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

FILED

2015 SEP 29 A 10:42

EDWARD C. HAWKINS & CO., LTD
Plaintiff

Case No: CV-10-744350

CLERK OF COURTS
CUYAHOGA COUNTY

BRIAN S. ERSEK, ET AL
Defendant

Judge: JOSE A VILLANUEVA

JOURNAL ENTRY

98 DISPOSED - FINAL

THIS CASE COMES BEFORE THE COURT ON APPEAL BY APPELLANT EDWARD C. HAWKINS & CO., LTD FROM A DECISION BY THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION PURSUANT TO OHIO R.C. 4141.28(O)(1). THE COMMISSION FOUND THAT CLAIMANT BRIAN ERSEK WAS DISCHARGED FROM HIS EMPLOYMENT WITH EDWARD C. HAWKINS & CO., LTD WITHOUT JUST CAUSE AND THEREFORE WAS ELIGIBLE FOR UNEMPLOYMENT BENEFITS. THE PARTIES HAVE BRIEFED THE ISSUES AND THE COURT HAS CONSIDERED ALL ARGUMENTS AND REVIEWED THE RECORD. THE COURT FINDS THAT THE COMMISSION'S DECISION WAS SUPPORTED BY THE EVIDENCE IN THE RECORD, AND WAS NOT 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, 697, 1995-OHIO-2016.

EDWARD C. HAWKINS & CO., LTD ARGUES THAT MR. ERSEK WAS UNSUITABLE FOR THE POSITION AND WAS THEREFORE DISCHARGED WITH JUST CAUSE. AS STATED IN TZANGAS, 73 OHIO ST. 3D, AT 698-99, UNSUITABILITY FOR A POSITION CONSTITUTES FAULT SUFFICIENT TO SUPPORT A JUST CAUSE TERMINATION. AN EMPLOYER MAY PROPERLY FIND AN EMPLOYEE UNSUITABLE FOR THE REQUIRED WORK, AND THUS TO BE AT FAULT, WHEN: (1) THE EMPLOYEE DOES NOT PERFORM THE REQUIRED WORK, (2) THE EMPLOYER MADE KNOWN ITS EXPECTATIONS OF THE EMPLOYEE AT THE TIME OF HIRING, (3) THE EXPECTATIONS WERE REASONABLE, AND (4) THE REQUIREMENTS OF THE JOB DID NOT CHANGE SINCE THE DATE OF THE ORIGINAL HIRING FOR THAT PARTICULAR POSITION.

THE HEARING OFFICER CONDUCTED AN ANALYSIS PURSUANT TO TZANGAS. BASED UPON A FINDING OF CREDIBILITY IN FAVOR OF ERSEK, THE HEARING OFFICER DETERMINED EDWARD C. HAWKINS & CO., LTD DID NOT MAKE KNOWN ITS EXPECTATIONS AT THE TIME OF HIRING, HAD UNREASONABLE EXPECTATIONS BASED UPON THE LACK OF TRAINING, AND THAT THE JOB REQUIREMENTS CHANGED FROM THE TIME OF HIRING.

APPELLANT EDWARD C. HAWKINS & CO., LTD ARGUES CLAIMANT ERSEK WAS DISCHARGED FOR JUST CAUSE BECAUSE HE MISREPRESENTED HIS SKILLS IN A THANK YOU NOTE AFTER HIS INTERVIEW. HOWEVER, THE HEARING OFFICER REJECTED THIS ARGUMENT, FINDING THERE WAS NO EVIDENCE CLAIMANT ERSEK MISREPRESENTED HIS FORMER EMPLOYMENT OR EDUCATION. SHE CONCLUDED THE LANGUAGE IN THE THANK YOU NOTE WAS "PUFFERY" AND DID NOT RISE TO THE LEVEL OF FALSIFICATION.

APPELLANT EDWARD C. HAWKINS & CO., LTD CITES TO TWO OHIO COURT OF APPEALS CASES IN ITS REPLY BRIEF, CITY OF DUBLIN V. CLARK, 10TH DIST. FRANKLIN NOS. 05AP-431 AND 05AP-450, 2005-OHIO-5926 AND SHUNA CHEN V. OHIO DEPT OF JOB AND FAMILY SERVS. 12TH DIST. CLERMONT NO. CA2011-04-026, 2012-OHIO-994. THE COURT FINDS THAT CLARK IS DISTINGUISHABLE BECAUSE, UNLIKE THE INSTANT CASE, NEITHER THE REVIEW COMMISSION NOR THE HEARING OFFICER EXAMINED THE ISSUE OF FAULT OR CONDUCTED THE ANALYSIS DISCUSSED IN TZANGAS. CLARK IS ALSO FACTUALLY DISSIMILAR BECAUSE THE EMPLOYEE AGREED TO STANDARDS AND FAILED TO LIVE UP TO THEM. THE COURT FINDS THAT CHEN IS DISTINGUISHABLE AND OFFERS NO SUPPORT FOR APPELLANT'S POSITION.

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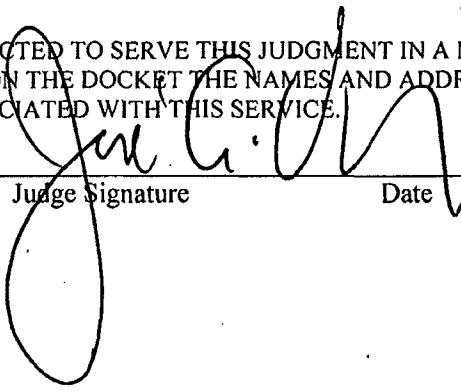


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THE COURT NOTES THAT THE FINDINGS BY THE HEARING OFFICER TURN LARGELY ON CREDIBILITY AND THAT THE HEARING BEFORE THE COMMISSION WAS BY TELEPHONE. NEVERTHELESS, THE OFFICER WAS IN THE BEST POSITION TO ASSESS THE VERACITY OF WITNESSES. FURTHER, THE TRIAL COURT SHOULD NOT USURP THE FACT FINDERS ROLE TO MAKE FACTUAL FINDINGS OR TO DETERMINE THE CREDIBILITY OF WITNESSES. IRVINE V. STATE, UNEMPLOYMENT COMPENSATION BD. OF REVIEW, 19 OHIO ST. 3D 15, 18 (1985). THE TRIAL COURT MUST GIVE DEFERENCE TO THE COMMISSION'S DECISION IN ITS ROLE AS FINDER OF FACT, AND MAY NOT REVERSE THE COMMISSION'S DECISION SIMPLY BECAUSE REASONABLE MINDS MIGHT REACH DIFFERENT CONCLUSIONS. ID. THE COURT THEREFORE AFFIRMS THE COMMISSION'S DECISION.

COURT COST ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.



Judge Signature

9/28/2015

Date