

DANIEL M. HERRIGAN

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SUMMIT COUNTY IN THE COURT OF COMMON PLEAS  
CLERK OF COURTS

SUMMIT COUNTY, OHIO

PAULA MAGGIO,	)	CASE NO. CV 2012 06 3528
	)	
Plaintiff-Appellant,	)	JUDGE TOM PARKER
	)	
vs.	)	
	)	
OHIO DEPARTMENT OF JOB &	)	<u>JUDGMENT ENTRY</u>
FAMILY SERVICES, <i>et al.</i> ,	)	(Final and Appealable)
	)	
Defendant-Appellee.	)	
	***	

This case is an administrative appeal from the Ohio Unemployment Compensation Review Commission ("UCRC") filed by plaintiff-appellant, Paula Maggio, pursuant to R.C. § 4141.282. The UCRC found that appellant quit her employment with the University of Akron without just cause. For this reason, she was not entitled to unemployment benefits.

The court has considered appellant's brief, the briefs of Appellee Ohio Department of Job & Family Services, the brief of Appellee the University of Akron, appellant's reply brief, the facts of this matter, R.C. § 4141.282 and other applicable law. Upon due consideration, and upon a finding that the UCRC's decision was not unlawful, unreasonable or against the manifest weight of the evidence, the court AFFIRMS the decision of the UCRC that appellant quit her employment without just cause. The court's decision is discussed in greater detail below.

## STATEMENT OF CASE AND LAW

### I. Statement of Facts and Legal Arguments

#### A. Statement of Facts

Appellant began working as a lecturer for the University of Akron in the fall of 2007. Initially, appellant worked as a part-time lecturer. In 2010, she worked full-time and this contract was extended to the Spring 2011 semester. In 2011, appellant's direct supervisor, Dr. Kathryn Feltey, sent an e-mail to appellant and other employees asking them what courses they would like to teach in the 2012 spring semester, beginning in January 2012. Appellant sent an e-mail back identifying four courses she wanted to teach. Dr. Feltey e-mailed back that appellant would only be able to teach two courses, including Introduction to Women's Studies. Appellant did not accept or refuse the offer to teach the two courses. Rather, she requested a meeting with Dr. Feltey to discuss what appellant perceived to be unfair treatment.

On November 11, 2011, Dr. Feltey and Dr. Matthew Lee met with the appellant. During the meeting, Dr. Feltey repeatedly asked appellant if she would teach the two courses. Appellant refused to answer because she wanted a full-time teaching schedule. Dr. Matthew Lee also participated in the meeting and tried to obtain a response from the appellant about teaching the two offered courses. Appellant continued to refuse to accept or reject the offer. Dr. Feltey finally told appellant that if she did not tell them whether she was going to teach the two courses, Dr. Feltey would assume that she was not interested in the courses.

Appellant then asked Dr. Feltey if she was “letting her go.” The parties dispute how Dr. Feltey responded to this question. Appellant claims that Dr. Feltey initially stated that she was going to let her go, then rephrased her response by stating that her current contract would end in December and she would not be re-hired. Dr. Feltey claims that she told the appellant that, if she did not respond, Dr. Feltey would not renew her contract. The meeting ended. It is undisputed that the appellant never accepted the two courses that were being offered to her in the Spring of 2012. Appellant finished the Fall semester, which ended December 11, 2011, and did not return to work in the Spring semester of 2012.

Appellant filed for unemployment benefits. On December 30, 2011, the Ohio Department of Job & Family Services (“ODJFS”) issued a determination finding that appellant was totally unemployed from the University of Akron due to lack of work. The determination further indicated that the appellant had a “contract or reasonable assurance of employment . . . for the next academic year” and was therefore ineligible for benefits from December 11, 2011 to January 7, 2012.

On January 19, 2012, appellant appealed the second part of the December 30<sup>th</sup> determination. On February 2, 2012, ODJFS issued a redetermination finding that claimant was unemployed from the University of Akron due to lack of work beginning December 10, 2011, and that she was temporarily unemployed due to a customary vacation period or holiday recess effective December 11, 2011 to January 2012.

On February 23, 2012, the University of Akron filed an appeal from the redetermination. On February 27, 2012, ODJFS transferred the case to the UCRC on the following issues:

\* Is the claimant entitled to benefits for a week claimed between academic years or terms or during a vacation period or holiday recess?

