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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STEPHEN T. RUE,

Appellant,

vs.

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

Appellees.

ENTERED
DEC 13 2012

Case No. A1203958

Judge Ruehlman

ENTRY AFFIRMING THE DECISION
OF THE REVIEW COMMISSION

This case is an appeal from the Ohio Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the March 15, 2012 Review Commission hearing officer's Decision finding that Appellant was discharged for just cause.

BACKGROUND

Stephen T. Rue ("Appellant") filed for unemployment benefits. Appellee, Director, Ohio Department of Jobs and Family Services ("ODJFS"), disallowed the Appellant benefits. Appellant appealed ODJFS' determination. ODJFS affirmed the initial determination finding that the Appellant was discharged for just cause for unexcused absenteeism or tardiness. The Appellant timely appealed the Redetermination and jurisdiction was transferred to the Review Commission.

A hearing was held on March 6, 2012. No one appeared at the hearing on behalf of Landry's Seafood or DJGN LLC ("Employer").

The hearing officer's "Findings of Fact" state:

Claimant was absent January 2nd, January 15th, January 16th and January 18th. The employer said that claimant was a no show on January 2nd for

saying he would be late, then never calling back or reporting to work. On January 15th and January 16th, Claimant called off of work because he was sick. He was considered to be a no call, no show on January 15th because he did not call in until 3:00 p.m. Claimant was scheduled to work on January 18th. He did not call off of work because he said the employer knew he was sick and that he did not think he had to call off every day. The employer's policy states that an employee must call off before 12:00 p.m. every day they will be absent and speak to a manager. It also says that failure to call off can result in an employee's immediate discharge.¹

The hearing officer found that the Appellant was discharged for just cause for violating the Employer's attendance policy.

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 is "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.² Otherwise, the court shall affirm the decision.³ 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.⁴

¹ August 16, 2012 Decision

² R.C. 4141.282(H).

³ *Id.*

⁴ *Tzangas, Plakas and Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E. 2d 1207 (1995). See also *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 161-162, 463 N.E. 2d 1280 (1983). (overruled in *Tzangas* for other reasons).

DISCUSSION

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[.]⁵

In *Irvine v. Unemployment Compensation Board of Review* the court describes the just cause standard.

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 reasonable decent level and is in keeping with the humanitarian and enlightened concepts of this modern day. Likewise, the act 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.⁶

⁵ R.C. 4141.29(D)(2)(a).

⁶ *Irvine v. Unempl. Comp. Bd. Of Review*, 19 Ohio St. 3d 15, 482 N.E.2d 587 (1985) (emphasis in original).

The Court has reviewed the certified record and the briefs submitted to the Court. The Appellant contends that he was discharged without just cause. The Appellant asserts the hearing officer's decision was unreasonable by challenging the hearing officer's use of hearsay. The unemployment statute states that hearing officers are not bound by common law or statutory rules of procedure. R.C. 4141.281(C)(2). Hearings are de novo, except that the director's file pertaining to a case shall be included in the record to be considered. R.C. 4141.281 (C)(3). Hearing officers in unemployment appeals are allowed to use hearsay.

The Appellant was discharged, for unacceptable attendance. The Employer's responses to ODJFS' fact-finding questions state that the Appellant did not show up for work on January 18, 2012, was told to bring a doctor's note and didn't show up until two days later without any notes.⁷ The Employer states that the Appellant never turned in any doctor's excuses.⁸ The Employer states that the Appellant was aware of its rules as attendance was discussed with the Appellant each time he missed work or was late.⁹ Appellant received a handbook.¹⁰

The Employer stated that the Appellant was a no call/no show on 1/2/12, 1/15/12 and didn't show up on 1/18/12.¹¹ Moreover, the Employer stated the Appellant was late for work four times and absent three times since 12/2/2011.¹² The Employer sent the Appellant's time cards, its Sick time/call policy, Attendance/Tardiness policy and its Dismissal policy to ODJFS. The sick policy requires employees to call by 12 noon and

⁷ Answer to Employer's Fact-Finding #1

⁸ Answer to Employer's Fact-Finding #2

⁹ Answer to Employer's Fact-Finding #3

¹⁰ Answer to Employer's Fact-Finding #8

¹¹ Answer to Employer's Fact-Finding #10

¹² Answer to Employer's Fact-Finding #12

speak to a Manager. Sick calls made after the deadline is not accepted.¹³ The Employer's Attendance/Tardiness policy states that failure to report on a scheduled work day will result in a writing [sic] warning and/or termination.¹⁴ The Employers Warnings/Suspensions/Discharge and Dismissal policies state that verbal or written warnings will be given for policy violations however; both policies allow management to exercise immediate termination without warning for infractions.

The Appellant contends that facts in the record should be ignored and his testimony accepted as the only version of truth in this case. The Claimant contends that he was unaware of the Employer's policy regarding missing work and that he could not be discharged for just cause because his sick time accounted for his absences with the Employer. The Appellant further contends that he was denied due process because the hearing officer acted in a one-sided manner to ascertain facts beneficial only to the Employer and tossed aside his testimony.¹⁵

The court finds that the hearing officer's Decision is not unreasonable. The weight of the evidence, including Appellant's testimony, shows that he was discharged for just cause. The Appellant never reported to work on January 2, 2012. He was not sick on this day. The Employer stated he would come to work but never showed. The timesheets and the Appellant's testimony supports this. The Appellant called in after the noon deadline on January 15, 2012. The Appellant stated he was sick. The Employer stated he said he had errands to run. If Appellant was sick, his call to the Employer was untimely. On January 18, 2012, the Appellant missed work but did not call the Employer and explain his absence. The Appellant assumed the Employer

¹³ Sick Time/Call Policy

¹⁴ Attendance/Tardiness Policy

¹⁵ Appellant's Brief pp 7-8.

would know he was sick since he called in on January 16, 2012 and the Employer told him to bring a doctor's note. The Employer states it did not receive a doctor's note. The critical issue in determining whether an employee has been terminated for just cause is not whether an employee has technically violated some company rule, but whether the employee, by his actions, has demonstrated an unreasonable disregard for his employer's best interest.¹⁶ In analyzing the purpose the statute as required of this Court, the Court cannot say that Appellant has been discharged for no fault of his own. The Appellant's failure to follow policy demonstrated an unreasonable disregard of the Employer's interest. The Employer needed to be made aware of when the Appellant was not going to work so it could cover the Appellant's shift at the restaurant.

Lastly, the court finds no due process violations in this case due to the hearing officer's decision to rule in favor of the Employer.

DECISION

The Court hereby AFFIRMS the Decision of the Review Commission. The Decision is not unlawful, unreasonable or against the manifest weight of the evidence. This is a final appealable order. There is no just cause to delay. Costs to the Appellant.



JUDGE ROBERT RUEHLMAN

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Court of Common Pleas
Hamilton County, Ohio

¹⁶ *Brown v. Bob Evans Farms, Inc.*, 190 Ohio App.3d 837, 843 (2010).