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IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

William L. Barnum, et al.	:	Case No. 2012-CV-0417
Plaintiff, Appellee	:	Judge Tygh M. Tone
VS.	:	JUDGMENT ENTRY
Kyklos Bearing International, Inc.	:	
Defendant, Appellant	:	

OHIO ATTORNEY
GENERAL'S OFFICE
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APR 4 2013

TOLEDO, OHIO

This matter is before the Court on Appellant's administrative appeal from the Ohio Unemployment Compensation Review Commission's May 23, 2012 decision, denying Appellant's Request for Review of the Unemployment Compensation Review Commission's March 6, 2012 Decision granting unemployment benefits to Appellee. This Court **AFFIRMS** the Decision of the Ohio Unemployment Compensation Review Commission.

STATEMENT OF THE CASE

Appellee William L. Barnum [hereinafter Barnum] claim for benefits was approved initially and on redetermination. Appellant Kyklos Bearing International, Inc. [hereinafter KBI] appealed such decision. The Hearing Officer for the Review Commissioner affirmed the redetermination and ruled that Barnum was terminated without just cause. KBI's request for a final administrative review was denied. KBI filed this administrative appeal.

STATEMENT OF THE FACTS

Barnum was terminated from his employment at KBI for exposing himself to coworker Stephanie Gomez in November 2011. Such conduct violated KBI's workplace policies. Allegedly, Barnum exposed himself to Ms. Gomez in the break area in which Ms. Gomez was assigned to collect the trash. Ms. Gomez reported the incident to her coworker Ms. Kerl. Further, the incident was reported to supervisor Jeffrey Gross. Neither Ms. Kerl nor Mr. Gross had firsthand knowledge of the incident.

The two witnesses testifying at the March 5, 2012 administrative hearing were Barnum and Gary Smith, KBI's labor-relations supervisor. Gary Smith did not have firsthand knowledge of the incident, but presented affidavits, emails, and a written statement. Stephanie Gomez stated in her affidavit:

1. On November 10, 2011, I observed Mr. Barnum, while at work, performing an immoral and indecent sexual act involving his genitals.
2. After observing the above I was extremely scared, upset, crying and shaking.

Further, Alisha Hopfinger stated in her affidavit:

1. In and around June 2010 Mr. Barnum, while at work, touched me, sexually, without my consent.
2. In and around June 2010 Mr. Barnum, while at work, spoke to me, sexually, without my consent.
3. In and around June 2010 Mr. Barnum, while at work, performed sexual gestures towards me, without my consent.
4. Each of the above was immoral and indecent conduct, on behalf of Mr. Barnum, in my opinion.

Throughout the entire case, Barnum denied any conduct regarding Ms. Gomez. Further, Barnum testified that his dealings with Ms. Hopfinger were welcomed and in the open public.

Further, while Mr. Smith attempted to introduce testimony regarding materials discovered in Barnum's locker, the Hearing Officer excluded such material based upon relevancy.

The Hearing Officer, finding Barnum's testimony to be more credible, concluded that Barnum was terminated without just cause.

ARGUMENTS

Appellant's Argument

Appellant argues that the Unemployment Compensation Review Commission's March 6, 2012 decision as well as the decision to disallow a request for review are unlawful, unreasonable, and/or against the manifest weight of the evidence. Appellant asserts that the record clearly establishes that Barnum was terminated from his employment for just cause. While Appellant introduced two affidavits, a statement reduced to writing by Appellant made by the female co-worker and a statement from a co-worker who first spoke to Ms. Gomez as well as attempted to introduce corroborating evidence that Barnum had sexually explicit materials in his locker, the only contrary evidence produced by Appellee was his self-serving testimony.

Further, the materials in Barnum's locker are relevant as they corroborate prior incidents and gives perspective and support for Appellant's decision to terminate Barnum.

Thus, the Hearing Officer's decision was unlawful as discharge for just cause includes Barnum violating an employer's policy. Here, the record shows that Barnum violated KBI's Diversity Policy and Shop Rule 36.

