IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Dorothy Bell,	:	
Appellant,	:	**Case No. 15CVF-6458**
vs.	:	**JUDGE SERROTT**
JCP Logistics, Inc., et al.,	:	
Appellees.	:	

DECISION AND ENTRY AFFIRMING THE ORDER OF APPELLEE DIRECTOR, OHIO DEPARTMENT OF JOB & FAMILY SERVICES
AND
ENTRY DENYING APPELLEE DIRECTOR OF OHIO DEPARTMENT OF JOB AND FAMILY SERVICES' MOTION TO DISMISS
AND
NOTICE OF FINAL APPEALABLE ORDER

Rendered this 16th day of October, 2015

SERROTT, J.

This case is before the Court on an administrative appeal from the Order of the Ohio Unemployment Compensation Review Commission affirming the Hearing Officer's decision disallowing Appellant's claim for unemployment benefits on the grounds that she was terminated for just cause. Appellee moves the Court to dismiss the appeal for want of prosecution as Appellant failed to file a brief in support. However, Appellant's Notice of Appeal sets forth the grounds upon which she seeks a reversal of the decision. Therefore, the Motion to Dismiss is DENIED, and the Court hereby renders the following decision based on its thorough review of the Record of Proceedings and the arguments set forth in the Notice of Appeal.

I. RELEVANT FACTS

Appellant was employed with Appellee JCP Logistics, Inc. at their call center from 2007 until sometime in November 2014, when she was terminated due to "unauthorized paid time away from work on 11/10/2014 and 11/11/2014." Appellant's application for unemployment benefits came before a Hearing Officer on March 4, 2015 and April 22, 2015.

During the initial hearing, the employer presented the testimony of Angela Wright, its loss prevention investigator. Ms. Wright stated she was informed by a "team coach" who worked in the call center with Appellant that there were concerns Appellant appeared to be coming into work when she should have already been there. Ms. Wright reviewed video footage and discovered Appellant had left the premises for 52 minutes on November 10, 2014 and for 24 minutes on November 11, 2014. Ms. Wright questioned Appellant, who indicated she left on November 10th because she had promised to take her neighbor's garbage out. Appellant had no recollection of leaving on November 11th.

According to Appellant, she suddenly remembered on November 10th that she had promised her neighbor she would take out her garbage. Appellant looked for her team coach, but couldn't find her, and decided to leave without telling anyone, explaining: "Because I needed to take care of that responsibility and I did not anticipate being gone nearly as long as, however long it was I definitely did not think I would be gone for long." (Hearing Transcript, March 4, 2015, p. 21).

As the employer had not responded to Appellant's request for documents, the Hearing Officer issued a subpoena on her behalf, and continued the hearing. At the second hearing, Appellant indicated that her employer still had not produced everything

she needed, although she received over 90 pages of documents. The Hearing Officer indicated he had narrowed the subpoena as the requests were too broad and he did not need seven years of records. However, the Hearing Officer afforded Appellant an opportunity to explain what additional information was still needed, indicating he would reschedule the matter for a third hearing upon sufficient proof of relevancy.

During the hearing, Appellant's primary defense was that she was not being paid for the two instances she left work because she had placed her phone on "personal" status. The evidence demonstrated that employees were instructed to change the "status" of their telephones so that they would not receive any incoming service calls when they were busy or away from their desks. One option was for employees to "clock in" or change their status to "personal time." The employer testified that personal time was to be used for purposes such as restroom or water breaks, and that the employees would still be paid when on personal status. (Hearing Transcript, April 22, 2015, p. 15).

The employer contended that its policies and procedures regarding the recording of time were explained to Appellant at the time of hiring. The employer testified that the proper use of personal time was again explained to Appellant following an incident in January 2014. Appellant's supervisor located Appellant in the breakroom after she had been clocked in on personal status for a couple of hours. Appellant indicated that she had signed out as she was close to incurring 40 hours for the week. Her supervisor explained that, because she was clocked in as "personal time," she was still being paid. (Tr., March 4, 2015, pp. 9-10). The employer further provided examples of numerous instances from September to November 2014 where Appellant was clocked in under personal time from anywhere from seven to fifteen minutes and was paid for that time. (Tr., April 22, 2015, p. 14).

However, Appellant remembered there being two occasions during her seven year employment where she was signed out on personal time and was not paid. Appellant could not recall the specific dates, but remembers she was not paid on one occasion when she was asked to move her car and on another day when she was ill:

> * * * eventhough I don't know the dates those two occasions would clearly show that I was out under personal, especially the one time when I kept getting sick and that would've proved that they did not pay me when I was clocked out under personal and that is why along with when I was told to move my car and clock out under personal because my time was adjusted for those reasons that I was out under personal that that takes away the company's stand that "she, she gets paid for personal" by those incidents that prove[s] that what they're saying is not true.

