

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

LARRY FOSTER,

CASE NO.: 2013 CV 02736

Appellant-Plaintiff(s),

JUDGE TIMOTHY N. O'CONNELL

-vs-

DELPHI AUTOMOTIVE SYSTEMS LLC, et al.,

**DECISION AND ENTRY AFFIRMING
THE DECISION OF THE REVIEW
COMMISSION**

Appellees-Defendant(s).

Appellant-Plaintiff, Larry Foster, filed a claim for unemployment compensation with the director of The Ohio Department of Job and Family Services ("ODJFS") beginning on July 02, 2012. On or about October 30, 2012 the employer, Delphi Automotive Systems, LLC, requested an investigation of the payment of unemployment compensation benefits to Larry Foster in various weeks in July, August and September of 2012. On or about December 24, 2012 Appellee, ODJFS, disallowed Appellant's application for unemployment benefits for all of those weeks. Appellant appealed.

On February 11, 2013, the ODJFS transferred jurisdiction to the commission.

On March 20, 2013, the commission conducted a telephone hearing, for which appellant appeared and offered sworn testimony. Kevin Rafferty represented the employer.

On March 26, 2013, the hearing officer affirmed the ODJFS determination with regard to appellant's separation from employment with the employer. The hearing officer held that Appellant's discharge was caused by his own actions. Appellant's conduct, apparently, demonstrated a disregard for the employer's best interest. The Appellant's subsequent request for review was disallowed.

The request for investigation resulted in ODJFS informing Delphi Automotive Systems that Appellant, apparently, applied for and received unemployment compensation benefits while actively working and/or on paid leave in direct violation of Delphi's prohibition of falsifying personnel records.

On April 17, 2013, the unemployment compensation review commission disallowed Appellant's request for further review pursuant to R.C.4141.281. On May 03, 2013, Appellant filed a *Notice of Appeal* with this court pursuant to R.C.4141.282.

On June 12, 2013 the transcript of the administrative proceedings was filed. Appellant filed a brief on July 29, 2013. Appellant also filed what he described as a reply brief on July 29, 2013. On August 29, 2013 the Attorney General's Office, on behalf of the Director of the ODJFS, filed the brief of Appellee for ODJFS. On September 04, 2013 the brief of Appellee-Defendant, Delphi Automotive Systems, LLC, was filed.

The court has reviewed the briefs and the transcript. For the reasons stated herein, the decision of the review commission is AFFIRMED.

FINDINGS OF FACT

Appellee, Delphi Automotive Systems, LLC, operates a plant that makes automotive heating and air conditioning units in the Greater Dayton Area being in Vandalia, Montgomery County, Ohio. Appellant, Larry Foster, was employed as a quality technician with Delphi beginning October 19, 2011.

Appellant was laid off from July 02, 2012 to July 06, 2012. He filed a claim for unemployment compensation for the week of the lay off. Appellant returned to work July 09, 2012.

Appellant continued to file claims until mid-October 2012. He did not indicate on the claims forms or telephone applications that he was working. During this time, he received three thousand one hundred and seven dollars (\$3,107) in benefits. The benefits were charged to the account of the employer.

The Appellant made applications for benefits or claims during weeks that he actually worked and received remuneration for his work. Some of these weeks he worked a full schedule. Other weeks he, apparently, missed a day due to sickness or other cause. In his applications, the Appellant did not distinguish whether he worked part or less than all week as opposed to not working at all.

Appellant violated the employer's, Delphi, work rules. The work rules provide that falsification of personnel or other records is cause for discharge. Thus, following an investigation, on or about November 29, 2012, the Appellant was discharged.

CONCLUSIONS OF LAW

A. STANDARD OF REVIEW

The standard of review when considering an appeal of a decision rendered by the review commission is set forth in R.C.4141.282(H). That section states:

If the court finds that the decision was unlawful, unreasonable or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification; otherwise such court shall affirm such decision.

This standard of review is reiterated in the leading case on Ohio unemployment compensation, which is *Tzangas, Plakas & Mannos v. Ohio Bure. of Emp. Serv.*, 73 Ohio St.3d 694 (1995). In *Tzangas*, the Ohio Supreme Court specified, “[t]he board’s role as factfinder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.”¹ Although the commission’s decision should not be “rubber-stamped,” a reviewing court may not rewrite the commission’s decision merely because it could or would interpret the evidence differently.² The parties are not entitled to a trial de novo.³

The determination of factual questions is primarily a matter for the hearing officer and the commission.⁴ As the trier of fact, the commission and its hearing officer are vested with the power to assess the evidence and believe or disbelieve the testimony of the witnesses.

Accordingly, the trial court in this administrative appeal should defer to the commission’s determination of purely factual issues which concern the credibility of the witnesses and the weight of conflicting evidence.⁵

¹ *Id* at 697.

