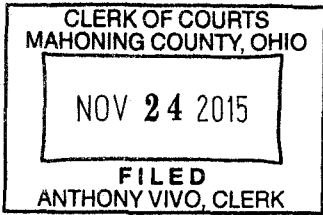


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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

Triad Health Services, LLC)	Case No. 2014 CV 2655
)	
)	Judge Maureen Sweeney
Appellant)	(Magistrate Dennis Sarisky)
)	
v.)	
)	
Director, Ohio Department of Job and Family Services, et al.)	JUDGMENT ENTRY
)	
)	
Appellees)	

This matter came before the Court for consideration of the Appellee's Objection to Magistrate Decision filed October 19, 2015. The Court finds that there is no reason for an oral hearing on the issues presented in the objections and therefore declines to conduct a hearing. Civ. R. 53(4)(d).

The Court has undertaken an independent review as to the objected matters to ascertain that the Magistrate has properly determined the factual issues and appropriately applied the law in consideration of this matter. **This Court hereby adopts the Magistrate's Decision and enters Judgment as follows:**

Having reviewed the record and the argument of counsel on Appellant's Appeal from the Decision of the Unemployment Compensation Review Commission in this matter, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

{M0340744.1}

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JUDENT

I. Statement of the Case.

1. Appellee, Leslie Corbett (“Claimant”), filed her claim for unemployment compensation benefits on May 30, 2014 (“Record”).
2. On June 13, 2014, Appellee, Ohio Department of Job and Family Services (“ODJFS”), issued its Determination of Unemployment Compensation Benefits disallowing the claim and finding that Claimant was discharged with just cause under Section 4141.29(D)(2)(a) of the Ohio Revised Code (Record).
3. Claimant appealed and on July 15, 2014, ODJFS affirmed its initial decision disallowing the claim (Record). Claimant again appealed and a telephone hearing was held before the Unemployment Compensation Review Commission (“The Commission”), Appellee herein, on July 29, 2014. The Commission’s Hearing Officer issued her decision on July 30, 2014 (“the Decision”), reversing the two previous determinations, finding that Claimant was discharged “without just cause in connection with work” and allowing unemployment benefits.
4. Appellant, Triad Health Services, LLC (“Triad”), filed its Request for Review and on September 17, 2014, the Commission issued its Decision Disallowing Request for Review.
5. Appellant Triad then timely appealed to this Court pursuant to O.R.C. 4141.282.

II. Background.

6. Triad is a wholly owned subsidiary of The Surgical Hospital at Southwoods (TR. 6-7). Triad essentially manages the office practices of physicians within the Southwoods complex.
7. Claimant, Leslie Corbett, was Triad’s Physician Office Manager (TR. 5). Claimant was hired by Triad on February 1, 2013 (TR. 5) but had worked previously for independently owned physician practices prior to Triad taking over such practices in 2012.

III. Triad’s Previous Discipline of Claimant.

8. On November 6, 2013, Patient, “Sean”, complained to Triad that, while he was filling out medical forms in Triad’s office, Claimant approached him

“speaking very loudly and rude”, never introducing herself, never speaking to the patient and never looking up from paperwork in her hands (Record, Exhibit F, pp. 1-7). According to the patient, Claimant told him that his attorney “did not know what he was talking about” and told the patient that “if (he) did not like what she had to say, (he) could go somewhere else” (Record, Exhibit F, pg. 1).

