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IN THE COURT OF COMMON PLEAS OF WILLIAMS COUNTY, OHIO

Jesse D. Friedel,

Case No. 14 CI 114

Plaintiff-Appellant,

vs.

Eugene F. Quota, Jr. et al.,

DECISION and ORDER

Defendant.

Plaintiff-Appellant, Jesse D. Friedel (hereinafter "Employer") filed a Notice of Appeal with this Court on August 8, 2014, as permitted by R.C. §4141.282. The Employer's appeal questioned whether the Board of Review properly decided that Defendant-Appellee, Eugene F. Quota, Jr. (hereinafter "Employee") was entitled to unemployment benefits. A certified transcript of the record of the proceedings was timely prepared and filed with this Court. A briefing schedule was ordered and all briefs and arguments have been filed. The issues raised in the pleadings are now decisional based upon a review of the briefs and the certified transcript of the record.

Unemployment compensation is designed to furnish funds to substitute for wages lost due to unemployment during the period of unemployment. *State ex rel. Cox v. Lopeman*, 13 Ohio App. 3d 192 (10th Dist., Franklin Cty. 1984). Such benefits should be paid where the individual's

unemployment is not the employee's fault and where the employee is ready, willing and able to secure other employment. *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15, 17 (1985). "Essentially, the Act's purpose is to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day." *Leach v. Republic Steel Corp.*, 176 Ohio St. 221, 223 (1964).

Discussion

The matter before the Court is an administrative appeal from the Ohio Unemployment Compensation Review Commission as allowed under R.C. §4141.282. In this case, the Review Commission found that the Employee "quit with just cause" from his position with Employer. Employee had worked as an over-the-road truck driver for Employer. Employer-Appellant requests this Court issue an order that based upon a review of the transcript of the proceedings below, that "the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." Employer further requests that the commission's decision be reversed, vacated, or modified, or that the case be remanded to the commission for further proceeding.

Employee and the Ohio Department of Job and Family Services (ODJFS), to the contrary, ask this Court to rule that the Review Commission's decision was not "unlawful, unreasonable or against the manifest weight of the evidence." Employee and ODJFS therefore request that the commission's decision be affirmed.

A reviewing court is limited to the record as certified by the review commission. *Abrams-Rodkey v. Summit County Children Serv.*, 2005-Ohio-4359 (Ohio App. 9 Dist.). While a court

must liberally construe a statute in favor of a claimant, that does not mean that it must liberally construe the facts in a particular case in favor of the claimant. *Kosky v. Am. Gen. Corp.*, 2004-Ohio-1541 (Ohio App. 7 Dist.). An appeal of a decision rendered by the Review Commission is governed by R.C. 4141.282(H), which provides, in part: “* * * If the court finds that the decision is 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, such court shall affirm the decision of the commission.” *Doering v. Holmes County Dept. of Job and Family Services*, 2009-Ohio-5719 (Ohio App. 5th Dist.) ¶ 57 (emphasis added). The trial court shall hear the appeal on the certified record provided by the commission. *McNeil Chevrolet v. Unemployment Compensation Review Board*, 2010-Ohio-2376 (Ohio App. 6 Dist.).

It is undisputed that Employee (Eugene F. Quota Jr.) quit his job with Jesse Friedel on February 8, 2014. Generally, an employee who quits without “just cause” in connection with his or her work may not receive unemployment benefits. A person has “just cause” to quit work where an ordinary, intelligent person would conclude he has a justifiable reason for quitting, and the cause is substantially related to the person’s ability to perform in his employment capacity. *Henize v. Giles*, 69 O. App. 3d 104 (4th Dist. Highland County 1990); See also: *McNeil Chevrolet, Inc. v. Unemployment Comp. Rev. Bd.*, 2010-Ohio-2376 (Ohio App. 6 Dist.)(upholding Review Board’s decision that employee had just cause to quit where he was subjected to numerous temper outbursts, extreme profanity and requests to do work without pay).

From a careful review of the Certified Transcript of Proceedings, the “Director’s File” discloses that the Employee was originally denied unemployment benefits at the initial

determination level because he “quit” his job because of a “moral objection.” According to the Determination of Unemployment Compensation Benefits issued by ODJFS on March 6, 2014.

The claimant quit JESSE D FRIEDEL on 02/07/2014. The claimant alleged that his/her supervisor subjected him/her to unreasonable annoyances and continuing work with such a relationship would have caused extreme hardship. However, the claimant has not established either allegation. Ohio’s legal standard that determines if a quit is without just cause is whether the claimant acted as an ordinary person would have under similar circumstances. After a review of the facts, this agency finds that the claimant quit without just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. (emphasis added)

There is no mention whatsoever in the initial determination to the alleged “federal trucking law violation” which Employee eventually claimed as his justification for quitting his job.