² *Kilgore v. Board of Rev.*, 2 Ohio App.2d 69 (1965).

³ *Id.*

⁴ *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St.511 (1947).

⁵ *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 162 (1983).

The Appellant argues that there was not just cause to terminate his employment because he did not fraudulently misrepresent records. He argues that he did not make complete and accurate disclosure because the employer told him to file claims. He did not have the wrongful intent necessary for falsification. The hearing officer at the official review commission level made findings of fact and also indicated his reasoning. The findings of fact are supported by the evidence and are generally not contested. The findings of fact indicate the Appellant was discharged by virtue of his own actions. The Appellant's conduct demonstrated disregard of the employer's interest. The hearing officer concluded there was sufficient fault on the part of the Appellant to warrant disqualification of unemployment compensation benefits. The hearing officer went on to find that the Appellant was discharged for just cause in connection with the work.

B. THE LAW OF JUST CAUSE

R.C.4141.29(D)(2)(a) provides, in pertinent part, as follows:

[N]o individual may serve a waiting period or be paid benefits... (1) 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 the kind of conduct which an ordinarily intelligent person would regard as justifiable reason for discharging an employee.⁶

Ohio law holds that an employee is considered to have been discharged for just cause when the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interest.⁷ The conduct need not rise to the level of misconduct, but there must be a showing of some fault by the employee to deny unemployment compensation benefits.⁸ The court must defer to the commission's factual findings on the fault issue.⁹

The Appellant's conduct demonstrated a disregard for his employer's best interest. He did not act as a reasonable person who desired to maintain his employment.

⁶ *Irvine v. Unemployment Comp. Board of Review*, 19 Ohio St. 3d 15, 482 N.E.2d 587 (1985).

⁷ *Kiikka v. Ohio Bur. Of Emp. Services*, 21 Ohio App.3d 168, 486 N.E.2d 1233 (1985).

⁸ *Sellers v. Bd. of Review*, 1 Ohio App.3d 161, 44 N.E.2d 550 (1981).

⁹ *Payton v. Sun T.V.*, 44 Ohio App.2d 10, 335 N.E.2d 751 (1975).

Unemployment compensation is a benefit for loss of remuneration due to involuntary total or partial unemployment. As used in R.C.4141.01(R)(4), an individual is “unemployed” if, with respect to the calendar week in which such an application is filed, the individual is “partially unemployed” or “totally unemployed”.

An individual is “totally unemployed” in any week during which the individual performs no services and with respect to such week no remuneration is payable to the individual.¹⁰ An individual is “partially unemployed” in any week if, due to involuntary loss of work, the total remuneration payable to the individual for such week is less than the individual’s weekly benefit amount.¹¹ Appellant was not involuntarily totally unemployed in some weeks. In other weeks, Appellant may have been partially unemployed as a factual matter, but he was not partially unemployed as defined in the statute because there is no indication that there was involuntary loss of work or that he was paid less than his normal weekly amount.

In the instant case, Appellant collected unemployment compensation while he was working and being paid wages. An individual who is working is not unemployed and hence not eligible for unemployment compensation.

The Appellant should have been aware that his fraudulent misrepresentation with the objective to obtain benefits could lead to his discharge. The work rules provide that falsification of personnel or other records is cause for discharge. However, regardless of whether work rules called for discharge, in determining just cause for discharge, the critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interest.

Here, the Appellant continued to make claims for unemployment compensation upon his return to work from the lay off. He did not indicate in his application that he was working or partially working. As a result, he collected unemployment compensation to which he was not entitled. He received three thousand one hundred and seven dollars in benefits while he was working. Appellant’s discharge was caused by his

¹⁰ R.C.4141.01(M).

¹¹ R.C.4141.01 (N).

own actions. Appellant's conduct demonstrated a reckless disregard of his employer's best interest.¹² The benefits were charged against the employer's account at the time the employer was paying the Appellant wages.

The unemployment compensation act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune's whims, but is, instead, directly responsible for his own predicament.¹³

Fault on Appellant's part separates him from the act's intent and the act's protection.¹⁴ For the foregoing reasons, the decision of the commission was not unlawful, unreasonable or against the manifest weight of the evidence.

Therefore, the decision of the review commission is AFFIRMED.

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

This is a final appealable order, and there is no just cause for delay for purposes of Civil Rule 54. Pursuant to Appellate Rule 4, the party shall file a notice of appeal within thirty (30) days.

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with notice of judgment and its entry upon the journal.

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

¹² *Kiikka, supra.*

¹³ *Irvine, supra.*

¹⁴ *Irvine, supra.*

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

Type: Decision
Case Number: 2013 CV 02736
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So Ordered

Timothy N. O'Connell