(Tr., March 4, 2015, p. 18).

The Hearing Officer did not schedule a third hearing, but rather issued a Decision on April 26, 2015 finding that Appellant was discharged for just cause. The Hearing Officer reasoned:

> [t]he claimant contends that she was not paid for "personal" time. Even if the claimant was not actually paid for the time away from work at issue on November 10 and 11, 2014, she was not authorized to leave work on those two occasions and had abandoned her employment on both of those occasions.
>
> In regard to this case, the claimant's job abandonment demonstrated an unreasonable disregard for the best interests of JCP Logistics, Inc.

(Decision, p. 4).

The Unemployment Compensation Review Commission disallowed any further review, and Appellant timely initiated this administrative appeal. In her Notice of Appeal, she argues:

> [I] did not commit ethics violations, when signing out under "personal." Several managers told [me] that "you don't get paid when clocking out under personal." At least one paycheck was significantly reduced as proof. Plaintiff's 11/17/2104 termination was in retaliation for raising concern about unethical practices in the workplace. The defense ignored the initial subpoena, requesting time card and payroll information. Also, before leaving for a two week summer break in [illegible], I kept clocking out under personal, and no one approached me about it.

(Notice of Appeal, p. 1).

II. STANDARD OF REVIEW

In reviewing unemployment compensation cases, "[a]n appellate court may reverse the board's decision if the court finds the decision unlawful, unreasonable, or against the manifest weight of the evidence." *Wash. County Eng'r v. Adm'r*, 4th Dist. No. 95CA34 (Sept. 25, 1996) (citing *Tzangas, Plakas & Mannos v. Adm'r*, 73 Ohio St.3d 694 (1995), paragraph one of the syllabus). "This standard applies to courts of common pleas and courts of appeals." Id. (citing *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 696). "In its review, a court determines whether 'some competent, credible evidence' supports the board's conclusion." Id. (quoting *Central Ohio Joint Vocational Sch. Dist. Bd. of Edn. v. Adm'r*, 21 Ohio St.3d 5, 8 (1986)). "The resolution of purely factual questions, including the credibility of conflicting testimony and the weight given to the evidence, is primarily within the province of the board." Id. (citing *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 697).

"[A]ppellate courts are obligated to defer to the board's findings and have no authority to make their own findings." Id. "A court may not substitute its judgment for that of the Administrator or the board." Id. (citing *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45(1982)). "Under the foregoing standard, reviewing courts are not permitted to make factual findings or determine the credibility of witnesses, which are instead reserved for decision by the Review Commission." *Quartz Scientific, Inc. v. Dir., Bur. of Unemployment Comp.*, 11th Dist. No. 2012-L-090, 2013-Ohio-1100, ¶9 (citing *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17 (1985)). "The decision of the Review Commission may not be reversed simply because reasonable minds might reach different conclusions from the same evidence." Id. (citing *Tzangas*, supra, at 697). "Where the board might reasonably decide either way, the courts have no authority to upset the board's decision." *Irvine v. State, Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 18 (1985).

III. LAW AND ANALYSIS

"The Unemployment Compensation Act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Tucker v. Home Health Connection*, 10th Dist. No. 03AP-1262, 2005-Ohio-848, ¶13 (quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39 (1980). "Generally, 'the basic eligibility for unemployment benefits depends upon the establishment of an 'employment' relationship followed by 'involuntary unemployment.'" Id. (quoting *Mathieu v. Dudley*, 10 Ohio App.2d 169, 174 (10 Dist. 1967)).

"R.C. 4141.29 sets forth the statutory authority for an award of unemployment benefits[.]" *Rubin v. Dir., Ohio Dep't of Job & Family Servs.*, 10th Dist. No. 11AP-674,

2012-Ohio-1318, ¶7. "R.C. 4141.29(D)(2)(a) establishes that a claimant who quits his or her work without just cause or has been discharged for just cause in connection with his or her work is not entitled to unemployment compensation benefits. The claimant has the burden to prove his or her entitlement to benefits." Id. "The term 'just cause' has been defined 'in the statutory sense, [as] that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.'" Id. at ¶8 (quoting *Irvine*, supra at 17). "The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case." *Irvine* at 17.

