due to her failure to work her scheduled full time shifts after May 30, 2011 in contravention of

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<sup>20</sup> / *Tzangas*, supra, at 697-98.

<sup>21</sup> / Brief of Appellant, at 8.

<sup>22</sup> / *Taylor v. Bd. Of Review* (1984), 20 Ohio App.3d 297, 299.

<sup>23</sup> / Appellant, at 8.

Barrington's best interest and the acknowledged Barrington attendance policy.<sup>24</sup> ODJFS contends that the holding in *Taylor* is narrow and inapposite to the case at hand.<sup>25</sup> According to ODJFS, unlike the claimant in *Taylor*, Dippold neither was the victim nor witnessed the attack take place.<sup>26</sup> Therefore, Dippold would have been in the same position as every other employee of Barrington, only one of whom stopped reporting for after the violent incident.<sup>27</sup> Moreover, ODJFS argues that at the time Dippold left work on May 31, 2011, she had not yet advised Barrington of her safety concerns and given Barrington an opportunity to correct them.<sup>28</sup>

The court finds that the Review Commission's October 26, 2011 Decision finding Dippold was discharged from her position with just cause is not unlawful, unreasonable, or against the manifest weight of the evidence. Dippold's decision to leave work on May 31, 2011 in contravention of the Barrington's best interest before allowing Barrington an opportunity to resolve her safety concerns was unreasonable. Therefore, the court finds that Dippold's appeal is not well-taken.

#### DECISION

The unemployment compensation appeal of Appellant Diane R. Dippold is DENIED. The findings of the Unemployment Compensation Review Commission are AFFIRMED IN FULL. If this Decision is adopted by the trial Court, Claimant must comply fully with the October 26, 2011 Decision of the Unemployment Compensation Review Commission.

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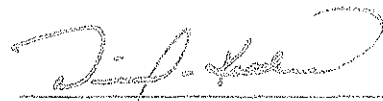
<sup>24</sup> / Brief of ODJFS, at 7-10.

<sup>25</sup> / *Id.*

<sup>26</sup> / *Id.*

<sup>27</sup> / *Id.*

<sup>28</sup> / *Id.*



DAVID M. KOTHMAN  
MAGISTRATE,  
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 6/19 Deputy Clerk: 