IN THE COURT OF COMMON PLEAS OF HENRY COUNTY, OHIO

MICHELLE A. MEXICOTT,	*	**CASE NO: 12CV0203**
Appellant,	*	
vs.	*	**Judge John S. Collier**
INNOVATIVE SUPPORT, SERVICES, INC., ET AL,	*	
	*	**JUDGMENT ENTRY**
Appellees.	*	

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This matter comes on for consideration on an administrative appeal from the Ohio Unemployment Compensation Review Commission's November 15, 2012 decision denying unemployment benefits to Appellant, Michelle Mexicott.

STATEMENT OF THE CASE

On July 2, 2012, Appellant applied for unemployment-compensation benefits. One July 18, 2012, Appellee Director, Ohio Department of Job and Family Services denied Appellant's application for benefits, finding that Appellant quit her position with Appellee Innovative Support Services, Inc., without just cause.

Appellant appealed the initial determination, and on August 10, 2012 the Director issued a Redetermination reversing the initial decision. Innovative Support appealed the Redetermination on August 30, 2012, and the Director transferred jurisdiction to the Unemployment Compensation Review Commission on September 4, 2012.

On September 27, 2012, a telephone hearing was held. On October 15, 2012 the hearing officer reversed the Redetermination, finding that Appellant quit without just cause.

Appellant submitted a Request for Review to the Unemployment Compensation Review Commission. The Review Commission allowed the request on November 1, 2012, Order of Allowance of Request for Review, and subsequently issued a decision affirming the hearing officer's decision on November 15, 2012.

STANDARD OF REVIEW

Revised Code 4141.282(H) sets forth the statutory guidance for a court to evaluate a decision of the Review Commission which states:

> 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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

This standard was confirmed by the Ohio Supreme Court in *Central Ohio Vocational School Dist. Bd. of Education v. Adm. Ohio Bureau of Employment Services,* 21 Ohio St. 3d 5 (1986). Thus, a court would only reverse a decision of the Review Commission if the decision is unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St. 3d 694 (1995). This strict standard was recently reiterated in *Bernard v. Unemployment Comp. Review Commission*, Slip Opinion No. 2013 Ohio 3121.

The determination of a factual questions is primarily a matter for the hearing officer and the Review Commission. *Brown-Brockmeyer Co. v Roach*, 148 Ohio St. 511 (1947). Accordingly, the court should defer to the Review Commissions purely factual determinations concerning credibility of witnesses and the weight of conflicting evidence. *Angelkowski v. Buckeye Potato Chips Co. Inc.*, 11 Ohio App 3d 159 (10th Dist. 1983). Only a decision that is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence to produce a result in complete violation of substantial justice" is deemed against the manifest

weight of the evidence. *Carter v. University of Toledo*, 144 Ohio Misc. 2d 79 (Lucas Co. Com Pl. 2007) citing *Phillips v. Ohio Bureau of Employment Services* (Aug. 26, 1988) 6th Dist. 1988 WL 88787 at 2, quoting 2 Ohio Juris 2d 817, Appellate Review Sec. 819.

Therefore if some competent, credible evidence going to all the essential evidence of the case supports the commission's decision, the decision must stand, and the court cannot reverse it as being against the manifest weight of the evidence. *Angelkowski* at 161.

STATEMENT OF FACTS

The undisputed facts of this case can be simply stated. Michelle A. Mexicott, Appellant, was employed as a Residential Service Companion by Innovative Support from March 2011 to June 2012. Appellant cared for mentally and physically disabled clients. Appellant experienced a problem with her feet in February 2012 which was eventually diagnosed as Charcot. Ms. Mexicott initially attempted to work, but after the diagnosis of Charcot and two broken metatarsals she took time off under the Family Medical Leave Act (FMLA). The initial leave was between March 21, 2012 and April 30, 2012. A second leave was taken on May 22, 2012 and was to end July 17, 2012. However, the record is clearly reflects that Ms. Mexicott returned sometime in June 2012.

Innovative Solutions did make several attempts at accommodating Ms. Mexicott's medical condition. Appellant was given limited hours as a ride-along passenger in a car while transporting patients. This was only for a few hours per week and did not constitute full time work. Ms. Mexicott was offered another position that the Appellee viewed as less demanding for Ms. Mexicott's medical condition, but the exact requirements are disputed.

What isn't disputed is that sometime prior to June 25, 2012 Ms. Mexicott left a note in her supervisor's mailbox which read in relevant part: "...consider my health and my family, and your company in my decision to end my employment. I am both sad and sorry – but I no longer want to put lead staff, clients, support managers and other employees on this up and down roller coaster that I am on." This note can fairly be described as a letter of resignation.

