

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

Beverly Hetzel,

Appellant,

v.

Director, Ohio Dept. of Job and Family  
Services, et al.,

Appellees.

LIICKING COUNTY  
COMMON PLEAS COURT  
2014 SEP - CASE NO. 14 CV 00221  
3 20

FILED  
CLERK OF COURTS  
JUDGMENT ENTRY

I. NATURE OF THE PROCEEDINGS

This matter is before the Court on appeal pursuant to R.C. 4141.282 from a decision of the Ohio Unemployment Compensation Review Commission issued February 12, 2014. For the reasons set forth below, the decision of the Commission is affirmed.

II. STANDARD OF REVIEW

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.

R.C. 4141.282(H). “[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696 (1995). However, “[t]he board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Id.* at 697. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision.” *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

Judge  
Thomas M. Marcelain  
740-670-5777

Judge  
W. David Branstool  
740-670-5770

Courthouse  
Newark, OH 43055

## CONCLUSIONS OF LAW

On December 24, 2013, a telephone hearing was conducted by a hearing officer of the Unemployment Compensation Review Commission (UCRC). On January 2, 2014, the UCRC found that appellant Hetzel was discharged by her employer, Appellee Englefield Oil, for just cause in connection with work, that she had received benefits to which she was not entitled, and that she was required to repay the benefits. Hetzel requested review of that decision which was denied by the UCRC February 12, 2014. Hetzel timely filed an appeal of that decision.

R.C. 4141.29(D)(2)(a) states that no individual shall be paid benefits if “[t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work....” Unemployment benefits exist to help those who find themselves unemployed through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39 (1980). “The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control.” *Tzangas* at 697. “Fault on the employee's part separates him from the Act's intent and the Act's protection.” *Id.* at 698. “That deficiency, which does not result from any outside economic factor, constitutes fault on the employee's behalf.” *Id.* at 698.

The burden of proof is upon the employee to prove his entitlement to unemployment compensation benefits under R.C. 4141.29(D)(2)(a). See *Irvine* at 18 and *Durgan v. Ohio Bur. of Emp. Serv.*, 110 Ohio App.3d 545, 550 (1996). A claimant must show he is “free from fault” for his termination. *Durgan* at 551.

The hearing officer made the following findings of fact:

Claimant worked as a Store Manager for the employer, Englefield Oil Company, Inc., from August 24, 2008 until October 9, 2013. The employer has a company policy that prohibits the falsification of time cards. A violation of the policy can result in an employee's termination of employment. Claimant was aware of the policy and had enforced the policy against other employees.

Eugene Robinson's wife had been diagnosed with breast cancer and was working a reduced 3 or 4 day work schedule. At the end of claimant's employment, she'd instructed Mr. Robinson to use his wife's social security number to clock her in and out for a day that she was not scheduled to work. Claimant told Mr. Robinson that she would take care of his time. Mr. Robinson knew that this was in violation of company policy. He did not use his wife's social security number to clock in/out. Mr. Robinson also reported claimant's comments to Mr. Williams. Mr. Williams began to monitor the time records closely after Mr. Robinson's [sic] had approached him with his concerns. Shortly after Mr. Robinson reported his concerns to Mr. Williams, claimant clocked Mrs. Robinson in and out for an eight hour shift on a day that she did not work. Claimant was the only one who [sic] the ability to clock Mrs. Robinson into the stores [sic] company's payroll system.

Claimant asked Mr. Robinson if he used his wife's social security number to clock in. Mr. Robinson responded that he did not. Claimant told Mr. Robinson that she would take care of it. Claimant told Mr. Robinson if they say anything "deny, deny, deny." Claimant then started laughing. Mr. Robinson reported the conversation to Mr. Williams. Mr. Williams reviewed the time records and confirmed that claimant had entered eight hours of work for Mrs. Robinson on a day that she had not been scheduled to work.

On October 9, 2013, claimant was discharged by the employer for falsification of company records.

(Decision of Hearing Officer at 1-2).

The hearing officer's findings were based upon the testimony of Mr. Robinson, an employee whom Hetzel supervised, and Mr. Williams, Hetzel's supervisor. The hearing officer found Mr. Robinson to be "extremely credible." *Id.* at 2. The findings reflect the testimony of Mr. Williams and Mr. Robinson. Hetzel maintained she mistakenly entered the hours for Mrs. Robinson.

Hetzel contends that the decision of the UCRC is unreasonable, an abuse of discretion, and against the manifest weight of the evidence. Hetzel asserts that she made an error to

which she admitted and the evidence at the hearing supported this explanation. She further argues that at the hearing, the employer had no explanation as to why Hetzel would falsify the time records and that she had no incentive to do so.

Heztel's contention, however, requires this Court to re-weigh the evidence in her favor and discount the testimony of the witness the hearing officer found to be "extremely credible." In unemployment appeals, "courts are not permitted to make factual findings or to determine the credibility of witnesses. The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision." (Citations omitted.) *Irvine* at 18. "A court cannot substitute its judgment for that of the review commission. Where the review commission might reasonably decide either way, courts have no authority to upset the review commission's decision." *James v. Ohio State Unemployment Review Comm.*, 10th Dist. No. 08AP-976, 2009-Ohio-5120, ¶18.

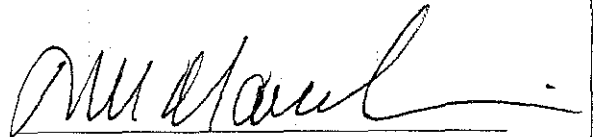
The decision of the UCRC is supported by the testimony of Mr. Williams and Mr. Robinson, and was not against the manifest weight of the evidence. The Commission gave greater weight to the testimony of Williams and Robinson than to Hetzel's testimony. It is beyond the scope of this Court's review to reassess the credibility of witnesses or re-weigh the evidence where the decision is supported by evidence in the record.

CONCLUSION

For the reasons set forth above, the decision of the Commission is AFFIRMED.

It is so ORDERED. There is no just cause for delay. This is a final appealable order.

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Thomas M. Marcelain, Judge

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