9. Patient Sean filed a written Complaint (TR. 11) and Triad interviewed Patient Sean as well as co-employees of Claimant. Co-employees indicated that Claimant “snapped” at Sean, was “very loud and nasty” and that several staff members were “embarrassed” by Claimant’s actions. (Record Exhibit F, pp. 3-7)
10. As a result of Claimant’s treatment of “Sean” Claimant was given a “final warning” (which is authorized by Triad’s Employee Handbook in more severe circumstances). The final warning dated December 10, 2013, stated that any further occurrences of inappropriate, disrespectful, unprofessional or discourteous behavior toward patients would result in immediate termination. (TR. 12, Record Exhibit E).
11. Triad provided an employee handbook to Claimant which contained a rule that subjected employees to discipline for being discourteous toward patients. (TR. 10). Claimant’s written job description contained a requirement that Claimant must deal with patients “respectfully and professionally” and must resolve conflict in a professional manner. (TR. 10).
12. On April 30, 2014, Triad received another complaint from a patient “Richard” that Claimant was rude, not compassionate and was very unwilling to assist the patient. (TR. 14; Record; Exhibit D). According to the patient, every time he asked Claimant a question, her response was “I can’t help you” (Exhibit D, p. 1). A representative of Triad interviewed the patient and found that his interview statements were consistent with the written complaint (TR. 15-16).
13. On May 29, 2014, while Triad was still investigating the April 30th complaint, Triad received a complaint from a third patient stating essentially the same issues as the previous patient. The patient claimed that Claimant was extremely rude to the patient in front of other patients in the office, lacked compassion and was unwilling to assist her. (TR. 6).
14. The May 29, 2014 interactions between Claimant and the patient, “Debra”, were witnessed by Michelle Dietz, Triad’s Physician Service Manager. Ms.

Dietz noticed Debra in the waiting area, sitting in a wheelchair “sobbing (TR. 18).

15. Ms. Dietz interviewed patient “Debra” who told Ms. Dietz that she was crying because of the way that Claimant had treated her, telling her that she was not able to see a physician because of some dispute over workers’ compensation. In an effort to see the physician, the patient volunteered that she was willing to use her private insurance. (TR. 18). When Ms. Dietz and another staff member took Debra to a private area to console her, they were easily able to arrange for a physician to see her (TR. 19).
16. According to Triad policy, if there is a problem with a patient’s insurance the appropriate way to handle the is to take the patient to a back office in private and not attempt to resolve the problem or argue with the patient in a waiting room full of patients. (TR. 20). Instead, Claimant had argued with the patient in a full waiting room causing the patient to become very upset so that she complained that she was embarrassed and felt belittled.
17. After the December 10, 2013 “final warning”, two more patients complained to Triad on April 30th and May 29, 2014, concerning Claimant’s treatment of them.
18. Based on the final warning, and the two subsequent incidents, Claimant was terminated by Triad for inappropriate treatment of patients on May 30, 2014. (TR. 5).
19. Claimant presented no evidence to refute Triad’s evidence concerning her treatment of “Sean” in December of 2013. She also presented no evidence rebutting Triad’s evidence of Claimant’s treatment of the second patient, Richard, with respect to the April 2014 complaint.
20. With respect to the May 2014 complaint, Claimant testified that patients were not to make an appointment until they had an approved workers’ compensation form from their physician in their record. While patient, Debra, may not have had such a form, the record indicates that Triad had disciplined Claimant for the manner in which she argued with the patient rather than the subject of the argument. According to Triad policy, Claimant should have taken the patient, Debra, to a private place and resolved the issue. Instead, Claimant argued with the patient in front of a waiting room in which other patients were present causing patient, Debra, to complain of embarrassment and humiliation. Triad presented direct evidence of Claimant’s rude and inappropriate behavior through testimony of eye witness Michelle Dietz.

21. Claimant acknowledged that Triad had a work rule forbidding discourteous conduct toward a patient and a rule which required patients to be treated like they were family members. (TR. 30).
22. Claimant admitted that she would not have wanted to be treated in the way she had treated patient, Debra. (TR. 32).
23. When Claimant was given her final warning in December of 2013, she acknowledged that patient issues should not be handled in front of others but that patients should be permitted to resolve any disputes or issues in a private area. (Record, Exhibit E, pg. 2).
24. Based on the Transcript, and record exhibits, and either admissions by Claimant or lack of countervailing evidence, the record establishes that Claimant's behavior with respect to three different patients was viewed by the patients as well as co-workers as rude, disrespectful, and in violation of Triad's policy to resolve patient issues in private. Furthermore, Claimant had been warned in writing that any further such incidents would result in discharge. Based on the undisputed evidence in the Record, a reasonable person would consider Claimant's behavior to have been rude, disrespectful and inappropriate in a patient-care area, and that termination would be justified as a result of Claimant's conduct.

