IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

ROBIN RUCKER WARD,	CASE NO.: 2011 CV 06121
Appellant,	JUDGE MARY WISEMAN
-vs-	**DECISION, ORDER AND ENTRY ON ADMINISTRATIVE APPEAL**
SYLVESTER PATTON, *et al.*,	**FINAL APPEALABLE ORDER**
Appellees.	

This matter is before the Court on Appellant Robin Rucker Ward's appeal from an Unemployment Compensation Review Commission hearing officer's decision that affirmed an earlier redetermination by the Director of the Ohio Department of Job and Family Services' ["ODJFS"] Office of Unemployment Compensation, denying unemployment compensation benefits to Appellant. The record before the Court includes a transcript of the administrative proceedings (*Transcript* ["*Tr.*"]), filed on September 30, 2011; *Plaintiff's Brief on Appeal* ["*Appellant's Brief*"], filed on September 24, 2012; the *Brief of Appellee, Director[,] Ohio Department of Job and Family Services* ["*ODFJS Brief*"], filed on September 27, 2012; and the *Brief of Appellee Places, Inc.* ["*Places, Inc. Brief*"], filed on October 15, 2012.

For the reasons that follow, the administrative decision denying Plaintiff unemployment compensation benefits (see *ODFJS Brief*, Exh. 1) is AFFIRMED.

FACTUAL & PROCEDURAL BACKGROUND/THE PARTIES' CLAIMS

From 1999 to 2010, Appellant worked as a residential aide for Appellee Places, Inc., an independent living facility for homeless clients with disabilities or substance dependency issues.

(*Tr.*, 6/9/11 hearing, pp. 9, 36). On October 21, 2010, Appellant submitted a letter of resignation, allegedly because she was "emotionally, mentally and physically stressed out." (*Id.*, pp. 9-10; see also *ODJFS Brief*, Exh. 2 (copy of 10/21/10 resignation letter)). Appellant testified at the administrative hearing that what she deemed continuing harassment by her supervisors "was destroying my health." (*Tr.*, 6/9/11 hearing, p. 10; see also *ODJFS Brief*, Exh. 2). She described that harassment as beginning in 2008, when Appellant was transferred to work in a building supervised by Wilma Woodfork, who "told me she knew how to get rid of people." (*Tr.*, 6/9/11 hearing, p. 11). Thereafter, according to Appellant, Ms. Woodfork on multiple occasions instructed Appellant to close a door behind Ms. Woodfork or others when they entered or left a room, even if it was more convenient for others to do so. (*Id.*, pp. 10-11; see also *Appellant's Brief*, p. 2).

Appellant also described an incident alleged to have occurred on September 2, 2010, when Appellant reported for her night shift and purportedly found the second shift worker, Jerome Daniels, "asleep on the job," "intoxicated as usual." (*Tr.*, 6/9/11 hearing, p. 12). Appellant claims that Daniels "threatened" her not to report that two clients had left while Daniels was asleep. (*Id.*). Appellant then called the emergency supervisor on call, to report that she felt that Mr. Daniels had made "a threat to my life . . . because he had previously told me he was from the penitentiary and his capabilities." (*Id.*, pp. 13, 14). According to Appellant, on September 24, 2010, she was disciplined by Woodfork, who told Appellant that she "should have never called [the] emergency supervisor," and that Daniels "can come back in the building anytime he want[s] to." (*Id.*, pp. 13, 14, 15). Woodfork "then proceeded to tell me to sign a document that I didn't agree with," because Appellant felt it didn't follow "protocol." (*Id.*, p. 14). Appellant testified that Woodfork "threatened me," "blocked the door, screaming at the top of her lungs," and told Appellant that Places, Inc. executive director Roy Craig, human resources representative Stacy Nolan, and supervisor Judith Patterson, "none of them would believe [Appellant]," they would believe Woodfork. (*Id.*, pp. 15-16).

