

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

BRADLEY E. AYTCH,	:	
	:	
Appellant,	:	
	:	Case No. 12CVF-01-930
vs.	:	
	:	(JUDGE BROWN)
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES, ET AL.,	:	
	:	
Appellees.	:	

FINAL JUDGMENT ENTRY AFFIRMING THE ORDER OF THE DIRECTOR OF THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Introduction

Mr. Aytch, appellant, was employed by Boehringer Ingelheim Roxane from May 18, 2010 to July 22, 2011. Mr. Aytch was employed as a Production Technician. In May 2011, Mr. Aytch became agitated at work and used profane language toward a fellow employee. The employer informed Mr. Aytch his conduct was not appropriate in their workplace.

Mr. Aytch again used inappropriate language at work on July 16, 2011. On that day, Mr. Aytch was being trained by Mr. Moss. Mr. Aytch became upset and when Mr. Moss tried to break off the conversation with Mr. Aytch, Mr. Aytch followed Mr. Moss as he tried to walk away. Mr. Aytch followed him, yelling and cursing at him. At some point, Mr. Aytch called Mr. Moss an “asshole.”

Mr. Moss and others complained to management about Mr. Aytch’s behavior. Mr. Aytch was discharged from employment on July, 22, 2011.

Mr. Aytch filed for unemployment benefits. On September 26, 2011 Mr. Aytch was allowed benefits beginning July 24, 2011. That determination of eligibility found that Mr. Aytch was terminated by Boehringer Ingelheim Roxane without just cause.

The employer appealed that determination. Upon appeal, a full hearing was held before Hearing Officer Lucy M. Trent. Mr. Aytch did not participate in the hearing despite proper notice. The Hearing Officer found the facts as stated above. Hearing Officer Trent determined that the facts constituted just cause for the employer to have terminated Mr. Aytch's employment. Mr. Aytch filed a request for review with the State of Ohio Unemployment Review Commission which was disallowed. A copy of that Decision was mailed to Mr. Aytch on January 4, 2012.

From that Decision, Mr. Aytch has filed this appeal.

Mr. Aytch did not file a traditional brief in this matter. Instead, Mr. Aytch submitted a two (2) page document. That document takes issue with the factual findings of Hearing Office Trent. Mr. Aytch sharply disputes the facts presented at the hearing before the Hearing Officer. However the court, as explained below, cannot make factual findings and must affirm the Decision below if there is some competent, credible evidence in the record that supports the findings of fact contained within the Decision. The court has examined the record below and finds there is competent, credible evidence supporting the Hearing Officer's factual findings. The court will not disturb those findings on appeal.

Standard of Review and Applicable Law

In *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, the Ohio Supreme Court set forth the law that applies to this case. The Court stated:

“R.C. 4141.29 sets forth the eligibility and qualifications for unemployment benefits:

{¶ 15} “(D) * * * [N]o individual may serve a waiting period or be paid benefits under the following conditions:

{¶ 16} “* * *

{¶ 17} “(2) For the duration of the individual’s unemployment if the director finds that:

{¶ 18} “(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual’s work * * *.”

{¶ 19} R.C. 4141.46 provides that R.C. 4141.01 through 4141.46 is to be liberally construed.

{¶ 20} The Unemployment Compensation Review Commission’s determination of whether a claimant was discharged with just cause is appealable to the court of common pleas: “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). This limited standard of review applies to all appellate courts. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 OBR 12, 482 N.E.2d 587. Thus, a reviewing court may not make factual findings or determine a witness’s credibility and must affirm the commission’s finding if some competent, credible evidence in the record supports it. *Id.* In other words, a reviewing court may not reverse the commission’s decision simply because “reasonable minds might reach different conclusions.” *Id.*

B. Just Cause

{¶ 22} Although it is not defined by statute, we have stated that “just cause” is “‘that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.’ ” *Irvine*, 19 Ohio St.3d at 17, 19 OBR 12, 482 N.E.2d 587, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 335 N.E.2d 751. The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts.*

v. Jennings (1991), 58 Ohio St.3d 206, 207, 569 N.E.2d 489. “[W]hat 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 reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis sic.) Irvine at 17, quoting Leach v. Republic Steel Corp. (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 199 N.E.2d 3.

{¶ 23} However, we have cautioned, “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.” Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs. (1995), 73 Ohio St.3d 694, 697-698, 653 N.E.2d 1207.

{¶ 24} Fault on an employee’s part is an essential component of a just cause termination. Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer’s instructions. Id. at 698. Unsuitability for a position constitutes fault sufficient to support a just cause discharge. “An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.” Id. at paragraph four of syllabus.” The Court looked to, “the purpose of the Unemployment Compensation Act.” And found that “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.” Salzl v. Gibson Greeting Cards, Inc. (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 399 N.E.2d 76.“

Discussion

The court has reviewed the record in this matter. The Hearing Officer found the facts as outlined in this introduction after conducting a hearing in this matter. Those findings are supported by competent, credible evidence developed during the hearing.

Significantly, although Mr. Aytch did not attend the hearing before Hearing Officer Trent, the evidence did fairly represent that Mr. Aytch had denied either following Mr. Moss or using profane language toward him. (Tr. P. 8)

However, the Hearing Officer had evidence that Mr. Aytch's denial was inconsistent with other evidence presented at the hearing. For instance, Melissa Schrieber had reports from employees other than Mr. Moss which corroborated Mr. Moss' recollection that he attempted to walk away from Mr. Aytch who pursued him and cursed at him. (See, Tr. P. 7 & 11). Thus, Hearing Officer Trent made a credibility determination which resolved the facts against Mr. Aytch's denials. This court can not disturb Hearing Officer Trent's implicit credibility determination. *Irvine*, supra.

Additionally, Hearing Officer Trent examined the employer's workplace policy prohibiting violence in the workplace. The Hearing Officer found that policy was reasonable and was fairly enforced against Mr. Aytch. The Hearing Officer found that the violation of the employer's explicit workplace policy established just cause for terminating Mr. Aytch's employment.

The court agrees. Mr. Aytch's conduct makes him directly responsible for his termination. (See, *Tzangas*, supra) Economic forces over which Mr. Aytch had no control did not cause him to lose his job: Mr. Aytch had it within his control to abide by workplace rules or violate those rules. When he chose to not control his workplace conduct, he acted at his own peril. 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 reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.' " (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 199 N.E.2d 3. The purpose of the act would be frustrated by allowing an at fault employee, such as Mr. Aytch, to participate in a fund reserved for employees who faultlessly find themselves jobless.

The Order of the Ohio Department of Job and Family Services is supported by reliable, probative and substantial findings of fact. The Order is lawful as Mr. Aytch was fired for just cause in relation to the legitimate expectations of his employer and the decision is both reasonable and based on the manifest weight of the evidence in the record.

The Order of the Ohio Department of Job and Family Services is **AFFIRMED** in all respects.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 01-23-2013
Case Title: BRADLEY E AYTCH -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRE
Case Number: 12CV000930
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the inner edge, and "ALL THINGS ARE POSSIBLE" at the bottom. The signature is a stylized, cursive "KRB".

/s/ Judge Kim Brown

Court Disposition

Case Number: 12CV000930

Case Style: BRADLEY E AYTCH -VS- OHIO STATE DEPT JOB
FAMILY SERVICES DIRE

Case Terminated: 06 - Court Trial