

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

TYRHONDA J COLEMAN,

CASE NO.: 2013 CV 02903

Appellant,

JUDGE DENNIS J. LANGER

-vs-

MIAMI VALLEY CHILD DEVELOPMENT
CENTER et al,

**FINAL AND APPEALABLE DECISION,
ORDER, AND ENTRY AFFIRMING THE
DECISION OF THE OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION**

Appellee(s).

The instant action is before the Court on pro se Appellant Tyrhonda J. Coleman’s (hereinafter “Ms. Coleman”) notice of administrative appeal filed May 10, 2013. See Docket. A certified transcript of the record of the former proceedings to the instant action was timely filed by the Unemployment Compensation Review Commission (hereinafter “UCRC”) pursuant to R.C. 4141.282(F) on June 24, 2013. *Id.* Thereafter, pursuant to the Court’s *Order and Entry Setting Submission Dates on Administrative Appeal Briefs*, Ms. Coleman filed her brief (hereinafter “*Appellant’s Brief*”) on July 10, 2013, and Appellee Director, Ohio Department of Job and Family Services (hereinafter “ODJFS”) filed its *Brief of Appellee, Director, Ohio Department of Job and Family Services* (hereinafter “*Appellee’s Brief*”) on September 4, 2013. *Id.* Ms. Coleman did not file a reply brief subsequent to *Appellee’s Brief*. *Id.* Therefore, the instant action is now properly before the Court.

I. FACTS AND PROCEDURAL HISTORY

The instant action is an unemployment compensation appeal pursuant to R.C. 4141.282 brought by Ms. Coleman. Ms. Coleman worked for Miami Valley Child Development Centers, Inc. (hereinafter “MVCDC”) as a Family Support Specialist from July 28, 2011 until October 22, 2012. See *Tr. of Admin.*

Agency, Ex. B. Within two months of being hired, on September 28, 2011, Ms. Coleman's employee performance was evaluated, wherein her evaluator found Ms. Coleman "need[ed] to achieve a higher degree of accuracy when completing the enrollment application for Head Start and Early Head Start Program" and that she "continue[d] to struggle meeting the agency requirement of full enrollment at MT.Enon and YWCA, due to inaccuracy and timeliness of submitting applications[.]" *Id.* Ms. Coleman's evaluator further stated that Ms. Coleman "need[ed] to become more familiar" with administrative rules, including "MVCDC Personnel Policy Manuel [sic], Head Start/Early Head Start Performance Standards, and Ohio Department of [J]ob and Family Services, Licensing and Safety Rules." *Id.* On November 28, 2011, Ms. Coleman's employee performance was evaluated, where again her evaluator found Ms. Coleman's "performance of duties continue to show very little growth since [her] last evaluation of September 28, 2011." *Id.* Again, Ms. Coleman's evaluator identified that Ms. Coleman "failed to meet the agency timelines for enrolling children for MT.Enon Head Start and YWCA Partnership" and that "files were reviewed [and] information wasn't present to complete the monitoring process accurately." *Id.* Ms. Coleman's evaluator further identified that Ms. Coleman "need[ed] to improve the quality of [her] work performance as outline[d] in [her] Position Description, for a Family Support Specialist." *Id.* Although Ms. Coleman's evaluator further stated that Ms. Coleman had developed her abilities in numerous areas of her job, she stated that "[Ms. Coleman's] ability to perform other job duties stated in [her] Family Support Specialist Position duties needs to show significant growth." *Id.*