CONCLUSIONS OF LAW

I. Jurisdiction.

1. Triad has its principal and only place of business in Mahoning County, Ohio.
2. Claimant resides in Mahoning County, Ohio.
3. Triad filed the instant appeal within thirty (30) days of the Commission's Decision Disallowing Request for Review.

Therefore, this Court has jurisdiction and venue is proper. O.R.C. Section 4141.282(B).

II. Standard of Review.

4. Reviewing courts may reverse determinations of the Unemployment Compensation Review Commission if they are unlawful, unreasonable, or

against the manifest weight of the evidence. *Tzangas Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services* (1995) 1995-Ohio-206, 73 Ohio St. 3d 694, 653 N.E. 2d 1207.

5. While reviewing courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the Commission's decision is supported by the evidence in the record. This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in the Supreme Court. *Tzangas, supra*.
6. Under O.R.C. Section 4141.29(D)(2)(a), Claimant is not eligible for unemployment compensation benefits if she was discharged for just cause in connection with her work.
7. "Just cause" in the statutory sense is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Tzangas, supra*, at 697.
8. The Unemployment Compensation Act exists "to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day". "The (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*". *Tzangas, supra* at 697 (emphasis added).
9. "The Act does not exist to protect employees from themselves, but to protect them 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 predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection." *Tzangas, supra* at 697-698.
10. "If an employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. Fault on behalf of the employer remains an essential component of a just cause termination." *Tzangas, supra* at 698.
11. Just cause cannot be rigidly defined but must be evaluated upon consideration of the particular facts of each case. *Tzangas, supra* at 698.

12. In this case, Triad was reasonable in finding fault on behalf of Claimant so that Claimant's termination was with just cause.

III. The decision of the Commission's Hearing Officer is Against the Manifest Weight of the Evidence.

13. On November 6, 2013, patient "Sean" complained to Triad that Claimant had spoken loudly and rudely to him, was disrespectful in speaking to him, and never looked up from her paperwork and never addressed the patient directly. (Record Exhibit F). Claimant told Sean that if he did not like what she had to say, he could go somewhere else. As a result, on December 10, 2013, Claimant was issued a "final warning" essentially warning her that future disrespectful or discourteous behavior toward patients would result in immediate termination. (Record Exhibit E). Claimant was given a copy of the final warning and signed an acknowledgement of it. (TR. 12). Claimant specifically admitted that she should have at least taken the patient into a private area instead of handling the matter in front of other patients at the front desk. (Record Exhibit E).
14. On April 30th, patient, "Richard", complained of Claimant's unresponsiveness and failure to help and claimed that he finally avoided Claimant by calling after hours to deal with an answering service. (TR. 12-14). Richard's statement was corroborated by interviews of Claimant's co-employees.
15. On May 29, 2014, a third patient, "Debra", (who was in a wheelchair), was snubbed by Claimant when she requested to see a physician and treated rudely and dismissively in front of other patients, causing her to cry and to report her embarrassment and humiliation to Triad. (TR. 18, 19, 21).
16. The Commission's Hearing Officer asked Claimant whether she was being rude and Claimant denied it. The Commission's Hearing Officer found that Claimant did not do anything intentionally. The Commission's finding is against the manifest weight of the evidence because whether or not just cause exists is not a test subjective to the Claimant but rather is an objective test. That is, just cause is that which, *to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.* Tzangas, *supra*, 697.
17. The record evidence establishes that patient, Debra, was brought to tears by Claimant's rude behavior. A supervisor who witnessed the event also

testified that Claimant had acted rudely and inappropriately. Finally, it is uncontested that Claimant did not take patient, Debra, to a private area to discuss her issues, a required procedure which Claimant had earlier acknowledged in writing. The Commission's find that Claimant was not intentionally rude or discourteous based simply upon Claimant's denial, and therefore applying a subjective rather than an objective "reasonable person test", was against the manifest weight of the evidence.

