

COMMON PLEAS COURT
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MEDINA COUNTY
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**IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO**

Jennifer Chidsey)	CASE NO. 14CIV1052
)	
Plaintiff)	
)	
vs.)	JUDGE JOYCE V. KIMBLER
)	
Director, Ohio Dept. of Job and Family Services, et al.)	
)	
Defendant)	Judgment Entry with Instructions to the Clerk

Case History

Appellant, Jennifer Chidsey (“ Chidsey”) appealed from a decision of the Ohio Unemployment Compensation Review Commission affirming a redetermination decision of the Director of the Ohio Department of Job and Family Services denying her unemployment compensation benefits. This appeal was filed pursuant to R.C. §4141.282. The parties have filed memorandums setting forth their respective positions. The appeal is now before this Court for determination.

The court finds that the decision of the unemployment compensation review commission was not unlawful, unreasonable, or against the manifest weight of the evidence and is therefore affirmed.

Findings of Fact by the Commission

The Commission's Findings of Fact are set forth in its decision. The decision is part of the Review Commission File that is filed with the court and is set forth as

"Exhibit A" in the brief filed by the Director of the Ohio Department of Job and Family Services. After reviewing the transcript, the Court finds that the Hearing Officer's Findings of Fact accurately describe what happened vis-à-vis Appellant and his former employer relative to the termination of Appellant's employment. Accordingly, the Court hereby adopts in their entirety the Findings of Fact as established by Hearing Officer. Those facts are as follows:

Medina Hospital, Inc. employed claimant from October 7, 1999 to May 29, 2014. At the time of her separation, claimant was a Paramedic.

On April 9, 2014, claimant was dispatched to handle a 911 call involving a 14 year old boy who severely injured his wrist while riding a scooter. When claimant arrived on the scene, the child's mother requested that he be transported to the hospital. The child was in a great deal of pain. Claimant did not assess the child's condition, attend to him medically, or transport him to the hospital as required by the employer's protocol for the treatment of minors with life or limb injuries. She only spent nine minutes on the scene mostly completing paperwork. Ultimately, the child's mother drove him to the employer's emergency room. Upon the child's arrival in the emergency room, the employer determined that he had an open compound fracture of the wrist that required surgery. The child's mother contacted the employer to complain about how claimant handled her son. After reviewing the entire matter, the employer concluded that claimant was negligent and demonstrated very poor decision making during the entire matter. Because of the seriousness of her conduct, claimant received a three-day suspension for neglect of duty. The employer has four levels of progressive discipline that include : documented counseling, written warning, suspension, and termination. Claimant understood that she would advance to the final step of progressive discipline if she committed another infraction.

On May 20, 2014, a patient's spouse contacted the employer to express her concern about claimant's treatment of her husband. When questioned, the patient's spouse told the employer that she called 911 because her husband had fallen down a flight of stairs and was lying unresponsive on the floor. Two police officers were the first to arrive at the patient's home and were present during the entire run. After asking the patient's wife a few questions, claimant's partner attempted to rouse the patient by placing an ammonia inhalant under his nose. The employer's protocol prohibits the use of

ammonia inhalants and the inhalants do not meet the standard of care. The patient's wife reported that claimant and her partner eventually sat her husband up and pulled him to his feet. They then walked him towards the gurney. The patient's wife asked claimant and her partner if they planned to use a backboard to immobilize her husband. Claimant replied no. She and her partner helped the patient onto the gurney and used a device to restrain him. The patient's wife said that the care claimant provided was repulsive. In her patient care report, claimant described the patient as combative and thrashing about. Claimant omitted her partner's use of the ammonia inhalants and restraints.

The employer interviewed one of the Medina police officers as part of its investigation. The police officer corroborated the patient's wife statement about the incident. He denied that the patient was combative or uncooperative. The police officer was wearing a body camera that recorded what happened at the patient's house. A review of the footage from the police officer's body camera confirmed the statements provided by the police officer and the patient's wife. When the patient finally arrived at the employer's emergency room, his treating physician found that he had two cerebral hemorrhages.