In summary it is not disputed that Ms. Mexicott was employed by Innovative Solutions from March 2011 until June 25, 2012. Further, she was diagnosed with Charcot's in March 2012 and took several FMLA leaves prior to submitting a letter of resignation in June 2012.

The factual issues in dispute are whether Ms. Mexicott fully communicated to her supervisors the extent of her restrictions and to what extent Innovative Solutions accommodated her medical condition. The evidence is conflicting as to whether Ms. Mexicott advised that her work could only be sedentary. The physician's note which reflects "desk work only" is dated July 3, 2012 which is after she resigned. Obviously, advising your employer of this limitation after you have submitted a letter of resignation is insufficient to allow the employer to accommodate the disability.

It's not disputed that another position was offered, but to what extent it accommodated her requirement to be off her feet is not completely clear. Ms. Malinda Stephens the regional director for Innovative Solutions testified Ms. Mexicott was offered an overnight shift which Ms. Stephens maintained would require a limited amount of time on her feet. Ms. Mexicott denies she was offered an overnight position, but rather a position which required light housework, picking up lunch and taking the client to various appointments. Regardless, Ms. Mexicott never attempted the additional employment prior to resigning.

The letter left in her supervisor's mail box does not indicate she left the employment for the failure of the employer to accommodate her medical limitations. Perhaps Ms. Mexicott was simply being pleasant towards her supervisor, but the note expresses thanks for the opportunity to work for Innovative Solutions. There was no expression frustration or lack of attempt by the employer to accommodate her medical condition.

ANALYSIS

Ms. Mexicott was denied benefits on the ground that she quit work without just cause under R.C. 4141.29(D)(2)(a). This section reads as follows in relevant part:

1. Notwithstanding division (H) of this section, no individual may serve a waiting period or be paid benefits under the following conditions;
2. For the duration of the individuals unemployment if the Director finds that:
   (a) The individual quit work without just cause in connection with the individuals work.

"Just cause for quitting one's job amounts to what an ordinarily intelligent person would find to be a justifiable reason for quitting, where the cause is related in a substantial way with a person's ability to perform his employment." *Moore v. Comparison Market, Inc.*, 9th Dist, 2006 Ohio 6382.

"Generally, a person who quit because of a problem with working conditions without first notifying the employer of the problems cannot be said to have become unemployed through no fault or agreement of their own, and thus does not quit with just cause for purposes of R.C. 4141.29(D)(2)(a)." *DiGiannantoni v. Wedgewater Animal Hosp.*, 109 Ohio App. 3d 300, 309 (10th Dist. 1996). "Essentially, an employee must notify the employer of the problem and request it to 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 quit without just cause and , therefore will not be entitled to unemployment benefits." *Id.* at 307. *See also King v. State Farm Mut. Auto Ins. Co.*, 112 Ohio App. 3d 664, 669 (6th Dist. 1996); *Wright v. Dir., Ohio Dept. of Job & Family Services*, 9th Dist. No., 2013-Ohio-2260, ¶ 15.

Those who quit for medical reasons are no exception to this rule. The Ohio Supreme Court in *Irvine v. Ohio Bd. of Unemp. Comp.,* 19 Ohio St. 3d 15 (1985) which held:

> An employee's voluntary resignation on the basis of health problems is without just cause within the meaning on R.C. 4141.29(D)(2)(a) when the employee is physically capable of maintaining a position of employment with the employer, but fails to carry her burden of proving that she inquired of her employer whether employment opportunities were available which conformed to her physical capabilities and the same were not offered to her by the employer.

Appellee cites the Court to the case of *Shepard v. Dir. Ohio Dept. of Job & Family Services.*, 166 Ohio App. 3d 747 (8th Dist.) places the burden on the employee to make reasonable attempt to solve the problem before leaving employment.

The present case is like Shepard in several respects. The employer was advised by the employee of a medical condition. Initial accommodations were made by Innovative Solutions to assist Ms. Mexicott. Ms. Mexicott failed to provide the updated doctor's limitation of "desk work only" dated July 3, 2012, before quitting June 25, 2012. Additionally, there is nothing in the record to indicate that Ms. Mexicott even attempted the other work offered whether it was a day or night shift.

The Review Commission's decision can be supported by the record and it is not unlawful, unreasonable or against the manifest weight of the evidence.

IT IS THEREFORE ORDRED, ADJUDGED AND DECREED that the decision of Unemployment Compensation review Commission is affirmed. Costs taxed to the Appellant.

Judge John S. Collier

cc: Michelle Mexicott, Appellant
Francis J. Landry, Esq.
Eric Baum, Esq.
Douglas Kennedy, Esq.