

HIGHLAND COUNTY COMMON PLEAS COURT
HILLSBORO, OHIO

NOTICE OF FINAL APPEALABLE ORDER

TO: FRED N BOWMAN
LANCASTER COLONY CORP
OHIO DEPT OF JOB AND FAMILY SERVICES

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO
OCT 21 2013
Dwight O Hodson
HIGHLAND COUNTY CLERK OF COURTS

PLEASE TAKE NOTICE THAT A JUDGMENT ENTRY HAS BEEN FILED AND ENTERED UPON
THE JOURNALS IN THE OFFICE OF THE CLERK OF COURTS, HIGHLAND COUNTY, OHIO
ON: OCTOBER 21, 2013 IN CASE NUMBER: 13CV0115

FRED N BOWMAN vs. LANCASTER COLONY CORP et al

COPY OF JUDGMENT ENTRY ATTACHED.

DWIGHT O HODSON

CLERK OF COURTS

BY *Carol Shaw*

Deputy Clerk

CC ATTY JARVIS

ATTY RAGONESI

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

Fred N. Bowman : Case No: 13 CV 0115

Appellant : DECISION AND FINAL JUDGMENT
ENTRY AFFIRMING DECISION
OF UNEMPLOYMENT
REVIEW COMMISSION

v.

Lancaster Colony Corp, et al.

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO

Appellees **OCT 21 2013**


HIGHLAND COUNTY CLERK OF COURTS

This case came before the Court pursuant to R.C. 4141.282(A) on the appeal of the Appellant from the decision of the Ohio Unemployment Review Commission dated February 20, 2013 disallowing the Appellant's request for review of the decision of its hearing officer dated January 14, 2013 disallowing the Appellant's claim for unemployment compensation benefits. The Appellee filed the certified record of its proceedings on April 30, 2013.

The parties filed their briefs on the matter in accordance with the Court's scheduling orders. Oral argument was presented to the Court on September 30, 2013. The Court has reviewed the pleadings, the arguments of counsel, the parties' briefs and the certified transcript of the Director's file including the transcript of the hearing held before the hearing officer.

PROCEDURAL HISTORY OF THE CASE

The Appellant was terminated from his employment with Lancaster Colony Corporation on July 19, 2012. Appellant's initial application for unemployment benefits was allowed. The employer filed for a redetermination. The Director disallowed the claim in his redetermination.

Appellant filed an appeal of the redetermination decision of the Director. Jurisdiction of the appeal was transferred to the Unemployment Review Commission which assigned it to a hearing officer pursuant to law.

A hearing was conducted by the hearing officer on January 8, 2013, a transcription of which is part of the certified record filed in this case. On January 14, 2013 the hearing officer issued a decision finding that the Appellant had been discharged by his employer for just cause. On February 14, 2013, the commission adopted the hearing officer's determination and affirmed the disallowance of the claim. Appellant filed a timely notice of appeal of that decision to this court.

FINDINGS OF THE HEARING OFFICER

The Appellant was employed as a material handler by Lancaster Colony Corporation (hereinafter referred to as "the employer"). The employer's disciplinary policy provides for oral counseling, a first written warning, a second written warning and a final written warning prior to discharge. Appellant was aware of the policy and received a copy of it.

Appellant was issued an oral warning on August 28, 2007 for failing to follow directions. On February 16, 2011 he received a first written warning for failing to follow directions. On October 27, 2011 he was issued a second written warning regarding his productivity. He was also evaluated on that date and received a score that was deemed below satisfactory and received an improvement plan that provided for reviews in thirty, sixty and ninety days.

On December 22, 2011, the employer issued a second written warning for failing to conduct a complete pre-shift inspection of his forklift. On April 24, 2012, claimant's review found that his performance was still below satisfactory. On June 12, 2012 the Appellant knocked over some pallets near a glass line and was found to have been at fault by the employer's accident review board. The employer issued him a final warning pursuant to that procedure on July 10th.

