

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JEFFREY BROWN,	:	
	:	
Appellant,	:	CASE NO. 12CVF-10801
	:	
vs.	:	JUDGE REECE
	:	
AVI FOOD SYSTEMS, INC., <i>et al.</i> ,	:	
	:	
Appellees.	:	

**DECISION AND JUDGMENT ENTRY**  
**GRANTING MOTION TO DISMISS FILED OCTOBER 2, 2012 AND**  
**AFFIRMING THE DECISION OF**  
**THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**  
**AND**  
**NOTICE OF FINAL APPEALABLE ORDER**

**REECE, JUDGE**

This is an appeal pursuant to R.C. 4141.282 from the July 31, 2012 Decision of the Unemployment Compensation Review Commission (the “Commission”).

**I. FACTS**

Appellant Jeffrey Brown was employed by Appellee AVI Food Systems, Inc. (the “Employer”) as a cafeteria worker/cashier until he was discharged on March 1, 2012. Mr. Brown then applied for unemployment compensation benefits.

On June 13, 2012, a hearing was held before a Hearing Officer of the Commission. The parties appeared and presented evidence as follows.

The Employer presented the testimony of Gina Grimm, Mr. Brown’s supervisor. Ms. Grimm testified that Mr. Brown was discharged for ongoing inappropriate conduct and insubordination. (T. 3). She stated that on February 28, 2012, when Mr. Brown was preparing salads, she asked him to check the next time he opened a bag of cheese to make

sure that there was not already an open bag. (T. 4). She stated that Mr. Brown responded: “that was, um, micromanaging and, bitch, bitch, bitch, that’s all I do.” She said “then he walked over to the sink and the ‘F’ word was thrown ....” (T. 4-5). She stated that the incident was in front of customers and co-workers. (T. 5).

Ms. Grimm stated that there had been a prior incident, on May 2, 2011, when Mr. Brown was given a written warning for inappropriate conduct in front of customers and co-workers. (T. 3). The Employer had decided to move sugar packets and creamers close to the register and charge customers for these items. Ms. Grimm stated that Mr. Brown refused to keep the items in the designated area despite being told to do so several times. (T. 4). She testified that Mr. Brown “said to me to stop moving the ‘F’ing sugar and that it was ridiculous that we had to charge for these items ... and then he followed me into the kitchen and, um, said a few choice words, the ‘F’ word ....” (T. 4). She stated that Mr. Brown was aware that his job could be in jeopardy after the first warning. (T. 5).

Ms. Grimm testified that the decision was made to discharge Mr. Brown after the February 28, 2012 incident because of “the fact that this happened once before and not knowing when his language or his, um, inappropriate conduct would take place again in front of customers.” (T. 5). She testified that Mr. Brown’s behavior violated the Employer’s anti-harassment policy. (T. 7). She stated that Mr. Brown had signed a copy of the policy, which stated that harassment consisted of “unwelcome conduct, whether verbal, physical or visual, which interferes with an individual’s work performance or creates an intimidating, hostile or offensive working environment.” (T. 7-8). Ms. Grimm testified that when Mr. Brown was informed he was being discharged, he “immediately

used foul language” and “bodily forced [her] out of the way” to get to her computer behind her desk. (T. 8).

Mr. Brown testified that in the February 28, 2012 incident, he did not remember saying “bitch, bitch, bitch,” but stated “I don’t even think that qualifies as profanity, if I’m not directing it at her.” (T. 11).

With respect to the May 2, 2011 incident, Mr. Brown said “I didn’t cuss at her, but I used, I don’t give a shit.” (T. 13). He admitted that after Ms. Grimm had explained the policy and told him not to move the sugar, he moved it again anyway, “just to mess with her.” (T. 14).

On June 20, 2012, the Hearing Officer issued a Decision finding that Mr. Brown was discharged for just cause. After reviewing the evidence, the Hearing Officer stated as follows:

Claimant was insubordinate to Ms. Grimm on at least two separate occasions. He also used profanity towards her on both of these occasions. After the first incident, claimant was told that he would be terminated if a similar situation happened. Despite this warning, when Ms. Grimm gave a simple instruction to claimant, he responded with more profanity. The employer has shown that claimant’s behavior was inappropriate, and that he was discharged for just cause in connection with work.

On July 31, 2012, the Commission disallowed the request for further review.

On August 27, 2012, the Claimant filed this appeal from the Commission’s Decision.

## **II. STANDARD OF REVIEW**

This Court must affirm the Commission’s decision unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). The Court’s scope of review is limited, and the Court is not to make

factual findings or substitute its judgment for that of the Commission. *Irvine v. Unemployment Compensation Review Commission*, 19 Ohio St.3d 15, 18 (1985); *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982).

### **III. THE COURT'S FINDINGS AND CONCLUSIONS**

On October 2, 2012, Appellees filed a Motion to Dismiss Debbie Riazzi, Colin Coberly, and Gina Grimm as parties to this appeal. There was no response to the Motion.

R.C. 4141.282(D) provides that a party appealing a decision of the Commission shall "name all interested parties." Under R.C. 4141.01(I), "interested party" includes the director of job and family services and the employer. Debbie Riazzi, Colin Coberly, and Gina Grimm are not proper parties to this appeal.

R.C. 4141.29(D)(2)(a) provides that an individual discharged with just cause in connection with work is not eligible for unemployment compensation benefits. Just cause is conduct which an ordinarily intelligent person would regard as a justifiable reason for discharging an employee. *Irvine, supra*. An employee is considered to have been discharged for just cause when the "employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests." *Kiikka v. Ohio Bur. of Employment Services*, 21 Ohio App.3d 168, 169 (1985).

Mr. Brown argues that the Employer originally stated he was discharged for violation of the anti-harassment policy, not insubordination. After reviewing the record, the Court concludes that there is sufficient evidence that Mr. Brown violated the anti-harassment policy by engaging in "unwelcome conduct ... which ... creates an intimidating, hostile or offensive working environment."

Mr. Brown argues that he did not have a fair hearing because the Employer failed to produce subpoenaed documents. At the hearing, Mr. Brown objected that the Employer had failed to produce employee performance reviews for the period after the first incident and emails about his discharge. (T. 15). The Hearing Officer stated that she would continue the case and ask for the requested documents if they were needed to make a decision, but that the documents were not relevant to her decision. (T. 17). The Court finds that the Hearing Officer properly concluded that the documents at issue were not relevant to Mr. Brown's conduct that resulted in his discharge.

Mr. Brown further argues that he did not receive a fair hearing because the Hearing Officer was biased. Having reviewed the transcript of the hearing, the Court finds this allegation to be without merit.

For the foregoing reasons, Appellees' Motion to Dismiss filed October 2, 2012 is granted; Debbie Riazzi, Colin Coberly, and Gina Grimm are not proper parties to this appeal. After reviewing the record, the Court finds that the Commission's Decision is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Commission's Decision is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant.

Franklin County Court of Common Pleas

**Date:** 12-12-2012

**Case Title:** JEFFREY BROWN -VS- AVI FOOD SYSTEMS INC  
ET AL

**Case Number:** 12CV010801

**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 12CV010801

Case Style: JEFFREY BROWN -VS- AVI FOOD SYSTEMS INC  
ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0108012012-10-0299960000

Document Title: 10-02-2012-MOTION TO DISMISS

Disposition: MOTION GRANTED