On December 12, 2011, Ms. Sharon Baber, Director of Human Resources for Miami Valley Child Development Center (hereinafter "Ms. Baber") informed Ms. Coleman that the Executive Staff had decided to extend her Initial Evaluation Period for an additional two months and that her "supervisor [would] meet with [her] to discuss the specific issues and * * * meet with [her] periodically to discuss progress on the plan." *Id.* Thereafter, on February 27, 2012, Ms. Baber informed Ms. Coleman that upon her and the Executive Staff's review of her Developmental Action Plan and performance since December 2011, "it ha[d] been determined that [Ms. Coleman] had improved upon the Performance Issues that were addressed[.]" and that "a recommendation for continued employment ha[d] been made by [her] supervisor and approved by Mary Burns, President & CEO." *Id.* Ms. Baber further informed Ms. Coleman that "[i]n order to remain employed with MVCDC in the future, [she would] need to show continuous and sustainable growth in [her]

position of Family Support Specialist.” *Id.* Upon returning from temporary employee layoff for summer break on July 30, 2012, Ms. Coleman thereafter received and signed a disciplinary action from her supervisor on August 31, 2011, wherein Ms. Coleman’s supervisor stated that “[o]n several occasions including the last incidences on 8/23/12 and 8/27/12, I have spoken with you about the incompleteness of applications you are submitting for intake[,]” and further ordered Ms. Coleman to “submit * * * in writing on how [she] will ensure [how complete applications submitted for intake are] met (ex: checklist)” from which “[f]urther violation if [sic] this policy will result in further disciplinary action up to and including a recommendation for suspension and/or termination.” *Id.* Thereafter, on September 24, 2012, Ms. Coleman received and signed a memorandum from her supervisor acknowledging her Developmental Action Plan from last year, and that she “still see[s] no improvement with the same issues[,]” and that “an evaluation [would] be completed by September 28, 2012.” *Id.* On October 9, 2012, Ms. Coleman received and signed another employee performance evaluation, wherein her evaluator found that Ms. Coleman’s work was “inaccurate[,]” that she [did] not put any thought into the quality of the work [she] submits[s,]” “[her] oral and written communications skills need[ed] improvement[,]” “[she] d[id] not always have the knowledge or ability to appropriately communicate with [her] supervisor[,]” “[she] d[id] not assume the accountability for [her] mistakes[,]” and “[she] blame[s] others for not knowing [her] job responsibilities.” *Id.* Then, on October 17, 2012, Ms. Coleman was suspended from her employment, and subsequently terminated on October 22, 2012. *Id.*

Ms. Coleman filed an application for determination of unemployment benefits with ODJFS, where on November 9, 2012, ODJFS determined that Ms. Coleman was eligible for unemployment benefits for her termination from MVCDC without just cause. *Id.* On December 12, 2012, MVCDC appealed ODJFS’s determination, where on January 4, 2013, the Redetermination Unit of ODJFS affirmed the ODJFS determination that Ms. Coleman was terminated without just cause and eligible for unemployment benefits. *Id.* Thereafter, on January 8, 2013, MVCDC appealed the Redetermination Unit of ODJFS’s decision, which was transferred to the UCRC for a telephone hearing to be conducted by Hearing Officer Nadine Pettiford on February 6, 2013, to which all parties participated including Attorney Bradley Hoyt on Ms. Coleman’s behalf. *Id.* Therein, Jackie Rhoades, Human Resources Coordinator for MVCDC (hereinafter “Ms. Rhoades”) stated that Ms. Coleman was terminated for “poor performance[,]” and that MVCDC followed the

proper disciplinary process as outlined in the MVCDC Personnel Policy Manual and signed by Ms. Coleman on July 28, 2011. See *UCRC Hr'g. Tr.*, 11:19-20; see also *Id.*, 14:24 – 15:5; see also *Id.*, 19:11-18. Ms. Coleman also confirmed that she was evaluated in September and November of 2011, subsequently placed on a development action plan, received a disciplinary action in August 2012, and met with her supervisor in September 2012 for a file review, to which she stated a blanket denial of all of her supervisor's allegations of poor performance. *Id.*, 25:20 – 31:10. Ms. Coleman further stated that upon returning from temporary employee layoff for summer break, MVCDC instructed its employees to utilize new forms in their work, of which Ms. Coleman ordered, but did not use until she received them. *Id.*, 33:7 -35:4. However, Danielle Smith, as Family and Community Partnership Supervisor to Ms. Coleman (hereinafter "Ms. Smith") stated that after her file review with Ms. Coleman in September 2012, Ms. Coleman did not correct any of the issues of her poor performance, particularly issues that affect a particular client's file "needs to be documented." *Id.*, 36:18-24; see also *Id.*, 39:5-40:12; see also *Id.*, 43:24-26. Ms. Coleman acknowledged that particular forms are normally changed or revised annually, but upon instructing Ms. Coleman to give her a new order for forms and to start using them, she continued to use the old forms. *Id.*, 41:5-42:8.

