

FILED  
LUCAS COUNTY

2013 SEP 24 P 2:10

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Chad Scouten,

Plaintiff,

-vs-

Jeff's Pro Hardware, Inc., et al.,

Defendants.

\* Case No. CI12-6296

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\* JUDGE FRÉDÉRIK H. McDONALD

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\* OPINION AND JUDGMENT ENTRY

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THIS IS A FINAL  
APPEALABLE ORDER

This matter is before the court upon appellant Chad Scouten's appeal from the October 17, 2012 decision of the State of Ohio Unemployment Compensation, Review Commission ("Commission") which denied Mr. Scouten unemployment benefits. Upon consideration of the pleadings, the record of the administrative proceedings, the memoranda of the parties, and the applicable law, I find that the decision of the Commission is supported by the manifest weight of the evidence and that the decision is reasonable and lawful. The decision of the Commission must therefore be affirmed.

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SEP 25 2013

I.

Mr. Scouten was employed by Fleeger's Pro Hardware, Inc. ("Fleeger's") as a store clerk from July 24, 2009 until February 18, 2012, in Toledo, Lucas County, Ohio, when Mr. Scouten was laid off due to lack of work.

On February 21, 2012, Mr. Scouten secured employment in a similar capacity with Jeff's Pro Hardware, Inc. ("Jeff's"), also in Toledo, Lucas County, Ohio. On March 16, 2012, while working at Jeff's, Mr. Scouten was involved in a verbal spat with a customer. After a conversation about the incident with Jeff's owner, Jeff Brown, Mr. Scouten informed Mr. Brown that he, Mr. Scouten, could no longer work at Jeff's.

On March 21, 2012, Mr. Scouten filed an application for determination of benefits rights with the Director of Ohio Department of Job and Family Services ("the Director"). On April 5, 2012, the Director issued its Determination that Mr. Scouten was not eligible for benefits because he quit his employment at Jeff's without just cause. Mr. Scouten appealed this decision.

On May 2, 2012, the Director issued a Redetermination affirming the April 5, 2012 Determination.

On May 14, 2012, Mr. Scouten filed an appeal from the Redetermination decision. Also on that date, the appeal was transferred to the Commission.

On July 16, 2012, a telephone hearing was conducted by a hearing officer. Testimony was heard on behalf of Mr. Scouten; no one appeared on behalf of Jeff's.

On August 9, 2012, the hearing officer issued a decision reversing the Redetermination decision and finding that Mr. Scouten quit working at Jeff's for just cause. Mr. Scouten's application for unemployment benefits was therefore granted.

On August 16, 2012, Jeff's filed a request for review of the hearing officer's decision, claiming that Jeff's did not receive notice of the hearing. The request was granted and another telephonic hearing was conducted on October 4, 2012, with Mr. Scouten and representatives from Jeff's participating.

On October 17, 2012, the hearing officer issued a decision reversing the August 9, 2012 decision, thereby disallowing Mr. Scouten's claim for benefits and ordering repayment of the benefits he had received.

On November 13, 2012, Mr. Scouten filed his administrative appeal with this court against Jeff's, Fleeger's and the Director. Mr. Scouten filed a brief in support of his appeal, and the Director filed a reply brief.

## **II.**

### **A. July 16, 2012 Hearing**

At the July 16, 2012 hearing, only Mr. Scouten testified. He stated that he had worked at Jeff's for almost four weeks and that his work environment was hostile due to customer abuse. He testified to an incident on March 16, 2012 where a customer was irate and almost threatening. He stated that he discussed the March 16 incident with Mr. Brown, and that Mr. Brown did not intervene to prevent the abuse of his employee. As a result, Mr. Scouten quit on March 16, 2012.

### **B. October 4, 2012 Hearing**

Mr. Brown testified at the October 4, 2012 hearing and refuted all of the allegations made by Mr. Scouten at the July 16, 2012 hearing.

C. Decision of the Hearing Officer

The hearing officer found Mr. Brown's version of the events to be credible. Her Findings of Fact are consistent with Mr. Brown's testimony. She held that Mr. Scouten quit without just cause.

**III.**

R.C. 4141.281(C)(2) states in pertinent part:

"\* \* \* In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record. Hearing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. No person shall impose upon the claimant or the employer any burden of proof as is required in a court of law. \* \* \*"

R.C. 4141.282(H) provides the standard of review utilized by Ohio courts in appeals from decisions made by the Commission. R.C. 4141.282(H) states:

"The court shall hear the appeal upon receipt of 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 court is not permitted to judge the credibility of witnesses or make factual findings; the court is to determine whether the Commission's decision is supported by evidence in the record. *Shepherd Color Co. v. Dir., Ohio Dep't of Job & Family Servs.*, 12th Dist. No. CA2012-11-244, 2013-Ohio-2393, ¶ 19, citing *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). In a manifest weight of the evidence review, a judgment must be supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978).

R.C. 4141.29(D)(2)(a) states in relevant part:

\*\*\*\* [N]o individual may serve a waiting period or be paid benefits under the following conditions:

\*\*\*\*

"(2) For the duration of the individual's unemployment if the director finds that:

"(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, \*\*\*\*."

"Just cause" has been defined as "\* \* \* that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). The act need not be misconduct, but there must be some fault on the employee's part. *Schivelbein v. Riverside Mercy Hosp.*, 6th Dist. No. L-11-1208, 2012-Ohio-3991. "[G]enerally employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request that it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to have quit without just cause and, therefore will not be entitled to unemployment benefits." *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist.1996).

#### IV.

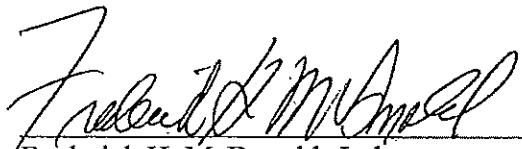
The decision finding that Mr. Scouten quit without just cause is based upon the hearing officer's assessment of the credibility of the witnesses, and upon a consideration of the controlling statutes and case law. I find that the decision of the hearing officer is supported by credible,

competent evidence and the decision is not unlawful, unreasonable or against the manifest weight of the evidence. It follows that the decision must be affirmed.

**JUDGMENT ENTRY**

It is Ordered that the October 17, 2012 decision of the State of Ohio Unemployment Compensation, Review Commission is affirmed. It is further Ordered that this case is dismissed with prejudice.

September 23, 2013

  
Frederick H. McDonald, Judge