

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NICOLE L. DZIENGELEWSKI,	:	
	:	
Appellant,	:	CASE NO. 13CVF-2296
	:	
vs.	:	JUDGE BEATTY
	:	
KNOX COUNTY BOARD OF EDUCATION,	:	
<i>et al.</i> ,	:	
	:	
Appellees.	:	

**DECISION AND JUDGMENT ENTRY**  
**AFFIRMING THE DECISION OF**  
**THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**  
**AND**  
**NOTICE OF FINAL APPEALABLE ORDER**

**CRAWFORD, JUDGE**

This is an appeal pursuant to R.C. 4141.282 from the January 30, 2013 Decision of the Unemployment Compensation Review Commission (the "Commission").

**I. FACTS**

Appellant Nicole L. Dziengelewski was employed by Appellee Knox County Board of Education (the "Employer") as a preschool special education teacher until August 31, 2012. Appellant then applied for unemployment compensation benefits.

On November 27, 2012, a hearing was held before a Hearing Officer of the Commission. The parties appeared and presented evidence. The Employer presented the testimony of Heather Darnold, School Treasurer, and Jennifer Highnam, Preschool Supervisor. Appellant testified.

Ms. Darnold testified that Appellant started her employment as a preschool special education teacher in August, 2009. (T. 5.) Appellant was hired with a temporary

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certification, and was required to obtain a permanent license to retain her position. (T. 9.) Ms. Darnold testified that the reason for separation from employment was that Appellant failed to obtain a permanent license. (T. 5.) Appellant had worked under a temporary license that expired on June 30, 2012. (T. 14.) Ms. Darnold stated that Appellant was required to obtain a permanent license by that date, but failed to pass the examination required to obtain the license. (T. 6.) Ms. Darnold testified that the Employer wanted to renew Appellant's contract, but could not do so because she had not obtained the required teaching license. (T. 12.) Ms. Darnold identified a two-year contract for Appellant dated April, 2012, that was contingent upon Appellant obtaining the required certification. (T. 12.)

Ms. Highnam testified that she was the supervisor of the preschool department and was Appellant's supervisor for three years. (T. 19.) Ms. Highnam testified that a special education license was required for Appellant's position, and that Appellant took the required licensing examination three times, but failed to pass. (T. 21-23.) Ms. Highnam stated that while a special education license was not required for a regular teaching position, there were no such openings at the time. (T. 23.)

Appellant testified that she was aware when she was hired that she had to get a permanent special education license for her position. (T. 31.) She stated that she was aware that the law required her to pass an examination to obtain the special education license, and she took the examination three times but failed to pass. (T. 32.) She stated that she was told that the reason for separation of employment was that her contract could not be renewed because she had not obtained her permanent special education license. (T. 30-31.)

On December 28, 2012, the Hearing Officer issued a Decision stating as follows:

... Claimant was hired as a special education preschool teacher with a temporary certification. Claimant was supposed to complete her coursework in order to obtain a permanent special education license. The temporary licenses could be renewed three times which claimant did. During this time claimant was told by her school that she would need to pass a test to complete her certification and obtain a license. Claimant attempted to take the test on multiple occasions but was unable to pass. Claimant's temporary license expired June 30, 2012. Claimant was separated on August 31, 2012 because she did not have the proper license to teach her class. (R. 141.)

The Hearing Officer found as follows:

Claimant was separated from employment under disqualifying conditions. Specifically claimant had to have a specific license in special education to teach her class. Claimant was able to obtain a temporary license until June 30, 2012, at which time the state would not renew her license. It is unfortunate that claimant was not able to pass the test to obtain her license but the school could not employ her in this position without this license. Since claimant was not able to obtain the license before the new school year, the Hearing Officer must find that claimant was discharged with just cause in connection with work. (R. 142.)

On January 30, 2013, the Commission disallowed a request for further review.

On March 1, 2013, Appellant filed this appeal from the Commission's Decision.

## II. STANDARD OF REVIEW

This Court must affirm the Commission's decision unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). The Court's scope of review is limited, and the Court is not to make factual findings or substitute its judgment for that of the Commission. *Irvine v. Unemployment Compensation Review Commission*, 19 Ohio St.3d 15, 18 (1985); *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982).

### III. THE COURT'S FINDINGS AND CONCLUSIONS

R.C. 4141.29(D)(2)(a) provides that an individual discharged with just cause in connection with work is not eligible for unemployment compensation benefits. Just cause is conduct which an ordinarily intelligent person would regard as a justifiable reason for discharging an employee. *Irvine, supra*, 19 Ohio St.3d at 17.

Appellant argues that her termination was not for just cause. Specifically, Appellant asserts that she was not given notice of termination and had been retained under a teaching contract for the next two years. However, as testified by Ms. Darnold, the contract at issue (Exhibit C) expressly requires that Appellant have "valid and appropriate certification to perform the duties of the position." (R. 137.) Moreover, a teacher whose license lapses "has no right to continued employment in the district irrespective of his contract status." *Gibbs v. Greenfield Exempted Village Dist. Bd. of Edn.*, 4<sup>th</sup> Dist. No. 01CA8, 2001-Ohio-2638, p. 11.

Appellant asserts that when she was hired in 2009, an examination was not required for special education certification. It is undisputed that in 2010, state licensure law changed to include an examination requirement for special education certification. Appellant testified that she was aware of the change in the law, and that she had from 2010 to 2012 to pass the examination and obtain the required certification. (T. 31-32.) The Employer could not employ her in this position without the required certification.

Appellant next asserts that the special education certification would not have been required for a regular teaching position. Ms. Highnam testified that no such positions were available. (T. 23.) Even if other positions were available, this would not establish that Appellant was discharged from her position without just cause.

After reviewing the record, the Court finds that the Commission's Decision is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Commission's Decision is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant.

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Franklin County Court of Common Pleas

**Date:** 06-17-2013  
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UNEMPLOYMENT COMPENSATION RE ET AL  
**Case Number:** 13CV002296  
**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge Dale Crawford