On March 22, 2013, Hearing Officer Nadine Pettiford reversed the Redetermination Unit of ODJFS's decision and found that Ms. Coleman was terminated with just cause in connection with her continued poor performance as a Family Support Specialist for MVCDC. *Id.* Ms. Coleman filed a further appeal with the UCRC for a redetermination; however, upon review of the record, the UCRC affirmed its decision on April 17, 2013. *Id.* Thereafter, on May 10, 2013, Ms. Coleman filed the instant action. In *Appellant's Brief*, although Ms. Coleman, now pro se, does not assert any specific assignments of error, she contends that her termination was not warranted because when she was first hired by MVCDC, she did not receive the proper training to effectively perform her job. See *Appellant's Brief*. Although Ms. Coleman acknowledges that she successfully completed her developmental action plan after poor performance evaluations, Ms. Coleman summarily argues that she did in fact perform her job adequately, including having the proper documentation in the running notes of her files, having complete information and income verifications located in such files, and attaining full enrollment. *Id.* Ms. Coleman further attaches a letter dated September 30, 2011 to *Appellant's Brief* which indicates her concern that she had been improperly trained and ill-prepared as a family support specialist due to general "miscommunication." Additionally, Ms.

Coleman states that she “would also like to [a]ppeal the decision of the over payment for benefits received 10/2012 – 3/2013; however, Ms. Coleman does not present any argument in support of such appeal. *Id.*

In response to Ms. Coleman’s arguments, ODJFS argues that there was significant evidence in the record to support a finding that Ms. Coleman was at fault for her termination for being unable to properly perform her job. See *Appellee’s Brief*. ODJFS further argues that Ms. Coleman received several opportunities over the course of her employment to prepare in performing her duties, however she simply was unable to maintain her performance levels over time. *Id.* In reliance on the four-part test to determine just cause in *Tzangas, Plakas & Mannos v. Administrator Ohio Bureau of Employment Services*, ODJFS argues that the record demonstrates that Ms. Coleman did not perform her required work, MVCDC made Ms. Coleman aware of its expectations at hiring, such expectations were reasonable, and such requirements did not change since Ms. Coleman’s hiring date. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 698-699, 653 N.E.2d 1207 (1995). In summary, ODJFS argues that the record contains competent and credible evidence from which the UCRC decision is not unlawful, unreasonable, or against the manifest weight of the evidence. *Id.*

II. LAW AND ANALYSIS

A. STANDARD OF REVIEW AND BURDEN OF PROOF

An applicant seeking unemployment compensation benefits submits to ODJFS an application for such benefits along with information in support of their claim. *McGee v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 09AP-680, 2010-Ohio-673, ¶ 9. ODJFS makes findings of fact and conclusions of law as to whether the applicant is entitled to unemployment compensation benefits. *Id.*, citing R.C. 4141.28(B). Such decision is thereafter subject to an appeal to the UCRC for a *de novo* hearing. *Id.*, citing R.C. 4141.281(C)(1) and (3). A party dissatisfied with the UCRC’s final determination may appeal to the common pleas court, which “shall hear the appeal on the record certified by the [UCRC].” *Id.*, citing R.C. 4141.282(H).

