

FILED
LUCAS COUNTY

2013 NOV -5 P 2: 01

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Meta L. Cieslikowski,

Plaintiff/Appellant,

vs.

Speedway, LLC, et al.,

Defendants/Appellees.

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Case No. CI 13-1148

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Honorable Dean Mandros

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OPINION AND JUDGMENT ENTRY

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Unemployment Compensation Review Commission's finding that claimant was discharged for just cause is affirmed where claimant violated company policy by swapping money from the cash register and keeping personal items behind the counter.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff/Appellant Meta L. Cieslikowski was hired as a customer service representative by Defendant/Appellee Speedway, LLC on July 7, 2008. (Tr. 6, 15) Ms. Cieslikowski was discharged on June 19, 2012, for violating company policy by swapping money between the cash register drawer and her wallet and keeping personal items behind the counter. (Tr. 6, 7, 15, 20-22)

Ms. Cieslikowski thereafter filed an application for unemployment compensation benefits. The Director issued a determination finding that Ms. Cieslikowski was discharged without just cause

and, accordingly, was entitled to benefits. On October 2, 2012, the Director issued a redetermination affirming the earlier determination.

On October 8, 2012, Speedway appealed the redetermination, and jurisdiction was transferred to the Unemployment Compensation Review Commission. A telephone hearing was held on November 2, 2012. The only persons testifying were Ms. Cieslikowski and Tammie Monti, store manager.

Reversing the redetermination, the Hearing Officer found that:

There was a new manager as of May 2012. The new manager was specific as to the employer's expectations going forward. Thus, claimant received adequate notice that swapping money and/or having personal items behind the counter was not permissible. Claimant made a conscious effort to not follow this rule. Had claimant followed this rule, there would not have been an occasion to swap money from the register to her wallet. Following the rule would have protected claimant from the very accusations advanced by the employer. The employer presented reliable, substantial and probative evidence that claimant violated a known and reasonable company policy. In summation, claimant engaged in sufficient fault to justify her discharge.

The Review Commission disallowed Ms. Cieslikowski's request for further review on December 12, 2012. This cause is now before the Court upon Ms. Cieslikowski's administrative appeal of the decision denying her unemployment compensation benefits.

II. STANDARD OF REVIEW

R.C. 4141.46 maintains that the Unemployment Compensation Act be liberally construed in favor of beneficiaries. *Baker v. Director of Ohio Department of Job & Family Services*, 6th Dist. No. L-06-1198, 2007-Ohio-743, 2007 Ohio App. LEXIS 680. The purpose of the Act is to provide financial assistance to those who find themselves unemployed through no fault of their own. *Id.* A

claimant has the burden of proving he or she is entitled to unemployment compensation benefits. *Irvine v. State, Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587, 1985 Ohio LEXIS 466 (1985).

The role of the court of common pleas upon appeal from the Unemployment Compensation Board of Review is set forth as follows in R.C. 4141.282(H):

The court shall hear the appeal on 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.

In other words, the Court's role is limited to determining whether the Commission's decision is supported by evidence in the record. "A decision supported by some competent, credible evidence going to all the essential elements of the dispute will not be reversed as being against the manifest weight of the evidence." *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 463 N.E.2d 1280, 1983 Ohio App. LEXIS 11265, paragraph two of the syllabus (10th Dist. 1983). Determination of purely factual operations is primarily within the province of the Review Commission; therefore, the Court has a limited power of review and is not permitted to make factual findings or to determine the credibility of witnesses. *Irvine* at 17-18. The fact that reasonable minds might reach a different conclusion is not a basis for the reversal of the Commission's decision. *Irvine* at 18.

III. ANALYSIS

Ohio's Unemployment Compensation Act prohibits the payment of benefits if an employee has been discharged for just cause in connection with his or her work. R.C. 4141.29(D)(2)(a). "Just

cause" is defined as "conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." (Citation omitted.) *Carter v. University of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10, 2008 Ohio App. LEXIS 1683. A single incident of misconduct can create just cause for termination. *Moore v. Comparison Market, Inc.*, 9th Dist. No. 2325, 2006-Ohio-6382, ¶ 25, citing *Gualtieri v. Stouffer Foods Corp.*, 9th Dist. No. 19113, 199 Ohio App. LEXIS 1176, *7 (Mar. 24, 1999). The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Heights v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489, 1991 Ohio LEXIS 901 (1991). In determining whether an employee has been discharged for "just cause" for unemployment compensation purposes, the critical issue is not whether the employee has technically violated some company rule, but whether the employee by his or her actions demonstrated unreasonable disregard for the employer's best interests. *LaChappelle v. Director, Ohio Department of Job & Family Services*, 184 Ohio App.3d 166, 2009-Ohio-3399, ¶¶ 21-22, 2009 Ohio App. LEXIS 2929 (6th Dist.), citing *Kiikka v. Administrator, Ohio Bureau of Employment Services*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233, 1985 Ohio App. LEXIS 9848 (8th Dist. 1985).

