

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

FILED

CORRINE G. STRAKA,)
Plaintiff 2014 MAR 14 P 1:28)
vs. MAUREEN G. KELLY)
LAKE PHO, INC., et al.,)
Defendants)

CASE NO. 13CV001653
JUDGE VINCENT A. CULOTTA
JUDGMENT ENTRY

This matter comes before the Court for consideration of the timely Notice of Appeal filed by Corrine G. Straka following a June 26, 2013, decision of the Ohio Department of Unemployment Compensation Review Commission (hereinafter, Review Commission) denying her request for review of a June 7, 2013, decision denying her right to receive unemployment benefits which had previously been awarded to her.

STATEMENT OF THE CASE

Initially, Appellant’s application for unemployment benefits was allowed, and the Employer, Lake PHO, appealed. The Director’s redetermination dated March 26, 2013, also allowed benefits to the Appellant. Thereafter, Lake PHO appealed and the Unemployment hearing officer issued a decision on June 7, 2013, reversing the Director’s redetermination and declaring that an overpayment of unemployment benefits had occurred. Appellant appealed that decision, and the Unemployment Compensation Review Commission denied the Appellant’s request for review. Appellant then filed the instant appeal on July 26, 2013.

On June 7, 2013, the Review Commission made the following findings of fact:

Claimant was employed by Lake Pho, Inc. from November 2, 2008, until January 22, 2013. At the time of her separation, she was employed as an RN circulator.

On January 18, 2013, claimant documented in a patient’s chart that a “time out” had been performed prior to the patient’s surgery. A “time out” is when the operating team stops to identify the patient, confirm the operation that is to be performed and confirm the site that is to be operated on. No “time out” was actually performed that day prior to the patient’s surgery. This was confirmed by two other staff members who were present at the time. This resulted in the patient’s right knee being operated on instead of his left knee. The error was not discovered until the surgery was over. Claimant acknowledges that she may have just thought they performed the “time out” even if they actually did not. The other staff involved in this incident were also disciplined.

Claimant was discharged on January 22, 2013, for falsification of a patient record.

APPELLANT'S BRIEF

Appellant contends that the decision that she was terminated for just cause is unlawful, unreasonable, and against the manifest weight of the evidence, and is not supported by the testimony at the May 28, 2013, hearing. Specifically, Appellant notes that the testimony is that both she and the physician saw the patient together and marked the leg together; did an admitting team huddle to let everyone know that it was the left knee; and then was sent on an immediate errand. Appellant contends that the evidence further provides that when she returned, the doctor had already put the leg in the holder and another nurse jumped in to help out. Appellant notes that pursuant to the hearing testimony, it was the other nurse who conducted the prepping and gave the meds to anesthesia and already placed the knee in the knee holder. Appellant notes that she testified that the surgery was already beginning by the time she returned, and so she asked at what time the first incision had been made by the doctor. Appellant contends that the actions she took in meeting with the physician prior to the surgery meet the employer's definition of a time out (i.e. she and the physician identified the correct patient, the correct operation and the correct site).

Appellant further argues that if those actions do not constitute a "time out," the facts clearly show that Appellant did not have a chance to conduct a "time out" because the physician started the surgery before the Appellant returned from an errand requested by the anesthesiologist to be done immediately. Appellant further notes that the employer testified at the hearing that it was unclear in her memory whether the physician led the "time out" at the time of the incident or if that was implemented after this incident. The employer's representative testified that she was unclear whether it was the physician or the circulator (Appellant's position) that was responsible for the "time out" on the day of the incident at issue in this case.

Appellant notes that due to the potential of civil liability following the incident, the employer conducted an investigation and suspended Appellant. Appellant notes that she testified that employees are generally permitted to correct any reporting mistakes via an addendum to a report but that she was not permitted to do so because she was immediately suspended. Therefore, she was denied the opportunity to correct the reporting mistake. It is Appellant's position that the hearing officer's reliance on the falsification of a report is misguided because Appellant did not have the opportunity to correct the report as other employees do.