Appellees' Argument

Appellee argues that the administrative Hearing Officer decision that Barnum was terminated without just cause due to finding Barnum's in-person testimony more credible than the evidence and testimony presented by Appellant was not unlawful, unreasonable or against the manifest weight of the evidence. Barnum appeared in person at the hearing and testified that his dealings with Ms. Hopfinger were welcomed. Also, Barnum denied Ms. Gomez's accusations. Appellant only produced the firsthand knowledge of Ms. Hopfinger and Ms. Gomez via affidavits. Mr. Smith did not have firsthand knowledge of either incident. This Court should defer to the administrative Hearing Officer for factual questions that concern the credibility of witnesses.

Further, the testimony regarding the materials in Barnum's locker was properly excluded from the hearing. The hearing officer must exclude irrelevant evidence pursuant to R.C. 4141.282(C)(2). These materials, even if sexual in nature, are not relevant as they do not raise the probability that Barnum committed the alleged act, does not establish a habit, does not involve bad acts, does not pertain to motive, and is not consistent with his alleged act. Also, even if such material was relevant, the omission of such evidence was not prejudicial as Appellant fails to show that such testimony would have changed the Hearing Officer's decision.

STANDARD OF REVIEW

The standard of review for the Common Pleas Court when considering appeals of decisions rendered by the Review Commission is set forth in R.C. 4141.282(H):

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.

The determination of just cause is a factual question and thus “is primarily within the province of the referee and board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence.” *Irvin v. Unemp. Comp. Bd. Of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). “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.” *Williams v. Ohio Department of Job and Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶20. As a court of limited power, this Court cannot reverse the Review Commission’s decision simply because reasonable minds might reach different conclusions. *Irvin* at 18.

ANALYSIS

This Court, sitting as a reviewing court, may not make factual findings or determine a witness’s credibility. While Barnum testified in person at the March 5, 2012 hearing, neither Ms. Hopfinger nor Ms. Gomez were present at the hearing. The Hearing Officer found that “claimant’s firsthand testimony is more credible than the hearsay testimony presented by the employer.” Further, the determination of just cause is a factual question for the Hearing Officer. Here, the Hearing Officer found:

Claimant was verbally spoken to about his sexually oriented behavior with another employee in June, 2010; however, he was not formally disciplined therefor. While more sexually oriented allegations were leveled against claimant in November, 2011, the claimant provided firsthand testimony denying the allegations. The Hearing Officer finds that the allegations, if true, would justify claimant’s discharge. However, the Hearing Officer finds that insufficient evidence has been presented to establish the allegations to be true.

Based upon the foregoing, competent, credible evidence in the record supports the reasoning by the Hearing Officer that KBI discharged Barnum without just cause in connection with work. Although reasonable minds may reach different conclusions, the Hearing Officer's determination was not unlawful, unreasonable, or against the manifest weight of the evidence. Thus, this Court cannot reverse the Review Commission's decision.

Further, the Hearing Officer properly excluded testimony regarding the materials found in Barnum's locker. As set forth in R.C. 4141.282(C)(2), the Hearing Officer must exclude evidence that is not relevant. Here, the Hearing Officer "ruled that this evidence was not relevant to this case as claimant was already discharged when his personal items in his locker were discovered." This Court agrees that such evidence would not have made it more likely or not that Barnum violated KBI's workplace policy by exposing himself to Ms. Gomez.

CONCLUSION

The decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. The Hearing Officer's determination that KBI discharged Barnum without just cause is based upon competent, credible evidence. Further, the Hearing Officer properly excluded testimony regarding the personal items discovered in Barnum's locker after he was discharged as being irrelevant as to whether or not Barnum was terminated without just cause.

JUDGMENT ENTRY

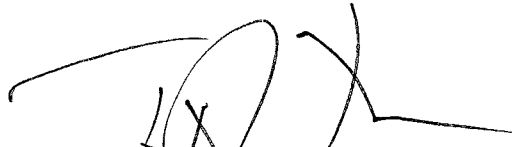
IT IS ORDERED that William Barnum, Appellee, is entitled to and eligible to receive unemployment compensation benefits.

IT IS ORDERED that the decision of the Unemployment Compensation Review Commission is **AFFIRMED**.

It is further **ORDERED** that there is no just reason for delay pursuant to Civil Rule 54(B).

IT IS SO ORDERED

3/27/13
Date



Judge Tygh M. Yone

cc: E. Baum, esq.
A. Wilhelms, esq.