Additionally, Appellant testified that Woodfork "repeatedly threatened" her with "insubordination" during a team meeting on October 25, 2010, after Appellant already had submitted her two week notice. (*Id.*). She stated that she waited nearly a month after the September incidents before giving notice of her resignation because "I was . . . reading the policy book of the required time, the required documents to be handed in to personnel." (*Id.*, p. 16). Although Appellant referred to another incident during which she allegedly felt harassed because a "certificate was awarded to all the staff [ex]cept me" (*id.*, p. 19; see also *Appellant's Brief*, pp. 2-3), the record from Appellant's hearing testimony indicates that such incident "actually happened after [Appellant] already decided she was quitting." (*Tr.*, 6/9/11 hearing, p. 19).

Asked about medical reasons underlying her resignation, Appellant stated that "there were sometimes chemicals throughout the year[s] . . . related to my asthma," but that her reason for resigning "was mainly stress." (*Id.*, p. 17). She then testified that she "even was rushed to emergency in 2008 after work because of the stress." (*Id.*).

A former Places, Inc. tenant, Derrick G. Flowers, testified that "on numerous occasions" in the four-plus years before he moved out in October 2009, he overheard Ms. Woodfork "screaming at" Appellant "about being insubordinate." (*Id.*, pp. 22-25). Ms. Woodfork testified that during her time as Appellant's supervisor, Appellant sometimes had expressed concerns about a lack of clarity in Ms. Woodfork's expectations, "or not feeling comfortable . . . discussing things with me." (*Id.*, p. 28). However, she denied ever shouting at Appellant or throwing anything during her conversations with Appellant. (*Id.*, p. 29). She also did not recall having disciplined Appellant for calling an emergency supervisor regarding Mr. Daniels. (*Id.*, pp. 29-32). She did admit, however, to having disciplined Appellant for tardiness, and possibly having denied Appellant vacation time. (*Id.*, pp. 32-34).

Places, Inc. executive director Craig testified that he received "a 10 or 12 page grievance" or complaint of harassment from Appellant during every year of her tenure there. (*Id.*, pp. 37, 40).

Appellant "filed a harassment or grievance claim against every supervisor in the chain of command at Places . . . beginning in 2001." (*Id.*). Appellant was transferred to Ms. Woodfork's supervision in 2008 after "five or six complaints against the supervisor" at her prior site, to give her a "little bit easier . . . workload." (*Id.*, p. 38). "[T]he last three or four" of Appellant's grievances "were typically things that had happened . . . at work with Ms. Woodfork or the way Ms. Patterson looked at her or those sorts of things." (*Id.*, p. 40). Although some of Appellant's complaints may have had "some substance," Mr. Craig found most to be "extremely superfluous." (*Id.*, p. 39).

Mr. Craig also testified that Places, Inc. accommodated some medical limitations affecting Appellant's ability to do her job following surgery in 2009, but he was not aware of any problems related to chemical fumes. (*Id.*, pp. 38-39).

Based on the testimony at that hearing as well as the rest of the administrative record, the hearing officer determined that Appellant "quit employment with Places, Inc. without just cause for the purposes of unemployment compensation benefits." (*ODJFS Brief*, Exh. 1, p. 4). Although the hearing officer found that Appellant "may have been unhappy with her supervisors . . . , based upon the evidence and testimony presented, it has not been shown that [Appellant's] dissatisfaction with her supervisors constituted just cause for her to quit . . ." (*Id.*).