18. The Commission Hearing Officer stated in the Decision that Claimant had asked for guidelines concerning workers' compensation. However, Claimant admitted that any patient issues should be handled in a private area, which she did not do. In addition, Triad's reasons for terminating Claimant were for rude and discourteous treatment of patients. Based on record evidence, an implicit finding by the Hearing Officer that Claimant's rude and discourteous behavior was excused because of confusion over workers' compensation procedures is against the manifest weight of the evidence, especially given Claimant's admission that any discussion with the patient should have been undertaken in a private area. All record evidence establishes that Claimant did not do so.

IV. The Commission's Decision is also Unlawful and Unreasonable.

19. Reviewing courts may reverse Commission determinations if they are "unlawful, unreasonable, or against the manifest weight of the evidence." *Irvine v. Unemployment Compensation Board of Review* (1985), 19 Ohio St. 3d 15, 17-18, 482 NE 2d 587, 590. The test is disjunctive. Therefore, any of the three grounds is sufficient to reverse a Commission finding.
20. In this case, the Commission's Hearing Officer found that if Claimant "had used profanity or derogatory language then the outcome in this case may have been different". (Decision p. 4) In that respect the Commission's Decision is unreasonable and unlawful.
21. "Just cause" for termination of a claimant includes termination for conduct which is rude, condescending, unprofessional and/or sarcastic when speaking with patients. *Scali v. C.S.A. HS UHHS, Canton, Inc.*, 2012 Ohio – 577, 2012 Ohio App. Lexis 501 (2012).
22. Rudeness and inappropriate conduct toward customers or, in this case patients, constitutes "just cause" for termination as a matter of law. *Bulatko v. Director, Ohio Department of Job and Family Services* (2008) 2008 Ohio – 1061, 2008 Ohio App. Lexis 918; *Bernard v. Administrator, Ohio Bureau*

of Employment Services (1983), 9 Ohio App. 3rd 277, 279, 459 N.E 2d 904; *Jenkins v. State Unemployment Compensation Review Commission*. (Nov. 13, 2000), 4th District No. 00CA11, 2000 Ohio 1995.

23. Claimant was objectively rude to a number of patients, and failed to handle patient disputes in private. The Commission's Hearing Officer's finding that Claimant did not act intentionally is irrelevant to a finding of "just cause". *Bonanno v. Ohio Department of Job and Family Services* (2012) 2012 – Ohio – 5167, 2012 Ohio App. Lexis 4520; *Irvine, supra* at 17.
25. The Commission's Hearing Officer's implicit finding that behavior must be beyond "rude and discourteous" and must include the use of "profane or derogatory language" to constitute just cause for termination is unreasonable and contrary to law. Rudeness on the part of an employee, without profanity or derogatory language is "just cause" for termination as a matter of law. *De La Calle v Meijer Group, Inc.* (2014) 2014-Ohio-1070, 2014 Ohio App. LEXIS 995.
26. With respect to violating employer policies, the critical issue is not whether an employee technically violated a company rule but whether the employee's actions demonstrated an unreasonable disregard for the employer's interests. The repeated patient complaints contained in the record demonstrate an unreasonable disregard for Triad's interests in keeping patients satisfied *De La Calle v. Meijer Group, Inc.*(2014) 2014-Ohio-1070, 2014 Ohio App. LEXIS 995.

V. The Decision of the Commission must be Reversed.

27. Upon the record as a whole, there was not competent, credible evidence presented from which the Commission could have reasonably determined that Claimant was terminated without just cause. Therefore, the Decision of the Commission is in error. *Chardon Local School District v. Keller* (2014) 2014-Ohio-5623, 2014 Ohio App. Lexis 5449.
28. The Decision of the Commission is unlawful, unreasonable, or against the manifest weight of the evidence.

IT IS HEREBY ORDERED as follows:

The Decision of the Unemployment Review Commission dated July 30, 2014 is hereby **reversed**; and

Claimant is **disqualified** from receiving unemployment compensation benefits because she was terminated from her employment with Triad for "just cause".

It is so Ordered.

Date: NOV 23 2015

HON



MAUREEN A SWEENEY

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIVIL R.5