A common pleas court sitting in such an appellate capacity has a limited power of review. *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587(1985). Factual questions remain solely within the province of the UCRC. *Tzangas, supra* at 697. On review of purely factual questions, a court is limited to determining whether the UCRC decision is supported by the evidence

in the record. *Id.* at 696, citing *Irvine, supra* at 18. A court is not permitted to make its own factual findings or to determine the credibility of witnesses. *Irvine, supra* at 18. Similarly, a court may not substitute its judgment for that of the UCRC. *Id.* The fact that reasonable minds may reach different conclusions is not a basis for reversing the UCRC decision. *Tzangas, supra* at 697. A reviewing court must affirm the UCRC decision if some competent, credible evidence in the record supports it. *Irvine, supra* at 18. Likewise, even on close questions where the UCRC might reasonably have decided otherwise, a reviewing court has no authority to upset the UCRC's decision. *Id.* Nonetheless, a reviewing court may reverse, vacate, or modify a UCRC decision if "the decision * * * was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. § 4141.282(H); see also *Irvine, supra* at 17-18. Otherwise, the court "shall affirm the decision of the commission." R.C. § 4141.282(H).

The Unemployment Compensation Act, pursuant to R.C. § 4141.29(D)(2)(a), provides in pertinent part, that "no individual may serve a waiting period or be paid benefits under the following conditions: * * * [f]or the duration of the individual's unemployment if the director finds that * * * [t]he individual * * * has been discharged for just cause in connection with the individual's work." An employee has the burden of proving that they are entitled to unemployment compensation benefits under R.C. § 4141.29 because they were discharged without just cause. *Irvine, supra* at 17. Just cause, in the statutory sense, "is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Tzangas, supra* at 697, quoting *Irvine, supra* at 17. Just cause is predicated upon employee fault, whereby such a determination must be consistent with the legislative purpose underlying the Unemployment Compensation Act to provide financial assistance to individuals who have worked, was were able and willing to work, but are without employment through no fault of his own. *Id.*, citing *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980). Therefore, the Ohio Supreme Court has necessarily held there to be no "slide-rule" definition of just cause and that "each case must be considered upon its particular merits." *Id.* (citation omitted).

B. ANALYSIS

The Court's focus is on the UCRC decision, whereby the task of the Court is as follows: (1) to review the UCRC decision and determine whether it is supported by evidence in the certified record; and (2) whether the UCRC decision is unlawful, unreasonable, or against the manifest weight of the evidence. Upon

review of the certified record to the instant action, the Court finds that Ms. Coleman has not met her burden in proving that she is entitled to unemployment compensation benefits for being terminated without just cause. Although Ms. Coleman summarily contends the UCRC made erroneous factual findings in concluding that she was terminated for just cause, the Court is limited in determining whether the UCRC decision is supported by the contents of the certified record. The Court is obligated to affirm the UCRC decision if it is presented with some competent, credible evidence in the record supports it. Therein, the Court finds the documented evidence, as well as the testimony of Ms. Rhoades and Ms. Smith, to be credible evidence for the purpose of the UCRC decision. In their testimonies, both Ms. Rhoades and Ms. Smith asserted that Ms. Coleman had been terminated for poor performance and had been unsuccessful in remedying her poor performance. Pursuant to the Court's standard of review, such evidence supports the UCRC's decision that Ms. Coleman was terminated through her own fault, i.e., for just cause, and is therefore ineligible for unemployment compensation. Therefore, the Court finds that the UCRC's decision was neither unreasonable, unlawful, nor against the manifest weight of the evidence. Accordingly, the Court affirms the decision of the UCRC in its entirety.

III. CONCLUSION

For all the foregoing reasons, the Court hereby affirms the decision of the Ohio Unemployment Compensation Review Commission in its entirety.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. LANGER

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

YVONNE TERTEL
(614) 466-8600
Attorney for Defendant, Ohio Dept Of Job And Family Services

Copies of this document were sent to all parties listed below by ordinary mail:

TYRHONDA J COLEMAN
4519 SILVER OAK ST
HUBER HEIGHTS, OH 45424
Plaintiff, Pro Se.

MIAMI VALLEY CHILD DEVELOPMENT CENTER
215 HORACE ST
DAYTON, OH 45424
Defendant

JULENE POWERS, Bailiff (937) 225-4055 powersj@montcourt.org



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
Case Number: 2013 CV 02903
Case Title: TYRHONDA J COLEMAN vs MIAMI VALLEY CHILD
DEVELOPMENT CENTER

So Ordered