In appealing from the Commission's final decision, Appellant argues that the "extreme levels of harassment" she allegedly experienced at the hands of her Places, Inc. supervisors created "an intolerable situation" that "amounted to a constructive discharge." (*Appellant's Brief*, pp. 1, 3). She cites as examples of such harassment an occasion when Ms. Woodfork denied Appellant permission to return home to change clothes after spilling coffee on herself at work (*id.*, p. 2); multiple occasions on which Ms. Woodfork "shamed and embarrassed" Appellant by making her close a door (*id.*); Ms. Woodfork revoking Appellant's 30 minute break, which was permitted for other employees (*id.*); being disciplined by Ms. Woodfork "for using the emergency system without just cause" after the September 2010 incident with Mr. Daniels (*id.*); being "intentionally alienated

and humiliated in front of the other employees" when Appellant was excluded from receiving a certificate awarded to other employees (*id.*, pp. 2-3); and having her requests for vacation time ignored or disallowed, unlike those of other employees. (*Id.*, p. 3).[1] She also claims to have been diagnosed with "Major Depressive Disorder, Severe w/o psychotic features" and "Panic Disorder w/o agoraphobia," allegedly "brought on by her work environment." (*Id.*, pp. 3-4). Appellant therefore asserts that she should receive unemployment compensation benefits, despite having resigned from her position at Places, Inc.

In opposing Appellant's appeal, ODJFS argues that the decision disallowing benefits to Appellant was not unlawful, unreasonable or against the manifest weight of the evidence, and thus should be affirmed. (*ODJFS Brief*, p. 1). Urging that Ohio statutory law does not provide for unemployment compensation benefits for those who quit a job without just cause, ODJFS maintains that the record supports the determination that Appellant in fact did quit without just cause. (*Id.*). Essentially echoing ODJFS's arguments, Appellee Places, Inc. also urges that the Commission's decision be affirmed. (*Places, Inc. Brief*).

LAW & ANALYSIS

Standard of Review on Appeals from Unemployment Compensation Review Commission

Pursuant to Ohio R.C. § 4141.282(A), any interested party may appeal a final decision of the Commission to an Ohio court of common pleas. In reviewing such decisions,

> 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.

R.C. § 4141.282(H).

[1] Significantly, the Court observes that not all examples of harassment advanced in Appellant's brief to this Court seem to be documented in the record before the administrative body below.

Because a reviewing court thus "may reverse the [Commission's] determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence," *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 697, 1995-Ohio-206, 653 N.E.2d 1207 (1995), that court may not make factual findings or determine witness credibility. *Irvine v. State Unemployment Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 18, 482 N.E.2d 587 (1985); see also *Tzangas*, 73 Ohio St. 3d at 696 (factual questions solely within Commission's province). Accordingly, a reviewing court may not reverse the Commission's decision simply because "reasonable minds might reach different conclusions." *Irvine*, 19 Ohio St. 3d at 18. Where there is "significant evidence to support both parties' arguments," the court may not disrupt a hearing officer's conclusions regarding witness credibility. See *David A. Bennett, D.D.S. v. Director, Ohio Dep't of Job & Family Servs.*, 10th Dist. No. 11AP-1029, 2012-Ohio-2327, ¶¶18-19.

Eligibility for Unemployment Compensation Benefits

According to the statute providing for unemployment compensation benefits, no individual may be paid such benefits if "[t]he individual quit work without just cause." R.C. § 4141.29(D)(2)(a). "The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case," and thus "is primarily within the province of" the Commission. *Irvine*, 19 Ohio St. 3d at 17. The Ohio Supreme Court there defined "just cause" as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Id.* The claimant bears the burden of establishing he or she had just cause for quitting a job. *Id.*

The plaintiff in *Irvine* quit her job on the advice of two doctors, after apprising her employer of her medical condition and physical limitations. See *id.* at 18. Nevertheless, the Ohio Supreme Court held as follows:

> an employee's voluntary resignation on the basis of health problems is without just cause within the meaning of R.C. 4141.29(D)(2)(a) when

> the employee is physically capable of maintaining a position of employment with the employer, but fails to carry her burden of proving that she inquired of her employer whether employment opportunities were available which conformed to her physical capabilities and same [*sic*] were not offered to her by the employer.