The Employee requested an appeal of the initial determination and his stated reasons for requesting the appeal (as shown on the Notice that a request for appeal has been filed) were:

“Ok I do disagree with your desission, fact is I was left out in freezing conditions -20 below with 35 mph winds for over 4 hours with no way to start my truck to stay warm, and my boss Jesse friedel was to intoxicated to help me find a service person to come fix the truck and pay for it, or I was less than 30 mile from his home he could brought me the parts and helped me fixed it, but because he was intoxicated he would not help in anyway. I had to call my son in law to frive 80 mile in the middle of night to come help me, he was the only person that could wait to be paid and because Jesse has to to pay for these service people to out before they will send some out to fix I do nat a card with much money on it so they Jesse has to do this and again he could not because he was intoxicated and told to do what I had to] I was left in a dangerous place in dangerous weather conditions with no help from my boss, and that put my life in danger. I was forced out of my truck after 3 hours bt high potrol because of the weather and taken to a truck stop about 10 miles a way to wait for help to arrive. They said the weather condition they could not let me wait

any longer Mr. Friedel is one of the greatest people I know and am proud to call him my friend, but he need to to his part as boss and they the only who the the authority call me help when I need it, so I feel he should have been sober enough to his job.” (emphasis added)

Again, no mention was made by Employee of any federal trucking law violations or complaint.

The Employer responded to Employee's appeal by a letter dated March 26, 2014.

Employer's response, in its entirety stated:

To whom it may concern,

I'm writing to respond to the appeal of the initial determination #227148509 regarding the reason Mr. Eugene Quota Jr. quit without notice. I remember the night that Eugene spoke of in his request for an appeal, I spoke with him on the phone and advised him to call for assistance and suggested he call his son-in-law Eric who had worked on the truck previously and is employed as a road service tech. The truck was disabled outside of Waterloo Indiana and only about 30 miles from Montpelier which is where Eugene and I both live. At the time, I believed it could e a filter but I didn't have the filter or access to a replacement filter to bring to him. It ended up needing a replacement hose and 4 gallons of anti-freeze. Eugene had a debit card in his name with access to my personal bank account to be used for fuel and repairs. His comment about not having a card with much money on it or needing me to pay for the services is untrue. There is a daily limit on the card of 500 for purchases and 200 cash advance. The limits are the same for myself or for Eugene. Also, he was not required to pay it in order for the repair to be done. In closing, I hired Eugene to drive the truck, I trusted him to do the job, handle minor repairs while on the road and schedule and/or suggest routine maintenance and other repairs that the truck needed as they arose. I listened to Eugene and did my best to keep the truck in good working order. I'm not sure what else I could have done. I don't believe I could have been any help to him except to drive him to the rest area like the police did. It was horrible weather, I agree but I don't control the weather. Furthermore this is the first time I've heard any reason at all as to why Eugene quit. His comments to me at the time were more about

concern for his marriage and personal reasons for wanting to quit.

Thank you

Jesse D. Friedel
03/26/2014

(emphasis added)

Based upon all of the information above, the ODJFS issued a Director's Redetermination and states in its Decision and Reasoning as follows:

AFFIRMED – A review of the original facts plus those submitted in the appeal does not support a change in the initial determination.

The determination with ID # 227148509-1, issued on 03/06/2014, is hereby affirmed.

In accordance with Section 4141.01(R)(2) of the Ohio Revised Code, the Ohio Department of Job and Family Services has **DISALLOWED** the claimant's application for unemployment compensation benefits dated 02/14/2014 due to a disqualifying separation from employment or other reasons described in the following text:

This portion of the determination has been affirmed.

The claimant quit Jesse D Friedel on 02/07/2014. The claimant alleged that his/her supervisor subjected him/her to unreasonable annoyances and continuing work with such a relationship would have caused extreme hardship. However, the claimant has not established either allegation. Ohio's legal standard that determines if a quit is without just cause is whether the claimant acted as an ordinary person would have under similar circumstances. After a review of the facts, this agency finds that the claimant quit without just cause under Section 4141.29(D)(2)(a), Ohio Revised Code. Therefore, no benefits will be paid until the claimant obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1398, and is otherwise eligible.

Under “fact finding information” and “reasoning,” the Director’s Redetermination stated:

Deny. Facts established the claimant objected to the employer’s behavior and felt that the employer’s behavior put him at risk. The claimant did try to resolve the situation by speaking with the employer, however, the claimant quit without notice failing to give the employer time to resolve the situation.

(emphasis added)

The Employee appealed the Director’s Redetermination and on April 8, 2014 the matter was transferred by ODJFS to the Ohio Unemployment Compensation Review Commission. A telephone hearing on Employee’s appeal was held on May 16, 2014. The Employee appeared and testified but Employer did not.

