

DANIEL M. HORRIGAN
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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MARVIN M. THOMAS
CLERK OF COURTS

Appellant,

-vs-

OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES et al.,

Appellees.

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) CASE NO. CV 2013-03-1708
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) JUDGE THOMAS A. TEODOSIO
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) **FINAL ORDER**
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This matter is before the Court on the appeal of Marvin M. Thomas of the decision of the Unemployment Compensation Review Commission, dated February 8, 2013, affirming the Director's redetermination decision that was issued on November 23, 2012, holding that the Claimant was discharged from employment with just cause and disallowing the Claimant's application for benefits.

A court may reverse a "just cause" determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Id.* The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's scope of review. *Lorain County v. State* (9th Dist. 2010), 2010 Ohio 1924. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Id.*

To be eligible for unemployment compensation benefits in Ohio, claimants must satisfy the criteria established pursuant to R.C. 4141.29(D)(2)(a), which provides that no individual may be paid benefits if discharge from employment was with just cause in connection with work.

A party is entitled to unemployment benefits if she is terminated without just cause. *Klemencic v. Robinson Mem. Hosp.* (9th Dist. 2010), 2010 Ohio 5108. “The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision.” *Id.*

Traditionally, in the statutory sense, “just cause” has been defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Id.*

“Fault on an employee’s part is an essential component of a just-cause termination.” *Sturgeon v. Lucas Plumbing & Heating, Inc.*, 2012 Ohio 2240 (9th Dist. 2012). “The discharge of an employee is considered to be for just cause where the employee’s conduct demonstrated some degree of fault such that the employee displayed an unreasonable disregard for his employer’s best interests.”

Lorain County v. State (9th Dist. 2010), 2010 Ohio 1924. “If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694.

The Ninth District “has noted that even a single incident of misconduct can create just cause for termination. The employee must provide evidence his [or her] discharge was without just cause by demonstrating he [or she] was without fault in the incident resulting in his [or her] termination to show he [or she] is entitled to unemployment compensation.” *Sturgeon v. Lucas Plumbing & Heating, Inc.*, 2012 Ohio 2240 (9th Dist. 2012).

Appellant’s initial Brief (captioned Appellant’s Reply Brief and filed on June 11, 2013) does not set forth an Assignment of Error as such, but rather presents two “Questions Presented on Review.” The first question raised is: “Did the Employment Appeals Board err in finding the petitioner’s action constituted misconduct under OAC 4112?” The second question asks: “Did the Employment Appeals Board err in finding that petitioner willfully and with undo stress ignore[d] the rules and regulation[s] for Employment?” The “Summary of Argument” contained within Appellant’s brief

sets forth a number of facts regarding Appellant's employment and termination with Time Warner Cable but does not present an argument per se. On August 30, 2013, Appellant filed a Reply Brief. The brief again sets forth a series of facts and presents the following statement in bold capital letters: "The Review Commission's Decision finding that the Claimant was discharged with just cause[] did not consider extenuating circumstances that created conflicts with monitoring and no time [was] given to improve job performance."

In the Decision dated February 8, 2013, the Hearing Officer found that the Appellant was discharged for just cause. The Hearing Officer reasoned that the Appellant had been given warnings by the employer regarding his job performance, and that based upon the available evidence in the record, Appellant was discharged for just cause in connection with work.

The Court finds there is credible evidence to support the Hearing Officer's Decision that Marvin M. Thomas was discharged from employment by Time Warner with just cause. The possibility that reasonable minds might reach different conclusions is not a basis for the reversal of the Hearing Officer's decision and the resolution of factual questions is chiefly within the Review Commission's scope of review. This Court finds evidence in the record to support the findings of the Hearing Officer and therefore the Court cannot substitute its judgment.

There is evidence that the employee's conduct demonstrated a degree of fault such that the employee displayed an unreasonable disregard for his employer's best interests. There is evidence that Appellant had numerous dropped calls and did not call the customers back or make a notation to do so as was required. (Tr. 15). There is evidence that Appellant violated account security guidelines by giving out an address on an account. (Tr. 15). There is also evidence that Appellant failed to follow troubleshooting guidelines as required. (Tr. 16). Appellant was given both a verbal

and written warning as a result of his job performance. (Tr. 19). Appellant was given a final written warning, which he signed and acknowledged on September 10, 2012. (Tr. 20).

For the above stated reasons, this Court finds the Decision of the Hearing Officer is not unlawful, unreasonable, or against the manifest weight of the evidence. The Court further finds the employer has been reasonable in finding fault on behalf of the employee and Appellant has failed to provide evidence that his discharge was without just cause. Appellant's Assignments of Error are overruled. Therefore, the decision of the Unemployment Compensation Review Commission, dated February 8, 2013, is AFFIRMED.

IT IS SO ORDERED.

JUDGE THOMAS A. TEODOSIO

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.

JUDGE THOMAS A. TEODOSIO

cc: Attorney Susan M. Sheffield
Marvin M. Thomas, pro se