The Unemployment Compensation Act "protects those employees who cannot control the situation that leads to their separation from employment," and "[c]onsistent with that purpose, courts have repeatedly held that a discharge is considered to be for just cause where an employee's conduct demonstrates some degree of fault, such as behavior that displays an unreasonable disregard for his employer's best interests." *Niskala v. Dir., Ohio Dep't of Job & Family Servs.*, 9th Dist. No. 10CA0086-M, 2011-Ohio-5705, at ¶11-12. "The Ohio Supreme Court has specifically held: '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.'" Id. at ¶13 (quoting *Tzangas*, 73 Ohio St.3d at 697-698). Thus, "[t]o show he is entitled to unemployment compensation, the employee must provide evidence that his discharge was without just cause by demonstrating he was without fault in the incident resulting in his termination." Id.

After a thorough review of the record, the Court finds the Hearing Officer's Decision is supported by "some competent and credible" evidence. Appellant complains

that she did not receive all of the requested records. When this issue was brought to the Hearing Officer's attention during the first hearing, he assisted Appellant in issuing a subpoena and scheduled the matter for a second hearing to allow her time to obtain any necessary evidence. When she continued to argue that certain documents had not been produced, the Hearing Officer afforded her an opportunity to explain what information she was seeking and for what purpose. The Hearing Officer indicated he would schedule another hearing if the documents being sought were relevant. Appellant claimed that payroll records for two unknown dates would show that she had signed out on personal time and was not paid. Appellant contended these records were necessary to disprove the employer's assertion that employees are paid for personal time.

Thus, Appellant's primary argument during the hearing and in this appeal is that she did nothing wrong in leaving the premises on the instances at issue because she signed out on personal time and was purportedly not being paid. The Hearing Officer concluded that, regardless of whether Appellant was being paid, she was not authorized to leave the work premises on the two occasions at issue. Thus, even if the payroll records for the unknown dates would discredit the employer's evidence that employees were paid while on personal status, this does not address the employer's contention that Appellant's absences were not authorized.

As the Hearing Officer indicated, under Ohio law, just cause for discharge exists when an employee's actions demonstrate an unreasonable disregard for an employer's best interests. See *Watkins v. Ohio Dep't of Human Servs.*, 10th Dist. No. 00AP-224 (Oct. 31, 2000). Courts have ruled that it is not unreasonable for an employer to require an employee to obtain permission before leaving the premises and further that an employee does not act in his employer's best interests when he leaves work without

permission. See *Watkins*; *Carpenter v. State Bur. Of Empl. Servs.*, 8th Dis. No. 77559 (July 27, 2000).

Appellant does not deny that she left the job site on November 10 and 11, 2014 without permission and without even notifying anyone. Appellant's absences were not necessitated by a true emergency. Appellant was absent for almost an hour on November 10, 2014 to take out her neighbor's garbage. Appellant offered no explanation as to why she left the premises for nearly a half hour on November 11, 2014. Even if Appellant was not being paid for these absences because she had placed her phone on personal status, Appellant has not demonstrated that her employer had a liberal policy allowing employees to come and go during working hours. To the contrary, the investigation started because Appellant's supervisor was confused as to why Appellant appeared to be arriving for work when she was thought to have already been there. Additionally, Appellant could only provide an explanation for one of her absences. She could not recall leaving the premises on November 11th despite there being video evidence of her doing so.

The Court finds there is competent and credible evidence to support the Hearing Officer's conclusion that Appellant did not act in her employer's best interests when she twice left the premises during working hours without authorization. Additionally, the record is devoid of any credible evidence to support Appellant's assertion that she was terminated in retaliation "for raising concerns about unethical practices in the workplace." Based on the foregoing, the Court rules that the Ohio Unemployment Compensation Review Commission's Order finding that Appellant was discharged for just cause in connection with her work is not unlawful, unreasonable, or against the

manifest weight of the evidence. The Order is hereby AFFIRMED. No costs shall be assessed.

Pursuant to Civ. 58(B), the Clerk of Courts is hereby directed to serve upon all parties notice of and the date of this judgment.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 10-16-2015

Case Title: DOROTHY BELL -VS- JCP LOGISTICS INC ET AL

Case Number: 15CV006458

Type: DECISION/ENTRY

It Is So Ordered.

/s/ Judge Mark Serrott

Court Disposition

Case Number: 15CV006458

Case Style: DOROTHY BELL -VS- JCP LOGISTICS INC ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0064582015-10-0899980000
   Document Title: 10-08-2015-MOTION TO DISMISS - DEFENDANT: OHIO DEPT JOB FAMILY SERVICES DIRECTOR
   Disposition: MOTION DENIED