\* Was the claimant separated from employment due to lack of work?

A hearing was held by telephone on March 13, 2012. The hearing officer issued a decision on March 23, 2012. The hearing officer determined that appellant quit her employment with the University of Akron without just cause.

On April 11, 2012, appellant filed a request for review. The request for review was disallowed on May 17, 2012. Appellant filed a timely appeal with this court on June 15, 2012.

#### **B. Appellant's Brief**

Appellant filed her brief on October 10, 2012. Appellant has assigned the following errors to the review commission's denial of her unemployment benefits:

- 1) The decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence because the manifest weight of the evidence shows that the University of Akron did not give claimant reasonable assurance of continued employment.
- 2) The decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence because the manifest weight of the evidence shows that the University declined to give reasonable assurance of continued employment because the claimant's complaint about discrimination, such that claimant's employment was terminated without just cause.
- 3) The decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence because the dramatic reduction in work and pay, and the contingent nature of the offer, was a reasonable basis for claimant to reject the offer, such that the denial of benefits. [*sic*]

Appellant argues that the UCRC's decision was against the manifest weight of the evidence. Appellant argues that the manifest weight of the evidence shows that the University of Akron did not give claimant reasonable assurance of continued employment. Appellant seems to argue that, because she did not verbally refuse the offer of two classes in the Spring semester, the hearing officer should have found that the University of Akron did not give her reasonable assurance of continued employment and awarded unemployment benefits on that basis.

Appellant also argues that she was terminated without just cause. Appellant argues that the University of Akron retaliated against her because she voiced a concern regarding age discrimination. Appellant contends that the University of Akron did not give her a reasonable assurance of continued employment because she complained regarding age discrimination.

Finally, appellant argues that the dramatic reduction in work and pay and the contingent nature of the university's offer gave her a reasonable basis for rejecting the offer. Appellant does not concede that she rejected the university's offer. However, she argues that if her refusal to accept the two courses is construed as a rejection, she was justified in rejecting it. Appellant represents that she worked full time in Fall 2010, Spring 2011 and Fall 2011. The offer for Spring 2012 was, at best, a decline of 50% of her normal work load. Appellant cites other Ohio case law indicating that a dramatic reduction in hours/wages can give just cause to an employee for leaving employment. See *Bethlenfalvy v. ODJFS*, 8<sup>th</sup> Dist. No. 84773, 2005-Ohio-2612, 2005 Ohio App. LEXIS 2484; *Bainbridge Township v. Stellato*, 11<sup>th</sup> Dist. No. 95-G-1936, 1996 WL 200594 (March 8, 1996); *Doney v. Board of Employment Services*, 5<sup>th</sup> Dist. No. CA-

1540, 1981 WL 6580 (December 10, 1981). Appellant requests that this court reverse the decision of the review commission and direct the commission to rescind the finding of overpayment and order payment of benefits to appellant.

**C. Appellee Brief filed by the Ohio Department of Job & Family Services**

The director of the ODJFS filed a brief on November 5, 2012. The ODJFS argues that the decision of the commission was not unlawful, unreasonable or against the manifest weight of the evidence. The ODJFS argues that the facts support the commission's decision that appellant quit her job. Appellant was offered two jobs and refused to tell Dr. Feltey whether she was accepting them or not.

The ODJFS also argues that the appellant has misconstrued the law on "just cause." The ODJFS cites R.C. 4141.29(D)(2)(a) which provides that an individual cannot receive benefits if she "quit work without just cause. . ." The ODJFS contends that "just cause" is defined by the courts as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board*, 19 Ohio St.3d 15 (1985). The ODJFS argues that an ordinary person would not have refused to respond to the University's offer to teach two courses. The ODJFS points out that the Unemployment Compensation Act was designed to assist those who are unfortunate enough to be without employment through no fault of their own. *Nunamaker v. U.S. Steel Corp.*, 2 Ohio St.2d 55 (1965).

The ODJFS represents that the appellant began as a part-time lecturer for the university and taught in several different disciplines. She only taught on a full-time basis for three semesters. The only employment available for anyone in Women's Studies during Spring 2012 was part-time. Considering the facts of this case, the

ODJFS argues that it was not against the manifest weight of the evidence for the hearing officer to determine that the appellant quit her job without just cause. The ODJFS argues that the court must affirm the decision of the review commission in this case.