After completing its investigation, the employer concluded that claimant had again neglected her job duties. Since claimant had already received a suspension, she advanced to the final step of discipline. Claimant was subsequently discharged.

Conclusions of Law

In reviewing a decision by the Commission denying benefits to a claimant the trial court must affirm unless it finds that the Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282 (H); *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St. 3d 694 (Ohio 1995)

During a review of a decision by the Commission, the trial court must make every reasonable presumption in favor of the decision and the findings of fact by the Commission. *Tzangas* at 697.

A trial court may not reverse a decision of the Commission just because it would have reached a different result if it had been deciding the case de novo. *Irvine v. State, Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15 (Ohio 1985)

In determining such an appeal, a common pleas court is limited to the transcript filed by the Commission. *Abrams-Rodkey v. Summit County Children Servs.*, 163 Ohio App. 3d 1, 2005 Ohio 4359, (2005).

An employer may terminate an employee for "just cause." "Just cause" has been defined by the Ohio Supreme Court as follows:

"[T]hat which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15, 17, 19 OBR 12, 14, 482 N.E. 2d 587, 589, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App. 2d 10, 12, 73 O.O. 2d 8, 9, 335 N.E. 2d 751, 752.

"A claimant must carry the burden of proving his entitlement to unemployment compensation benefits. *Irvine* at 17, citing *Shannon v. Bur. of Unemployment Comp.* (1951), 155 Ohio St. 53, 97 N.E.2d 425.." *Houser v. Dir., Ohio Dep't of Job & Family Servs.*, 2011 Ohio 1593, P7 (Ohio Ct. App., Franklin County Mar. 31, 2011)

"Just cause" in discharging an employee involves some degree of fault on the part of the employee. *Houser* at P9.

A hearing officer conducting a hearing to determine whether or not a person is entitled to unemployment compensation is not bound by the traditional rules of evidence. *Mastromatteo v. Brown & Williamson Tobacco Corp.*, 2003 Ohio 5328 (Ohio Ct. App., Montgomery County Oct. 3, 2003), at P13.

"A hearing officer has no duty to present or establish either party's case." *Fredon Corp. v. Zelenak* (1997), 124 Ohio App.3d 103, 111, 705 N.E.2d 703. This

takes the hearing officer outside his necessarily impartial role. *Bulatko v. Dir., Ohio Dep't of Job & Family Servs.*, 2008-Ohio-1061 (Ohio Ct. App., Mahoning County Mar. 6, 2008).

Under Ohio case law, even when one or both parties appear pro se, a hearing officer has no duty to present or establish either party's case. *Fredon, supra*; See *Fasolo v. Admin., Ohio Bur. of Emp. Services* (Jan. 21, 1988), Cuyahoga App. No. 52839, unreported. Having chosen to pursue its case without counsel, [appellant] should not expect, and the law does not provide, that the hearing officer must act as either party's advocate. *Fasolo, supra*. Thus, any failure to present properly or to explain the significance of various exhibits must be placed at the feet of the respective litigant. *Fredon, supra*.

Holding

Hearing Procedure

First Chidsey argues that the hearing officer failed to assist her at the hearing when she was proceeding pro se. Chidsey contends that if the hearing officer assisted her properly she would have obtained admission of a police body camera video of the second incident and cross examined the employer's witness.

OAC Ann. 4146-7-02(D) provides:

(D) Duty of hearing officer or review commission in conducting hearings.

The review commission or hearing officer conducting the proceeding shall advise each party as to rights, aid in examining and cross-examining witnesses, and give every assistance compatible with the discharge of the official duties of the review commission or hearing officer.

OAC Ann. 4146-7-02(C) further states:

(C) Rights of parties

The review commission or hearing officer conducting a proceeding may examine the interested parties and other witnesses, and each interested party and the interested party's representative shall have all rights of fair hearing,

including:

- (1) The right of examination and cross-examination of witnesses,
- (2) The right to present testimony and other evidence,
- (3) The right to inspect and examine documents, files, reports and records received in evidence,
- (4) The right to present testimony and other evidence in explanation and rebuttal,
- (5) The right to subpoenas for witnesses and documentary evidence and the right to present argument.