However, on July 2, 2012 the Appellant had an accident with another forklift at an intersection in the building. The employer's accident review board found that he was at fault. On July 19, 2012, the employer discharged the Appellant.

STANDARD OF REVIEW BY THE COURT

Pursuant to R.C. 4141.282(H), the Court reviews the certified record of the proceedings of the Appellee and determines whether the decision of the Appellee was unlawful, unreasonable or against the manifest weight of the evidence. If it is, the decision of the commission is to be reversed. If not, it is to be affirmed. The Court does not have the right to substitute its judgment for that of the commission or the hearing officer even if it would have reached a different interpretation of the evidence. The determination of factual questions in the case is primarily one for the hearing officer and the commission. See *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511.

The Appellant's primary argument is that the Appellant's employment record did not warrant termination. He argues that the forklift incidents themselves did not merit serious discipline because drivers could have up to 12 points and that the employer did not follow its discipline policy in its determination to discharge him.

The Court notes that the record demonstrates that progressive discipline was followed by the employer prior to discharge. The Court notes that the employer in some of its correspondence with Appellant did refer to incidents that were more than one year old which does appear contrary to its policy, but the events involved in the discharge occurred from February 16, 2011 until July 2, 2012 and those incidents were within the time frame provided by the employer's policy because subsequent incidents occurred within one year of each other.

According to the certified record, the employer had determined that the Appellant's job performance was unsatisfactory prior to the two forklift incidents based on the written performance evaluation instruments in use in 2011 and 2012. Appellant argues that the employer failed to follow its policy as to the definition of "satisfactory" performance which according to page C-51 of the policy in the certified record provided that satisfactory was a rating of "2". The instruments used to evaluate the Appellant provided for a scale of five, with a "2" being "small extent" and a "3" being "moderate extent". Appellant's evaluation rating on 6-21-12 was 2.66, which was within the "small extent" according to the instrument.

While the instrument does appear to be contrary to the policy, the certified record shows that the Appellant received a first warning prior to and unrelated to his evaluation on February 16, 2011 and a second warning the same day as his first evaluation on October 27, 2011. His last two disciplinary events related to his operation of the forklift not to the evaluations. The Court is troubled by the conflict between the handbook and the evaluation instrument and cannot find any evidence that the handbook provisions were changed. The use of the instrument suggests that it was changed. However, even without the performance evaluations, the record would indicate that termination was available under the employee handbook.

Appellant's argument essentially asked the Court to look at each individual disciplinary step which he contended did not support termination alone. However, the law does not require the Court to find that any one event supported termination alone, but whether the entire certified record contained sufficient evidence to allow a hearing officer to reasonably conclude that the employee's discharge was supported by the evidence. The Court concludes that the evidence that is in the certified record supports that finding.

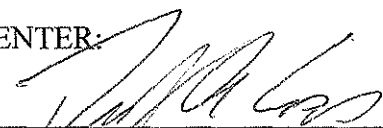
Based upon the Court's review of the certified record in this case, the oral arguments and the consideration of the briefs filed by each of the parties and the provisions of R.C. 4141.282(H), it is the Court's decision that the finding of the hearing officer and Unemployment Review Commission in this case is not unlawful, unreasonable or against the manifest weight of the evidence. The Court is not permitted to substitute its judgment for that of the commission and finds that the determinations of the hearing officer and the commission were reasonable and not against the manifest weight of the evidence.

FINAL JUDGMENT ENTRY

Therefore, it is the judgment of the Court that the decision of the Appellee Director to disallow the Appellant's claim for unemployment benefits due to her discharge for just cause in connection work be and is hereby affirmed and judgment is granted in favor of the Appellees and against the Appellant in this case. This is a final appealable order. The Court finds that there is no just cause for delay. The Clerk of Courts shall deliver a copy of this decision and final judgment entry to all parties and counsel of record. Costs are to be paid by the Appellant.

IT IS SO ORDERED.

ENTER:

 10/18/17

Rocky A. Coss, Judge