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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

JEFFREY O. WILEY, : CASE NO. 2013-CV-1401
 Appellant, : Judge Richard P. Ferenc
 Vs. :
 DIRECTOR, OHIO DEPT. OF :
 JOB AND FAMILY SERVICES, ET AL., :
 Appellees. : DECISION AND FINAL ENTRY

Jeffrey O. Wiley, Pro Se, 4442 Happiness Lane, Cincinnati, OH 45245.

Robin A. Jarvis, Assistant Attorney General, 1600 Carew Tower, 441 Vine Street, Cincinnati, OH 45202, Attorney for ODJFS.

Todd D. Penny, 11025 Reed Hartman Hwy., Cincinnati, OH 45242, Attorney for Siemens Industry, Inc.

Procedural Posture

Appellant, Jeffrey O. Wiley ("Wiley"), appeals the determination of the Unemployment Compensation Review Commission ("Commission"), that he was discharged with just cause by his employer, Siemens Industry, Inc. ("Siemens"), and was therefore not entitled to unemployment benefits.

Wiley filed an application for unemployment benefits on April 24, 2013. On May 13, 2013, the Ohio Dept. of Jobs and Family Services ("ODJFS"), through its Director, allowed Wiley's application finding that he had been discharged without just cause. Siemens filed a timely appeal of this determination on May 30, 2013.

On June 14, 2013, ODJFS, again through its Director, reaffirmed its initial determination granting benefits to Wiley.

On July 3, 2013, Siemens timely appealed ODJFS' redetermination decision of June 14, 2013, to the Commission. ODJFS certified its records to the Commission on July 5, 2013.

The Commission sent a notice of the transfer of Wiley's appeal to all parties on July 9, 2013. On July 16, 2013, the Commission sent a notice to all parties that a telephone hearing would be held on July 29, 2013, at 10:15 a.m. The hearing notice contained detailed instructions for participation in the hearing as well as other rights applicable to the hearing.

On July 29, 2013, a hearing officer conducted a hearing as previously noticed. Wiley failed to participate. Nydia Rodriguez participated on behalf of Siemens. On July 30, 2013, the hearing officer mailed his Decision to all parties, announcing that he was reversing ODJFS' redetermination finding that Siemens had discharged Wiley without just cause. Therefore, it was determined that Siemens had just cause in the termination of Wiley and he was, therefore, not entitled to unemployment compensation benefits.

On August 8, 2013, Wiley submitted his request for review of the Commission's Decision. On August 21, 2013, the Commission disallowed Wiley's review.

Wiley has now timely appealed the Commission's Decision pursuant to R.C.4141.282.

Legal Standard

The standard of review in an unemployment compensation case was most recently addressed in, *Odom Industries, Inc. v. Shoupe*, 12th Dist.No.CA2013-09-069, 2014-Ohio-2120, at ¶¶11-12:

Our standard of review in unemployment compensation cases is limited. The common pleas court and this court utilized the same standard of review: 'reviewing courts may reverse just cause determinations only 'if they are unlawful, unreasonable, or against the manifest weight of the evidence.' ' It should be noted that when evaluating whether a judgment is against the manifest weight of the evidence in a civil case, such as the case at bar, the standard of review is the same as in the criminal context. That is, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the finder of fact 'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' (citations omitted)

Given this standard, reviewing courts are not permitted to make factual findings or determine the credibility of the witnesses. Factual

questions remain solely within the province of the Review Commission. The focus of an appellate court's review on an unemployment compensation appeal is upon the Review Commission's decision and whether such decision is supported by evidence in the record.

“Just Cause” Termination and Unemployment Compensation Eligibility

The Ohio Revised Code provides that an individual is not entitled to receive unemployment benefits if he was discharged for just cause in connection with work pursuant to R.C. 4141.29(D)(2)(a) which provides in pertinent part:

- (D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:
 - (2) For the duration of the individual's unemployment if the Director finds that:
 - (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, . . .

“Traditionally, just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Id.*, at ¶14, citing, *Irvin v. Unemp.Comp.Bd. of Review*, 19 Ohio St.3d 15, 17-18, (1985); *Johnson v. Edgewood City School Dist.Bd. of Edn.*, 12th Dist.No.CA2008-11-278, 2010-Ohio-3135, ¶11.

Facts Relative to Wiley's Discharge

Ms.Rodriquez testified that Siemens had hired Wiley on October 28, 1985. On the date of his discharge, April 23, 2013, he was employed as a quality inspector. She testified that Wiley was discharged for violating Siemens' work rule 19, that prohibited employees from selling Siemens' property. In particular, Siemens had discovered that Wiley was selling, without authorization, numerous items of its property on ebay. The hearing officer advised Ms. Rodriquez that Wiley had previously provided a written statement as part of the application process in which he claimed he was authorized to sell certain items of Siemens' property, including the property giving rise to his discharge. He claimed that a supervisor, Steve Kroger, had provided that authorization. Ms. Rodriquez acknowledged that Siemens did allow employees to take and sell, as scrap, certain items of property. However, the items of property Wiley was selling were

not classified as scrap, and further, he did not have proper authority to sell the items.

Ms. Rodriguez further testified that Wiley had initiated Siemens internal grievance process over his discharge. During the grievance process Wiley claimed he had authorization documents signed by Mr. Kroger regarding some of the property at issue. Mr. Kroger participated in the grievance process and specifically denied ever authorizing Mr. Wiley to sell the property at issue. Ms. Rodriguez further testified that the type of property Wiley was selling was of a type that the company would not allow employees to sell given its value. She clearly stated that the property involved would not be considered scrap material that Siemens may have allowed employees to sell from time to time.

Ms. Rodriguez further stated that Wiley had used his work computer to aid in his selling endeavors and had established a "folder" which he called "ebay" which had pictures of equipment he had taken without permission and listed on line.

As noted above, Mr. Wiley did not participate in the hearing. The notice of hearing that was sent to him advised him that pursuant to R.C.4141.281(D), if a non-appealing party fails to appear the hearing would go forward and a decision would be issued. A party who failed to appear had 14 days after the hearing to provide a written statement showing good cause for the non-appearance. The notice further advised the party that another hearing could be granted if good cause for the non-appearance is shown. While Wiley requested a review of the decision of commission denying his benefits, he did not provide any written statement explaining why he failed to participate in the hearing.

Based upon the uncontroverted evidence presented at the hearing, this Court finds that the Commission's decision of July 29, 2013, finding Wiley was terminated with just cause, was not unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, the decision of the Review Commission is affirmed.

Based upon the above,

IT IS HEREBY ORDERED, that the Commission's Decision of July 29, 2013, is affirmed in all respects and Wiley's appeal is denied.

IT IS FURTHER ORDERED, that this Decision shall also constitute the final appealable order in this matter as all issues raised herein have been finally decided.

A handwritten signature in black ink, appearing to read "Richard P. Ferenc", written over a horizontal line.

Richard P. Ferenc, Judge

INSTRUCTION TO THE CLERK:

Please serve a copy of this Final Judgment Entry/Final Appealable Order upon all counsel of record.