Id. at 19. As construed in later decisions, the *Irvine* holding means that "an ordinarily intelligent person with a health problem would not quit their employment without first notifying their employer of the problem and thus giving the employer an opportunity to make suitable arrangements." *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App. 3d 300, 307, 671 N.E.2d 1378 (10th Dist. 1996) (citing *Thake v. Unemployment Comp. Bd. of Review*, 67 Ohio App. 3d 503, 505-06, 587 N.E.2d 862 (11th Dist. 1990)). Accordingly, as a general rule, "employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment," and "those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore will not be entitled to unemployment benefits." *Id.*

Nevertheless, limited circumstances do exist when an employee should not be required to give an employer notice of a problem and an opportunity to solve it in order to maintain eligibility for unemployment compensation. *Id.* One such instance is when the employee is at immediate risk of physical harm. See *id.* at 307-08 (referring to employees "subjected to physical sexual harassment by [an] employer") (emphasis in original); see also *Taylor v. Board of Review*, 20 Ohio App. 3d 297, 299, 485 N.E.2d 827 (8th Dist. 1984) ("an employee has just cause to quit his job and is entitled to unemployment compensation 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").

Application of Relevant Law to Appellant's Claim

Here, the hearing officer for the Commission specifically found that Appellant "quit employment with Places, Inc. without just cause." (Exh. 1, p. 4). Under the standard of review applicable to this case, this Court cannot say that such decision is "unlawful, unreasonable, or against the manifest weight of the evidence." See R.C. § 4141.282(H); *Tzangas*, 73 Ohio St. 3d at 697.

Appellant's claimed entitlement to unemployment compensation benefits despite her admitted resignation from her job seems to rest on either of two theories: 1) that Appellant's working conditions were so intolerable as to amount to a constructive discharge; and/or 2) that Appellant was forced to quit due to medical problems caused by her supervisors' harassment. (See *Appellant's Brief*, pp. 3-4). The record evidence, however, supports neither such theory.

As Appellee Director aptly argues, Appellant has presented no objective evidence that any medical professional advised her prior to her resignation that she should quit her job. (See *ODFJS Brief*, p. 7). Contrary to Appellant's unsubstantiated contention that her "treating physician . . . suggested that she resign from work due to her health issues" (see *Appellant's Brief*, p. 3), what apparently is the only medical evidence of record consists of a letter dated after Appellant's resignation, in which Appellant's doctor refers to Appellant's "reactive airway disease and Sarcoidosis" as "being adversely affected by the chemicals she was being exposed to at her job." (*Tr.*, Review Commission File, p. 9, 11/17/10 letter from Angela C. Long-Prentice, M.D.). Although that letter further states that Appellant was "here today stating she has resigned related to the stress associated with her problems related to the job," the letter nowhere suggests that Dr. Long-Prentice advised Appellant to resign for stress-related reasons. (See *id.*). Instead, Dr. Long-Prentice opines only that "removing herself from exposure to [ ] chemicals would be best" for Appellant's medical condition. (See *id.*).

Limited to that medical evidence, this Court has no basis for disrupting the Commission's conclusion that the record does not support Appellant's contention that "harassment from her

supervisors caused health concerns that led to [Appellant's deci]sion to quit." (See *ODJFS Brief*, Exh. 1, p. 4). This Court is constrained to defer to the Commission's credibility determinations. See *Irvine*, 19 Ohio St. 3d at 18; *Bennett, D.D.S.*, 2012-Ohio-2327, ¶¶18-19. Moreover, the record is devoid of evidence that Appellant provided Places, Inc. with notice of any health concerns purportedly affecting her ability to perform her job, thereby "giving the employer an opportunity to make suitable arrangements." See *DiGiannantoni*, 109 Ohio App. 3d at 307. Executive director Craig's testimony that Places, Inc. had accommodated medical limitations that Appellant previously made known to her employer (see *Tr.*, 6/9/11 hearing, pp. 38-39) underscores the possibility that such notice on this occasion might have achieved a similar result. Absent such notice, the Commission justifiably concluded that Appellant had "quit without just cause" and "therefore [was] not [ ] entitled to unemployment benefits." See *id.*