**D. Appellee Brief of the University of Akron and Motion to Strike**

On November 13, 2012, the University of Akron filed a brief and a motion to strike. The university argues that the appellant's assigned errors related to reasonable assurance of employment are irrelevant. The university argues that the issue of benefits between academic terms is not at issue in the present case. The university argues that the issue before the court is whether the UCRC's determination that appellant quit her employment without just cause is supported by the evidence in the record.

As to appellant's second assignment of error, the university argues that appellant's own testimony establishes that she refused to accept or reject the offer of employment. Because appellant refused to respond at all, the university argues that Dr. Feltey's interpretation of appellant's behavior and her conclusion that appellant was not interested in teaching in the Spring 2012 semester was reasonable. The university argues that this court must defer to the UCRC's decision.

As to the appellant's third assignment of error, the university argues that the appellant cannot argue that she did not quit but then argue that she quit with just cause. The university argues that it is irrelevant whether the nature of the offer of continued employment constituted a basis for appellant to reject the offer. The university argues that the appellant refused to reject the offer and cannot now argue that she had a reasonable basis for rejecting it.

The university also moves the court to strike Exhibit 11 attached to appellant's brief because it is not a part of the certified record provided by the UCRC and cannot be considered by the court.

**E. Appellant's Reply Brief**

With regard to the university's motion to strike, the appellant argues that Exhibit 11 merely attaches a section of the administrative code and should not be struck from the record. The court agrees. This attachment is inconsequential in this court's review of the hearing officer's decision. The court sees no reason to strike this section of the administrative code from the appellant's pleadings.

In response to the appellee's substantive arguments, appellant mostly repeats the arguments submitted in her initial brief. She argues that the university previously argued that appellant had been given a reasonable assurance of employment. She argues that the university should not be permitted to argue that this is irrelevant now. However, she further argues that, even though the university argued that it had given her reasonable assurance of continued employment, it had not. As support, appellant cites the university's response of "n/a" to a fact finding questionnaire which asked whether "claimant has reasonable assurance of employment in the next ensuing school year or term?"

She next argues that the determination that she quit was against the manifest weight of the evidence. Appellant characterizes the series of events differently than the appellees. Appellant argues that she did not quit but that Dr. Feltey decided not to make work available to her. Appellant claims that she never had an opportunity to respond to the offer of employment after she asked whether Dr. Feltey was letting her go.

Finally, appellant argues that Dr. Feltey's decision to offer no classes to appellant does not constitute just cause for terminating her employment. Appellant argues that this is a classic case of lack of work and that she is entitled to unemployment benefits. Appellant argues that the reason she was not given any assurance of continued employment is because the university was retaliating against her for asking questions regarding age discrimination. She also argues that if she did quit, the court should consider the dramatic reduction in her work as a substantial factor which the court may consider in determining just cause.

## **II. Standard of Review and Analysis**

### **A. Standard of Review**

R.C. 4141.282(H) provides that a court of common pleas "shall hear the appeal" from a decision of the review commission, and "shall affirm the decision of the commission, unless the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." When considering a decision by the review commission, "every reasonable presumption must be made in favor of the decision and the findings of facts of the review commission." *Upton v. Rapid Mailing Servs.*, 9<sup>th</sup> Dist. No. 21714, 2004-Ohio-966, 2004 Ohio App. LEXIS 846, quoting *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988). In addition, "if the evidence is susceptible of more than one construction, the court must give it that interpretation which is consistent with the [UCRC's findings], most favorable to sustaining the [UCRC's decision]." *Upton*, supra at ¶ 11, citing *Karches*, 38 Ohio St.3d at 19.

