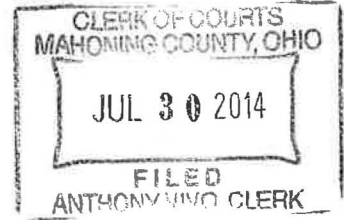


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IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

VALARIE A. THOMPSON	)	CASE NO. 13 CV 1451
	)	COURTROOM NO. 4
	)	
APPELLANT	)	JUDGE JOHN M. DURKIN
	)	
VS.	)	
	)	JUDGMENT ENTRY
STATE OF OHIO UNEMPLOYMENT	)	
COMPENSATION REVIEW	)	
COMMISSION, ET AL	)	
	)	
APPELLEES	)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to Ohio Revised Code Section 4141.282.

In this case, the record before the Review Commission establishes that the Director, Ohio Department of Job and Family Services (“Director”) issued an initial determination on May 29, 2012 that Appellant, Valarie A. Thompson (“Thompson”) did not meet the weeks and wage requirements for receipt of unemployment compensation benefits and disallowed Thompson’s application for benefits. On June 6, 2012, the Director issued a replacement initial determination holding that Thompson was discharged with just cause from her employment at Ace Cash Express (“Employer”) pursuant to Ohio Revised Code Section 4141.29(D)(2)(a) and disallowed Thompson’s claim for benefits.

Thompson timely appealed the Director’s determination and on June 22, 2012, the Director affirmed the replacement initial determination disallowing Thompson’s claim

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for benefits. Thereafter, Thompson filed a timely appeal of the Director's redetermination decision and the matter was transferred to the Review Commission on June 27, 2012.

A telephonic evidentiary hearing was held before the Review Commission on July 19, 2012. The Review Commission issued a decision on July 31, 2012 affirming the redetermination by the Director disallowing Thompson's claim for benefits. The Review Commission found that Thompson was discharged from employment with just cause in connection with work and was therefore ineligible for unemployment benefits.

On July 31, 2012, Thompson requested a further review by the Review Commission. The Review Commission allowed the request on August 29, 2012 and on September 13, 2012 the Review Commission issued a decision affirming the July 31, 2012 decision.

Thompson filed a timely appeal with this Court which was assigned Case No. 12 CV 3178. This Court issued a Judgment Entry on March 20, 2013 remanding the case back to the Review Commission for a rehearing since it was determined that the recording of the hearing could not be located and Case No. 12 CV 3178 was closed.

On April 22, 2013, the Review Commission conducted a telephonic evidentiary hearing. Thereafter, on May 31, 2013 the Review Commission issued a decision affirming the July 31, 2012 decision. This appeal followed.

In this case, the record before the Review Commission establishes that Thompson worked as a Center Manager for Employer from December 2003 until she was discharged from employment on May 18, 2012. The Employer is a check cashing business and has work rules and policies regarding the safeguarding of information obtained in the course

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of business. Violation of the policy permits discipline, including termination. Thompson signed the policy when she was hired. Tr. 13.

In April 2012, Thompson removed outdated checks from the Employer's business. Instead of shredding the checks, Thompson gave the checks to the niece of a male friend to use in a school project. Tr. 12. She was not authorized to give checks to anyone and did not receive permission to do so. Tr. 13-14. Though she whited out the check casher's name, Thompson left the check casher's employer's name, address, bank name, account number and routing number on the checks. Tr. 14-15.

The Employer received an anonymous tip that claimant was involved in fraudulent activity with her male friend regarding the checks. The Employer investigated but found no fraud by Thompson. However, the Employer terminated Thompson on May 18, 2012 for violating the company's policy concerning the safeguarding of customer information.

The procedure for reviewing a Review Commission's decision is set forth in R.C. 4141.282(H) which provides as follows:

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

To reverse, vacate or remand the matter, this Court must find that the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to

support the Review Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4<sup>th</sup> Dist. 1965); *Roberts v. Hays*, 9<sup>th</sup> Dist. No. 21550, 2003-Ohio-5903, paragraph 12.

The determination of factual questions is a matter primarily for the hearing officer and the Review Commission. *Brown-Brockmyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E.2d 79 (1947). If some credible evidence supports the Review Commission's decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In this case, Thompson was found to be discharged for "just cause". The "just cause" test is whether the discharge was due to the culpability of the employee rather than due to circumstances beyond the employee's control. *Loy v. Unemp. Comp. Bd.*, 30 Ohio App.3d 204, 206, 507 N.E.2d 521 (1<sup>st</sup> Dist. 1986). The Seventh District Court of Appeals considered the "just cause" issue in *Kosky v. American Gen. Corp.*, 7<sup>th</sup> Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

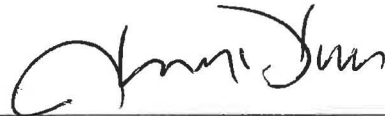
The record before the Review Commission contains evidence that Thompson unreasonably disregarded the best interests of her Employer by removing checks from the Employer's business in violation of company rules and policies. Thompson knew about the company rules and policies as she signed and acknowledged them when she was hired. The Hearing Officer determined, after considering the testimony of the parties, that Thompson was discharged with just cause. The hearing officer was responsible for

weighing and considering the evidence to determine if just cause existed for Thompson's termination. This Court cannot substitute its judgment for that of the hearing officer.

This Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

DATE: \_\_\_\_\_

7/29/14



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JUDGE JOHN M. DURKIN

THIS COPY TO ALL PARTIES  
BY REPRESENTED : 7/29/14

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