Additionally, Appellant has not demonstrated that her circumstances present the rare exception where an employee should not be required to give an employer notice of a problem and an opportunity to solve it before quitting. See *DiGiannantoni*, 109 Ohio App. 3d at 307-08; *Thake*, 67 Ohio App. 3d at 505-06; *Taylor*, 20 Ohio App. 3d at 299. Appellant's allusion to "a threat to my life" by fellow employee Jerome Daniels (see *Tr.*, 6/9/11 hearing, pp. 13, 14) does not change this result. In the first instance, Appellant did not claim in her resignation letter (see *ODJFS Brief*, Exh. 2) to have quit due to a fear of threatened physical harm. Instead, Appellant very clearly attributed her resignation to the alleged "Harrassive Behaviors" of her supervisors, Ms. Woodfork and Ms. Patterson. (See *id.*). Moreover, the Court concludes that no evidence in the record would substantiate a reasonable fear of imminent danger on Appellant's part. See *Taylor*, 20 Ohio App. 3d at 299. To support her claim that Mr. Daniels had threatened her life, Appellant cited only her claim that Daniels "had previously told [Appellant] he was from the penitentiary and his capabilities." (*Tr.*, 6/9/11 hearing, p. 13). Such past statements, even if assumed to have been made as claimed, could not reasonably be construed as an imminent threat on Appellant's life. The fact

that Appellant thereafter remained at Places, Inc. for two more months, apparently without any further confrontation with Mr. Daniels, bolsters that conclusion.

Finally, this Court is not persuaded by Appellant's "constructive discharge" argument. Although the three decisions cited by Appellant (see *Appellant's Brief*, pp. 3-4) may demonstrate that the concept of constructive discharge is widely accepted in the context of employment discrimination claims, none of those cases stands for the proposition that an allegation of "constructive discharge" warrants an award of Ohio unemployment compensation benefits. See *Pennsylvania State Police v. Suders*, 542 U.S. 129, 124 S. Ct. 23432 (2004); *Wilson v. Firestone Tire & Rubber Co.*, 932 F.2d 510, 515 (6th Cir. 1991); *Mauzy v. Kelly Servs., Inc.*, 75 Ohio St. 3d 578, 1996-Ohio-265, 664 N.E.2d 1272. Rather, the proper standard for determining a claimant's entitlement to unemployment benefits in this state is whether "[t]he individual quit work without just cause," R.C. § 4141.29(D)(2)(a) -- precisely the standard applied by the Commission's hearing officer in deciding Appellant's application. (See *ODJFS Brief*, Exh. 2). Although evidence sufficient to support a finding of constructive discharge in the employment discrimination context might well support a finding of "just cause" for quitting a job as to an unemployment compensation claim, the Commission did not err by failing to conduct a separate "constructive discharge" analysis. Accordingly, the Court finds no error in the hearing officer's factual or legal analysis.

Because the Director's conclusion that Appellant did not prove that she resigned for just cause is not "unlawful, unreasonable, or against the manifest weight of the evidence," that decision must be affirmed. See R.C. § 4141.282(H); *Tzangas*, 73 Ohio St. 3d at 697.

CONCLUSION

Based on the Commission hearing officer's credibility determinations as well as the other reasons set forth above, this Court determines that Appellee Director's final decision affirming the denial of Appellant's unemployment compensation claim is not unlawful, unreasonable, or against

the manifest weight of the evidence as contemplated by R.C. § 4141.282(H). Accordingly, the Director's decision is AFFIRMED.

THIS IS A FINAL APPEALABLE ORDER UNDER CIV.R. 58. PURSUANT TO APP.R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE MARY WISEMAN

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