Because the resolution of factual questions falls under the review commission's scope of review, this court's role is to determine whether the decision of the review commission is supported by evidence in the certified record." *Ro-Mai Industries v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, Ohio App. LEXIS 262 (9<sup>th</sup> Dist.), citing *Durgan v. Ohio Bur. Of Emp. Servs.*, 110 Ohio App.3d 545, 1996 Ohio App. LEXIS 1658 (9<sup>th</sup> Dist.1996). If such support is found, then the reviewing court may not substitute its judgment for the judgment made by the review commission. *Id.* "The fact that reasonable minds might reach different conclusions is not a basis for reversal." *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985)

Under R.C. 4141.29, a party is entitled to unemployment compensation benefits if she "quits with just cause or is discharged without just cause." *Upton*, supra ¶13. The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work. *Irvine*, 19 Ohio St.3d at 17, citing *Shannon v. Bur. of Unemp. Comp.*, 155 Ohio St. 53 (1951). Although, "just cause" has not been clearly defined, "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." *Id.*, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 1975 Ohio App. LEXIS 5735 (10<sup>th</sup> Dist. 1975). Finally, "the determination of whether an employer had just cause to terminate an employee is a factual question primarily within the province of the UCRC, and one which reviewing courts are precluded from inquiring into during these administrative appeals." *Summit Cty. Fiscal Office v. Wood*, 9<sup>th</sup> Dist. No. 23982, 2008-Ohio-2159, 2008 Ohio App. LEXIS 1856.

## **B. Analysis**

In the present case, a hearing was conducted and appellant had an opportunity to present the facts, as she understood them. The court has reviewed the record, including the transcript from the hearing. Following the hearing, the hearing officer made findings of facts and determined that appellant quit her employment without just cause. This finding is supported by the evidence in the record.

The appellant's first two assignments of error are related to an assurance of continued employment with the university. For purposes of the present appeal, whether or not the university gave appellant assurances of continued employment are irrelevant. Under R.C. § 4141.29(I)(1)(a), a determination of reasonable assurance of employment relates to benefits between terms at an institute of higher education. When the UCRC ultimately determined that appellant quit her job without just cause, the question of whether she had a reasonable assurance of continued employment became irrelevant, especially for purposes of this court's review, which is limited. This court must determine only whether the UCRC's decision is unlawful, unreasonable, or against the manifest weight of the evidence. Upon review of the record, the court determines that the UCRC's decision that appellant quit her employment without just cause was supported by the evidence in the record.

The essential facts of this case are not in dispute. Appellant began her employment with the university as a part-time lecturer in 2007. She was given the opportunity to work full time for three semesters. Prior to the Spring 2012 semester, appellant was informed that she would not be given another full-time contract. Dr. Feltey asked appellant which courses she would like to teach. Dr. Feltey told appellant that only

two of the courses were available. Appellant refused to accept or reject the offer of two courses. Because of this refusal to respond, Dr. Feltey told appellant that she was going to assume that appellant did not want to teach the courses. Appellant never expressed acceptance of the offer to teach the two courses.

The ODJFS and the university argue that appellant's refusal to accept or reject the two courses should be interpreted as appellant quitting her employment without just cause. The appellant argues that her conduct should be construed as either being terminated without just cause or quitting with just cause, thereby entitling her to unemployment compensation. As stated above, this court's review is limited to determining whether the decision of the UCRC is supported by evidence in the certified record. It is. Even if this court's interpretation of the facts were different – and it likely would have been – this court could not substitute its judgment for the judgment made by the UCRC. The fact that reasonable minds might reach different conclusions is not a basis for reversal. The appellant's third assignment of error lacks merit.

Upon due consideration of the record, the court finds that the UCRC's decision that appellant quit her employment without just cause is supported by the evidence in the record. The review commission's decision is not "unlawful, unreasonable, or against the manifest weight of the evidence." Accordingly, the court AFFIRMS the UCRC's decision.

### CONCLUSION

WHEREFORE, as stated above, after a review of all of the evidence and record, the court finds that the UCRC's determination in this matter was not unlawful,

unreasonable, or against the manifest weight of the evidence. WHEREFORE, the court AFFIRMS the UCRC's decision disallowing appellant's application for unemployment compensation.

This is a final appealable order and there is no just cause for delay.

IT IS SO ORDERED.

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JUDGE TOM PARKER

Pursuant to Civ.R. 58(B), the clerk of courts shall serve notice of this judgment and its date of entry upon all parties.

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JUDGE TOM PARKER

cc: Attorney Neil Bhagat  
Attorney Susan M. Sheffield  
Attorney Nancy E. Grim

CR:lcb  
12-3528