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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTER

JUN 29 2015

Charles J. Kubicki Judge

DANA P. MURPHY,

Appellant,

vs.

RD AMERICA LLC, et al.,

Appellees.

: Case No. A 1404994

: Judge Charles J. Kubicki Jr.

: ENTRY ADOPTING THE
: MAGISTRATE'S DECISION

ENTERED
JUL -6 2015

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that disallowed benefits to the Appellant Dana Murphy. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, oral argument, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

MAGISTRATE

JUN 25 2015

HAS SEEN

JUDGE CHARLES J. KUBICKI JR.

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Appellant,

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: Case No. A 1404994

: Judge Charles J. Kubicki Jr.

: Magistrate Michael L. Bachman

: MAGISTRATE'S DECISION



RENDERED THIS 4TH DAY OF May MAY, 2015

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying Dana P. Murphy's ("Appellant") claim for unemployment benefits on the basis that he was discharged with just cause. This appeal, filed pursuant to R.C. 4141.282, was taken under submission upon the conclusion of oral arguments, review of the administrative record and the briefs.

BACKGROUND

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued an initial Determination allowing the Appellant's application for benefits. RD America, LLC. ("Employer") appealed the Determination and ODJFS issued a Redetermination affirming allowance of benefits. The Employer filed an appeal from the Redetermination and ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The Hearing Officer reversed the Redetermination, and denied the Appellant's claim for unemployment benefits finding that the Appellant was fired for just cause in connection with work. The Appellant requested further review of the claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision. A Motion to Remand the case to the Review Commission was filed by ODJFS because the hearing officer's recording device did not work during the telephone hearing. The Motion to Remand was for the purpose of obtaining the evidence presented at a hearing that occurred on June 17, 2014. (9/12/14 *Motion to Remand*). The Motion to Remand was granted. The Review Commission filed the completed administrative record on December 10, 2014. This court filed a Case Management Order on February 2, 2015. The case is now ripe for review.

STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H); *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, 951 N.E.2d 1031; ¶ 20. A reviewing court must not make factual findings or determine a witness's credibility and must affirm the Review Commission's decision if there is competent, credible evidence to support it. *Id.*

DISCUSSION

The Hearing Officer found the following Findings of Facts.

Rd America LLC ("RDA") is a wholesale food service distribution company. The claimant began working for RDA on July 7, 2005, and was separated from his position as Assistant Branch Manager effective April 4, 2014. According to RDA's policies and procedures, when employees receive product from a truck, they are supposed to count each item individually as opposed to just counting the boxes that the items arrive in. Employees are supposed to do this before the delivery truck leaves to ensure the accuracy of the product received. The claimant was made aware of this policy.

The claimant had a disciplinary history which included a written warning issued on September 5, 2013, for poor work quality in failing to meet the company audit standards of 80%--the claimant received 62%. The claimant was issued a written consultation and demoted from Branch Manager to Assistant Branch Manager on February 12, 2014. The claimant was demoted due to customer complaints, poor warehouse conditions, lack of consistency of product on the shelves, low employee morale in the warehouse, and for failure to practice company standards. The claimant was also issued a written warning on March 31, 2014, for attendance issues.

On March 22, 2014, the claimant failed to properly receive product from a truck when he counted the boxes instead of verifying the items individually according to policy, and then he released the driver. By not following the standard verification procedures and then sending the driver away, there was a risk of RDA losing money because of incorrect product received. The claimant had properly received product in the past. The claimant alleges that there was a policy in place stating that employees were allowed to count boxes under certain time restrictions. The Regional Manager and Branch Manager both testified to having no knowledge of this policy. The claimant has not provided a copy of this policy on the record. On March 31, 2014, the claimant was asked to enter product into the system and did not complete the assignment, leaving most of it to be completed the next day. The claimant told other employees that he blamed them for his demotion, and the Regional Manager received phone calls about the claimant's blaming others and negativity. The claimant was discharged effective April 4, 2014, for these final two incidents and for blaming other employees for his demotion, in conjunction with his previous discipline.

The Court has reviewed the record provided by the Review Commission, the brief of ODJFS and the Appellant. The Appellant contends that he was not discharged

for just cause. Just cause is defined by the courts as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985) quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). The determination whether there is just cause for discharge depends upon the factual circumstances of each case. *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489 (1991). The Unemployment Compensation Act is designed to protect the unemployed from economic forces over which they have no control. “When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination.” *Williams* citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* 73 Ohio St.3d 694, 697–698, 653 N.E.2d 1207 (1995).

In this case, the Appellant focuses on one of the final events that led to his termination to argue that his termination was unjust. Specifically, the Employer contended that the Appellant failed to properly follow procedures in unloading a truck that he was responsible for counting. Joe Hurd, the Regional Director of Operations and Branch Manager, Tasha Melton both testified that the Appellant did not follow procedures when he failed to count the truck and left it for the next day. (Tr. pp. 16, 27). The Appellant testified that there was an alternate method to count the truck but the Appellant did not submit this policy. The Appellant submitted two unsworn statements from two individuals that did not have personal knowledge of the event that happened on March 22, 2014 when the truck was delivered to bolster his claim. The Court finds

that these general unsworn statements bear little weight to the specific sworn testimony of Appellant's supervisors.

The Appellant proffered that he could prove that he properly followed procedure if the Review Commission would have requested e-mails and a video he subpoenaed. There are several issues with Appellant's contention. First, the Appellant did not subpoena the e-mails or video for his June 17, 2014 hearing. (Tr. p. 18). The hearing held on November 25, 2014, was held specifically to "obtain the evidence presented at the June 17, 2014 hearing." (*Motion to Remand*). Second, the hearing officer found that this evidence would not be helpful. (Tr. pp. 34-35). The evidence did not show how the Appellant handled the truck but rather how another person may not have properly counted a truck. Under R.C.4141.281(C)(2), the hearing officer can "exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious errors." The court finds that it was not error for the hearing officer to not allow new evidence to be introduced in the second hearing which was designed to recreate the evidence in the June 17, 2014. Moreover, the hearing officer's determination that the evidence would not be useful is not unlawful, unreasonable or against the manifest weight of the evidence.

ODJFS contends that the Appellant was discharged with just cause for poor performance. ODJFS calls attention to the entire record which contains the Appellant's February 12, 2014 demotion for poor performance, a written warning for attendance on March 31, 2014 and a written warning for poor quality of work on September 5, 2013. These infractions, it argues, together with Appellant's failure to properly follow

procedure on the March 22, 2014 truck show by the manifest weight of the evidence that the Appellant was discharged for just cause.

The hearing officer took into consideration the Appellant's entire work history. The hearing officer reasoned that the employer "provided reliable, substantial and probative evidence showing that the claimant failed to improve based on his warnings, and that his actions demonstrated an unreasonable disregard for the employer's best interests." (Hearing Officer's Decision). Upon review of the entire record, the court finds that the hearing officer's decision is supported by the record.

DECISION

The decision of the Review Commission denying the Appellant's unemployment compensation benefits is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight.



**MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 6/10

Deputy Clerk: 