

DAVID M. HODGSON
IN THE COURT OF COMMON PLEAS

2015 JAN 30 COUNTY OF SUMMIT

GENERAL DIE CASTERS, INC.)
SUMMIT COUNTY)
CLERK OF COURTS)
Plaintiff)
-vs-)
JEROME D. IVERY,)
Defendant)

CASE NO. CV 2014-08-3685

JUDGE MCCARTY

ORDER

On August 7, 2014, the Appellant, General Die Casters, Inc. (“GDC”), filed this administrative appeal from the decision of the Ohio Unemployment Compensation Review Commission. Jerome Ivery (“Ivery”) and Director, Ohio Department of Job and Family Services (“ODJFS”) are the Appellees in this matter.

The transcript of proceedings was filed on September 5, 2014. The briefing schedule, pursuant to Loc. R. 19.03, is now complete. The issues raised by this administrative appeal are now deemed submitted.

FACTUAL BACKGROUND

Appellee Ivery began his employment with Appellant GDC in November of 1979. GDC terminated Ivery’s employment, effective January 15, 2014. The stated reason for Ivery’s termination was that Ivery violated a company rule when he failed to follow proper lockout/tag out safety procedures in connection with the machine he was working on.

On January 17, 2014, Ivery filed an application for determination of benefit rights with ODJFS Office of Unemployment Compensation. On February 7, 2014, ODJFS issued a Determination disallowing the application for benefits, finding that Ivery was discharged with just cause.

Ivery filed an appeal of the Determination on February 20, 2014. The Director issued a Redetermination on March 7, 2014, wherein it affirmed the initial determination of discharge with just cause. Ivery then timely appealed the Redetermination.

The appeal was transferred to the Unemployment Compensation Review Commission, and a hearing was held on April 3, 2014 and on April 21, 2014. At the hearing both sides were represented by counsel. GDC presented Douglas Hicks, Terry Betz, and Justin Schrantz as witnesses. Thomas Llewellyn and Chad Johnson testified as subpoenaed witnesses.

The Hearing Officer issued a Decision reversing the Director's Redetermination. The Hearing Officer found that Ivery did not remove stuck parts without properly locking out a machine, as alleged by GDC. The Decision, issued May 20, 2014, found that GDC had discharged Ivery from his employment without just cause; allowing his claim for unemployment benefits.

The issue central to this administrative appeal is whether Ivery was separated from his employment for just cause. ODJFS maintains that the incident that resulted in Ivery's termination did not actually occur. Therefore, ODJFS contends that Ivery should not have been subject to the disciplinary process and, consequently, discharged from his employment. GDC asserts the position that the totality of the record evidence shows that GDC appropriately terminated Ivery for violating the lockout/tag out policy, and that Ivery was lawfully discharged for just cause.

LAW & ANALYSIS

The role of the Court of Common Pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the Court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

In the May 20, 2014 Decision, the Hearing Officer elaborated as to the reasons for reversing the Director's Redetermination. The Hearing Officer considered the testimony of Terry Betz and Justin Schrantz, and found their testimony to be inconsistent, unreliable, and lacking in credibility. As to Betz, the Hearing Officer found inconsistencies as to when, where, and how Betz allegedly observed Ivery violate safety procedures. The Hearing Officer noted that Schrantz testified inconsistently as to whether or not he had actually recognized a safety violation himself,

and, if so, what then prompted him to seek out Betz to question whether or not Ivery was following proper lockout procedures.

The Hearing Officer also observed unresolved inconsistencies in the statements of Betz and Schrantz regarding who sought out maintenance to work on the machine. Further, the Decision indicated that Betz and Schrantz undermined their own credibility by failing to provide a plausible explanation for failing to approach Ivery in an attempt to stop or correct him from working on the machine in an unsafe manner, and for their decision to instead report the incident directly to management.

The Hearing Officer found that the submitted video fails to provide sufficient support for GDC's allegations. The Hearing Officer reasoned that the video does not demonstrate any wrongdoing on Ivery's part, and the testimony of the witnesses failed to clarify whether or not the machine was locked out during the video clip.

The Hearing Officer found Ivery's testimony, that he always locked prior to entering the machine, to be credible and corroborated by the credible testimony of Tom Llewellyn, a technician who worked on the machine after Ivery. Additionally, the Hearing Officer considered the evidence of a disagreement between Ivery and GDC on union issues, and the timing of certain events related to those issues, to constitute a plausible explanation of GDC's motivation to fabricate evidence of the incident leading to Ivery's termination.

GDC asks this Court to overturn the Decision and find that the record evidence shows that Ivery's termination was for just cause. In undertaking this review, this Court must give due deference to the Hearing Officer's resolution of evidentiary conflicts, rather than substitute its

own its judgment. This Court finds that a preponderance of reliable, probative, and substantial evidence exists to support the findings and conclusions of the Decision. Therefore, the Court declines to engage in the reweighing of evidence and reassessing of the credibility of witnesses.

After a thorough review of the record, the Court finds that there was sufficient competent, credible evidence to support the Hearing Officer's Decision that Ivery was terminated from employment by GDC without just cause. In considering whether the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence, this Court finds that the decision was supported by the record.

The decision of the Ohio Unemployment Compensation Review Commission is
AFFIRMED.

This shall serve as a final appealable order. There is no just cause for delay.

IT IS SO ORDERED.

JUDGE ALISON MCCARTY

cc: Attorney Laurence R Snyder
Attorney Ronald L. Mason