It is Appellant's position that the employer did not make it clear whose responsibility it was to conduct the "time out." Further, while the employer had a procedure in place for employees to correct their mistakes, Appellant was immediately suspended which prevented her from correcting the error. By immediately suspending her, Appellant contends the employer backed her into a corner, and then relied upon her inability to correct her mistake. Appellant contends that her actions were reasonable and a person of ordinary intelligence would not consider the facts and testimony as to amount to a justifiable reason for the discharge.

APPELLEE, DIRECTOR, OHIO DEPT. JOB AND FAMILY SERVICES BRIEF

Appellee contends that the Review Commission's decision that the claimant was discharged with just cause is not unlawful, unreasonable, or against the manifest weight of the evidence.

Appellee contends that there is credible evidence in the record which supports the Review Commission's decision that the claimant was discharged with just cause. Appellee notes that claimant acknowledged that the accuracy of the perioperative record for the knee surgery conducted on January 18, 2013, was her responsibility, and agreed that discharge from employment would be an appropriate disciplinary action for falsification of a document. Appellee contends that the only disputed issue before the Hearing Examiner was whether claimant did falsify the surgical documentation, and, if the answer was yes, the discharge was with just cause, and the decision of the Review Commission should be affirmed.

Appellee notes that claimant admitted that the perioperative record indicates that a "time out" was conducted, while an investigation by the employer revealed that the "time out" was not done. Appellee notes that the claimant was the only member of the surgical team who insisted that a "time out" was done throughout the employer's initial investigation. Thereafter, claimant testified that she only believed that a "time out" was done. Appellee contends that the Hearing Officer found that the claimant's testimony was not credible.

The Appellee contends that there is competent credible evidence that the claimant falsified the surgical record. Appellee notes that just because reasonable minds might have come to a different conclusion on the basis of the evidence presented, the Court may not substitute its own judgment for that of the administrative body. See *Tzangas, Plakas & Mannos v. Ohio Bur. Of Employ. Serv.*, 73 Ohio St.3d 694 (1995).

COURT'S ANALYSIS AND CONCLUSION

Pursuant to R.C. §4141.282(H):

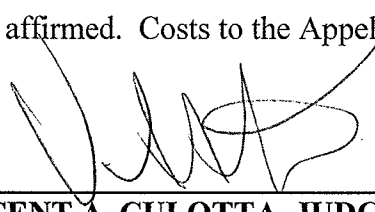
The Court shall hear the appeal upon receipt of the certified record provided by the commission. If the Court finds that the decision was unlawful, unreasonable or against the manifest weight of the evidence, it shall reverse, vacate or modify the decision, or remand the matter to the commission. Otherwise, the Court shall affirm the decision of the commission.

The Court cannot substitute its own judgment for that of the Board of Review. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). Ordinarily, the court should defer to the agency's resolution of purely factual issues which depend on the credibility of witnesses or the relative weight of conflicting evidence. *Angekovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159 at 161 (1983); *Brown-Brockmeyer*, 148 Ohio St. at 518. For such issues, the common pleas court should affirm the agency's findings if they have support from some competent, credible evidence. *Id.*; *Bernard v. Administrator*, 9 Ohio App.3d 277, 279 (1983).

Upon consideration of the record as well as the briefs of the parties, the Court finds that the decision of the Review Commission was supported by competent, credible evidence and is not contrary to law. Specifically, the Court finds that the record provides competent, credible evidence that supports the finding that Appellant was terminated from her employment with the Lake Pho, Inc. for just cause related to falsification of a patient's record. The Court may not substitute its own judgment for that of the Hearing Officer in this case to resolve purely factual issues which depend on the credibility of the witnesses.

WHEREFORE, the decision of the Ohio Department of Unemployment Compensation Review Commission dated June 7, 2013, is hereby affirmed. Costs to the Appellant.

IT IS SO ORDERED.



VINCENT A. CULOTTA, JUDGE

Copies:

Brian P. Scherf, Esq.
Christopher B. Congeni, Esq.
Laurence R. Snyder, Esq.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R. 58 (B)