From a review of the Transcript of Proceedings documenting the telephone hearing held on May 16, 2014, the transcript discloses the following:

1. The Employee was working for Employer as an over-the-road truck driver from February 5, 2013 to February 7, 2014.
2. The Employee had traveled to the State of Missouri on February 3, 2014 to deliver goods for Employer. His return to Ohio was delayed because of a snow storm.
3. As Employee was driving back to Ohio on February 7, 2014, his truck broke down near Waterloo, Indiana. The weather conditions were dangerous and the Employee placed a phone call to Employer for roadside assistance.
4. The Employee was stranded for several hours before help arrived and his truck was repaired. Employee was frustrated with Employer’s response to his request for help.
5. Once Employee’s truck was repaired, Employee drive approximately 30 miles to his home (he is Employer’s neighbor) and he went to bed.

6. According to Employee, after only having a few hours of sleep, a third party customer or broker called the Employee to transport goods in or around the Detroit, Michigan area. The Employee declined and told the customer/broker to call Employer. No mention of this phone call had previously been raised by Employee.
7. Late on the morning of February 8, 2014, Employer appeared at Employee's home and discussions occurred between them. Ultimately, Employee advised Employer that he was quitting. Again, no mention of this meeting and discussion between Employee and Employer had previously been raised by Employee.
8. During the telephone hearing on May 16, 2014 (over 3 months after he quit his job), the Employee raised for the first time his new justification for "quitting" his job, which was that the Employer had instructed him to violate federal law pertaining to the trucking industry.
9. During the entire telephone hearing on May 16, 2014, the Employee spent little time discussing his original "justification" for quitting which was that his Employer "subjected him to unreasonable annoyances and continuing work with such a relationship would have caused extreme hardship."
10. During the telephone hearing, the Employee only briefly touched upon the facts he discussed in his appeal from the ODJFS "initial determination" concerning his February 7, 2014 truck breakdown in sub-zero temperatures and the snow storm.
11. The Employee did not provide any explanation to the telephone hearing officer during the May 16, 2014 hearing as to why absolutely no mention whatsoever had previously been made by Employee of the fact that he "quit" because his Employer was instructing him to violate federal law pertaining to the trucking industry.
12. Employee quit his position with Employer on February 8, 2014 and the first mention of his concern for federal trucking law violations did not appear in the record until the May 16, 2014 phone hearing, over 3 months after he quit his job.
13. There is also an absence of evidence disclosing what notice and opportunity to correct any perceived violations were given by the Employee to Employer.

The issue for this Court to determine is whether, based upon a review of the entire record, sufficient facts exist in the record to support the commission's ruling that this Employee had

“just cause” to quit his job. As stated earlier, the test in making this determination is whether “an ordinary, intelligent person would conclude he has justifiable reason for quitting, and the cause is substantially related to the person’s ability to perform in his employment capacity. *McNeil Chevrolet, Inc.* supra. Based upon the record before this Court, no “ordinary, intelligent person would conclude he has a justifiable reason for quitting” his over-the-road trucking job simply because his vehicle unfortunately broke down in a horrible snow storm. Certainly, those facts support feelings of frustration by the Employee toward his Employer. But frustration with one’s employer alone does not rise to the level of giving the employee “just cause” to quit without adversely affecting the employee’s rights to collect unemployment benefits.

Based upon this Court’s review of the certified transcript of the record in its entirety, the decision of the Review Commission is unreasonable and against the manifest weight of the evidence. The purpose of the administrative process below in determining whether an individual is entitled to unemployment compensation benefits as allowed by statute is to determine the truth as to what events led to the separation of an employee from their job. The three step review process is not designed to allow employees and/or employers to test various arguments at each level of review until the new set of claims is successful when the earlier claims had failed.

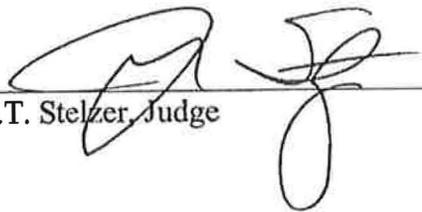
Additionally, an employee who encounters problems with his work conditions must notify his employer of the problem, so as to give the employer an opportunity to remedy the problem. *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App. 3d 300, 307 (10th Dist. 1996); *Morris v. Director, ODJFS*, 2002-Ohio-5250 (Ohio App. 7 Dist.) ¶ 19. A key issue for determination whether an employee has quit with just cause is “whether an ordinarily

intelligent person would have quit without giving notice under the circumstances of the case.” *DiGiannantoni @ 308; Morris @ ¶27*. In this case, Employee failed to raise or even mention his allegation concerning a perceived federal trucking law violation until the May 16, 2014 phone hearing.

Decision

Based upon a review of the certified transcript and law discussed above, the Court finds the decision of the Unemployment Compensation Review Commission to be unreasonable and against the manifest weight of the evidence. The decision is hereby vacated and the claim is remanded to the commission for further hearing not inconsistent with this decision and order.

IT IS SO ORDERED.



J.T. Stelzer, Judge

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