

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

THE REED WAREHOUSES, INC.,

Appellant,

vs.

DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES

and

PAUL A. WICKENS,

Appellees.

CASE NO. 13-CV-0522

JUDGE COREY E. SPITLER

FINAL JUDGMENT ENTRY OF REMAND

This case came on for consideration as a statutory unemployment appeal that was filed by Appellant, The Reed Warehouses, Inc. (TRW), under R.C. 4141.282. TRW appeals from the final *Decision* of the Unemployment Compensation Review Commission (UCRC) that granted the claim for unemployment benefits filed by Appellee, Paul Wickens, on the basis that he was discharged from his employment by TRW without just cause under R.C. 4141.29(D)(2)(a).

According to the evidence in the certified record, Wickens was employed by TRW as a warehouse delivery driver from July 1, 2009 until he was discharged by TRW on March 28, 2013 for unauthorized fuel purchases in his personal vehicle with a TRW credit card in violation of TRW disciplinary policy. According to the evidence in the certified record of the UCRC, TRW conducted a disciplinary investigation of the unauthorized fuel purchases and Wickens verbally admitted to President Ken Walkerly of TRW that he made the unauthorized fuel purchases in his personal vehicle in violation of TRW disciplinary policy. Finally, according to the evidence in the certified record of the UCRC, Wickens had been given a prior verbal warning by TRW for his unauthorized use of a TRW credit card in violation of TRW disciplinary policy.

According to the evidence in the certified record of the UCRC, Wickens *failed to offer any evidence* to ODJFS and/or the UCRC to rebut the sworn testimony and evidence that was provided by TRW in the certified record. Moreover, according to the evidence in the certified record of the UCRC, Wickens *failed to appear* at the evidentiary hearing that was held by the UCRC in the claim on June 28, 2013 and thereby *failed to offer any sworn testimony* to the UCRC to rebut the sworn testimony and evidence that was provided by TRW President Ken Walkerly to the UCRC.

In the *Decision* of the UCRC dated July 1, 2013, the hearing officer of the UCRC appears to suggest that the un rebutted sworn testimony of TRW about the discharge of Wickens by TRW for his unauthorized fuel purchases in his personal vehicle with a TRW credit card was not supported by any "criminal charges" filed by TRW. However, the Court hereby notes for the record that Ohio law *does not require* that the disciplinary misconduct of an employee result in any *criminal charges* or a *criminal conviction* for the UCRC to decide that the employee was *discharged by the employer for just cause* under R.C. 4141.29(D)(2)(a). See *Tzangas, Plakas & Mannos v. OBES*, 73 Ohio St.3d 694 (1995); *Cross v. ODJFS*, 5th Dist. No. 2005CA006, 2005 Ohio 3781. In any event, according to the evidence in the certified record, TRW did not pursue criminal theft charges against Wickens after his discharge by TRW because President Ken Walkerly of TRW was concerned about the adverse impact of criminal prosecution on the family and children of Wickens.

Accordingly, after due consideration of the evidence in the certified record of the UCRC, the Court hereby ORDERS that this case be REMANDED to the UCRC pursuant to R.C. 4141.282(H) for a *de novo* evidentiary hearing to be held by the UCRC in the claim under R.C. 4141.281 on the issue of whether Wickens was discharged by TRW for just cause under R.C. 4141.29(D)(2)(a). See *Tzangas, Plakas & Mannos v. OBES*, 73 Ohio St.3d 694 (1995); *Moore v. ODJFS*, 9th Dist. No. CA23255, 2006 Ohio 6382; *Westphal v. ODJFS*, 9th Dist. No. 09CA9602, 2010 Ohio 190; *Simon v. Lake Geauga Printing*, 69 Ohio St.2d 41 (1982); *Barksdale v. ODJFS*, 8th Dist. No. 93711, 2010 Ohio 267; *Cross v. ODJFS*, 5th Dist. No. 2005CA006, 2005 Ohio 3781.

 04/16/2014

JUDGE COREY E. SPITLER

NOTICE TO THE CLERK OF COURTS

Pursuant to Civ. R. 58(B), the Clerk of Courts shall serve notice of this *Final Judgment Entry* and its date of entry on the Journal upon all parties and/or counsel of record.

APPROVED BY:

Michael G. Buytendyk (0033618)
Kennedy, Cicconetti, Knowlton & Buytendyk, L.P.A.
558 North Market Street
Wooster, Ohio 44691
Attorney for Appellant The Reed Warehouses, Inc.

Patrick MacQueeney (0042750)
Assistant Attorney General
Ohio Attorney General's Office
615 W. Superior Avenue, 11th Floor
Cleveland, OH 44113-1899
Attorney for Appellee ODJFS