Prior to the hearing Chidsey was given notice of her rights and responsibilities at the hearing including the right to subpoena witnesses and evidence. See “Notice that an Appeal Has Been Transferred by the Director to the Review Commission”. Further Chidsey had received an “Employee Corrective Action Report” during the termination process that referenced the body camera video. The commission also sent Chidsey a notice of hearing that once again detailed her rights to obtain subpoenas for necessary witnesses, documents or other physical evidence. Chidsey was thus on sufficient notice of her right to bring the body camera video into evidence. It was not the hearing officer’s duty to act as Chidsey’s advocate. *Fasolo, supra*. Chidsey’s failure to present properly or to explain the significance of the body camera video must be placed at her feet not those of the hearing officer. *Fredon, supra*.

With respect to her right to cross examine the employer’s representative, the hearing officer explained that she would question the employer’s representative then Chidsey would have the right to ask him questions. Tr., at 4. Chidsey then waived her right to question the representative when the hearing officer asked her if she had any questions for him. Tr., at 22.

Just Cause Determination

Chidsey claims that the first incident was not a violation of the employer’s policy and the second incident was not sufficient to support her termination for just

cause. However the employer’s policy states “violations of a major nature will subject an employee to corrective action which is severe in nature, usually resulting in a Step 3, Unpaid Suspension or a Step 4 Termination. A representative list of major violations includes:

(B) Inappropriate treatment of any patient for any reason;

.....
(U) Failure to fulfill the responsibilities of the job to the extent that might reasonably or does cause injury to a patient, visitor or another employee.

.....
(FF) Any other serious failure of good behavior or serious neglect of duty. See *Human Resources Enterprisewide Policies and Procedures* pages 3 and 4.

Regarding the first incident Chidsey admitted that she could tell that the child’s wrist had a deformity but she did not do a further assessment or treatment. Tr., at 32-33. Chidsey also admitted that she did not know the employer’s protocol for dealing with a minor’s refusal of transport for treatment. Tr. at 33. The employer’s representative testified that the incident could jeopardize the employer’s license for its EMS services and subject it to a claim for negligence. Tr., at 20. There is thus sufficient evidence to support the employer using this incident as the basis to suspend Chidsey for 3 days and make the next incident a terminable offense.

There was also sufficient evidence to support using the second incident for just cause to terminate Chidsey. Chidsey admitted not reporting that her partner used the ammonia inhalant to wake the patient and that they used restraints on the patient. Tr., at 24-25. Chidsey also admitted that before having the patient get up and get on the gurney “we were concerned because at this point we don’t know is he intoxicated or is there a neurological thing going on.” Tr., at 24. Yet despite this concern Chidsey and her partner did not immobilize the patient by using a backboard and neck collar. Tr., at 25-26. Chidsey’s actions during this incident

and the prior one led the employer's medical director to tell the employer that he was uncomfortable with some of the judgment calls that Chidsey was making to the extent that he was concerned about Chidsey practicing under his medical license. Tr., at 15-16. The evidence concerning this incident along with the first incident thus supports a finding that Chidsey was terminated for just cause.

Therefore, this Court affirms the decision of the Commission as it was not unlawful, unreasonable, or against the manifest weight of the evidence.

IT IS SO ORDERED.


Judge Joyce V. Kimbler

INSTRUCTIONS TO THE CLERK

Pursuant to Civil Rule 58, the Clerk is hereby directed to serve upon the following parties, notice of this judgment and its date of entry upon the journal:

John C. Oberholtzer
Oberholtzer & Filous
39 Public Square, Suite 201
Medina, OH 44256

Susan M. Sheffield
20 West Federal Street, 3rd Floor
Youngstown, OH 44503

Michael M. Michetti
Cleveland Clinic Foundation, Law Department
3050 Science Park Drive- AC321
Beachwood, Ohio 44122

Notice was mailed by the Clerk of Court on 6-9-15.


DEPUTY CLERK OF COURT