As previously stated, the determination of purely factual questions is primarily within the province of the Hearing Officer, and the Court is not permitted to make factual findings or to determine the credibility of witnesses. *Irvine, supra* at 17-18. In the instant case, the Hearing Officer found Ms. Monti's testimony to be credible in holding that Ms. Cieslikowski received adequate notice that swapping money and/or having personal items behind the counter was not permissible. The Hearing officer further found that Ms. Cieslikowski made a conscious effort to not follow this rule. The evidence in the record to support the Hearing Officer's decision includes the following.

Ms. Cieslikowski admitted at the hearing, as well as in her statement, that on June 16, 2012, she had her wallet on the counter and she swapped money from the cash register drawer into her wallet. She stated her intent was to exchange two \$20.00 bills and two \$5.00 bills from her wallet for a \$50.00 bill in the drawer. (Tr. 19, 23-24) According to Ms. Monti's testimony, the drawer was \$50.00 short at the end of Ms. Cieslikowski's shift. (Tr.10) Ms. Cieslikowski also admitted that she kept drinking water on the floor behind the counter. (Tr. 12, 21)

Ms. Monti testified that swapping money and keeping personal items, e.g., wallets and beverages, behind the counter were violations of company policy. (Tr. 7,8,10) These rules are discussed during the employee's training and were reinforced by Ms. Monti during a meeting in early June of 2012. (Tr.11,29) Furthermore, "Mishandling of Cash/Inventory" is listed on a form signed by Ms. Cieslikowski on July 7, 2008, as one of the violations of company policy for which discharge may result.

While Ms. Cieslikowski denied that there was company policy prohibiting swapping money, she admitted that Speedway required employees to make transactions through another cashier. (Tr. 19, 20, 24,26- 28) In addition, Ms. Cieslikowski admitted that the district manager had told her that no personal items were permitted behind the counter. (Tr. 21)

Courts have held that failing to follow the employer's policy regarding the handling of cash is an unreasonable disregard for the employer's best interest and thus constitutes just cause for discharge. For example, in *Williams v. Administrator, Ohio Bureau of Employment Services*, 8th Dist. No. 49759, 1985 Ohio App. LEXIS 9562 (Nov. 27, 1985), the Court held that the employee was discharged for just cause when she failed to make a bank deposit and allowed the funds to accumulate in the store. The Court noted:

Regardless of whether the company rules explicitly call for the discharge of an employee for violation of cash handling procedures, such an act may still be considered as just cause for discharge: 'the critical issue is whether the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests.' * * * An employer may require certain standards of conduct, and discharge employees who breach these standards. A deliberate violation of such rules constitutes just cause for discharge. * * * (Citations omitted). *Id.* at *6-*7.

Ms. Monti testified that the rule exists "to make sure that everything is done correctly. Um, [so] there's no confusion." (Tr.29) As the Ohio Department of Job and Family Services emphasized in its brief, "it is self-evident that any business has an interest in ensuring that its money is properly monitored and tracked. Speedway's policy promotes this interest by making sure that an employee's personal transactions - even making change - are completed by another employee."

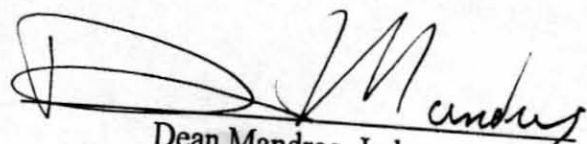
IV. CONCLUSION

After reviewing the record, arguments of the parties, and applicable law, the Court finds that the Review Commission's decision is supported by competent, credible evidence, was not against the manifest weight of the evidence, and was reasonable and in accordance with the law.

JUDGMENT ENTRY

It is **ORDERED** that the decision of the Unemployment Compensation Review Commission is **AFFIRMED**. This is a final and appealable order.

Date: 11 - 4 - 13


Dean Mandros, Judge