

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

NATHAN A SCROGGINS,

CASE NO.: 2015 CV 06102

Plaintiff(s),

JUDGE RICHARD S. SKELTON

-vs-

R D BAKER ENTERPRISES INC et al,

**DECISION AND JUDGMENT**  
**REVERSING BOARD**

Defendant(s).

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This is an appeal by Nathan A. Scroggins, from the decision of the Unemployment Compensation Review Commission, (“UCRC”), denying his application for unemployment benefits after the termination of his employment as the Plant Supervisor at R.D. Baker Enterprises, Inc. facility in West Carrollton, Ohio known as Dayton Water Systems DI Plant. Scroggins maintained he resigned his employment for just cause, namely that the employer failed to comply with the agreement to provide him with a raise and, more immediately, that it placed him in a position of being responsible for safety, but it would not address several safety issues regarding repairs to an air compressor and using a schedule 80 PVC plumbing for high pressure air lines that presented a danger and violated OSHA, for high pressure air lines that are throughout the entire DI Plant. He stated he made his superiors aware of the situation but no changes were implemented, nor even discussed with him. He also claimed that poor ventilation of hydrochloric acids and salt usages at the plant caused structural beams to become brittle at the foundation of the building and also unrepaired leaks have weakened the floors, but, despite his protest, his superiors have still allowed forklifts to travel on the weakened floors.

Scroggins argues that he was placed in a position to be directly responsible for safety and to respond to an emergency or accident at the plant. “Due the conditions of the DI Plant, this was not a responsibility that I was willing to accept.” Brief of Appellant, 3.

#### Transcript of Testimony

The Unemployment Compensation Review Commission heard Scroggins’ appeal from the Director of Job and Family Services and a hearing officer conducted a telephone hearing. The UCRC has filed the Transcript of Testimony with the Court. At the September 10, 2015 hearing, only Scroggins testified.

Scroggins agreed that he had tendered a written resignation on June 16, providing two weeks notice. T., 5. He responded to the Hearing Officer’s question that he had not been given a raise since he was hired in 2009 at \$18.00 per hour. He stated, “I was promised that each year that I will receive yearly raises based upon evaluation. I received two evaluations and never received anymore evaluations, but never received a raise.” Id. He acknowledged that the promises were verbal. Id. He stated his evaluations were good. “I met every expectation over and above.” Id., 6. The Hearing Officer asked: Q: Okay. You didn’t have any does not meet or unsatisfactory evaluations? A: Absolutely not. Not one mark.” Id.

The Hearing Officer also asked about the issues with air compressed air and PVC. Id. Scroggins testified: “ I didn’t want to bring a lot of things up, but because of the fact that it seemed to lean more towards to that and because of the fact that I do have a house that has to eat and things of that nature, I began to say some of the things that was actually going on. Uh the president.” Id., 7. “And throughout the plant, in the letter I sent you I had to call out a (inaudible) which is a compressed air technology company to come out and service our compressor and that’s when they brought it to my attention, you know you’re not supposed to have that on there and that’s one, that’s going to explode and the shrapnel and this, that, and the other and I addressed that you know with

the owner as well and as well as Tim Harris in human resources and let them you know and nothing was done.” Id., 7-8.

The Hearing Officer asked when this occurred and Scroggins testified it was “early this summer.” He then further explained his quandary: “That along with a lot of other things has been a very, very stressful situation, which was beginning to cause problems at home with my family, I’m not going to lose my family behind a job. They put my name on the emergency consultant and once I listened to this responsibility of that position, I found things such as you know it was my responsibility to protect the human health and safety in the building, prevent the emergencies from escalating, and protect the equipment and/or the company from loss, and protect the environment, and there’s too many issues there that weren’t being address in order for me to accurately do those things and I spoke with both the president and Tim Harris in human resources pertaining to those things and they were never addressed and it just got worse and worse on me stressfully because I (inaudible).” Id., 8.

The Hearing Officer then asked: “Q. Did you ever speak with or file a complaint with OSHA regarding the PVC issue? A. Uh no sir, I did not.” That closed the sworn testimony.

In his closing statement, Scroggins stated: “I spoke with Dennis Perkins on the third of this month, he contests to it. He said he never had any intentions on fighting my employment [sic] and had words with Tim from human resources, that he told him not to give me any problems. He knew that everything I said is accurate and true.” Id., 9. He feared that: “I really needed to leave there because it was causing a lot of problems and I was putting myself in a position to possibly even go to jail for situations, so I finally listened you know (inaudible) the man expecting that check and this, that, and the other and did what I felt was right to do.” Id. The Hearing Officer took the matter under advisement.

### Hearing Officer's Decision

On September 11, 2015, the Hearing Officer mailed his decision for UCRC in Scroggins' request for review of the Director's determination that he had "quit without just cause." The Decision contains a section designated as "FINDINGS OF FACT". It summarizes the testimony at the hearing. The Hearing Officer found that Scroggins was promoted to plant supervisor on February 16, 2010 with a pay increase to \$18.00 per hour. Also, "Between February 16, 2010 and June 16, 2015, the claimant did not receive a yearly raise despite the fact that he did not have any unsatisfactory performance reviews." Dec., 1. The Hearing Officer then found that Scroggins was informed "that the company could not afford to give him a raise at that time because of a business slowdown." The Hearing Officer also found: "The claimant also alleged that he worked around compressed air that flowed through PVC pipes and that was a dangerous condition. The claimant did not report the safety issue to OSHA. The claimant tendered his resignation on June 16, 2015, because of the lack of a yearly raise which he felt was a breach of contract by the employer and for unsafe working conditions due to the PVC compressed air piping. Claimant worked out a two week notice and his last day was June 30, 2015." Id., 1-2.

The Hearing Officer designated the issue as follows: "Did claimant quit work with R.D. Baker Enterprises Inc without just cause?". Dec., 2. The decision is based on application of R.C. 4141.29(D)(2)(a). The Decision affirmed the Director's conclusion that Scroggins was not qualified for unemployment benefits because "claimant quit R D Baker Enterprises Inc without just cause. Dec., 3. The Hearing Officer reasoned that Scroggins had not shown that the employer breached an agreement with him to pay him an annual raise for working as plant supervisor even though the only evidence in the hearing was that Scroggins and been promised the annual raise and his work performance had been above satisfactory and even outstanding. He stated, "However, many essential terms of this alleged contract were not addressed." Id., 2. The Hearing Officer then speculates: "It is conceivable that part of a performance evaluation of the claimant, as the plant

supervisor, would not just include his personal performance but also the performance of the plant as a whole. If the company did not have the money to give the claimant a raise because of a business slowdown than [sic] conceivably the claimant would not have qualified for a raise, as the plants performance was poor.” Id. Furthermore, the Hearing Officer reasoned: “In the absence of a contract, the claimant’s alleged wage agreement would have been at the company’s discretion based on business need and feasibility. Based on the evidence presented the company was not monetarily able to give the claimant a yearly raise.” Id.

The Hearing Officer rejected Scroggins’ testimony that the risks from unsafe working conditions that his superiors would not address and the impact on him as the responsible supervisor caused him to resign.

#### Court’s Review: Decision is Unreasonable, Unlawful, And Against the Evidence

The Court is aware the standard of review is whether the UCRC decision is unlawful, unreasonable, or against the manifest weight of the evidence. Also, the Court is not permitted to weigh the evidence or substitute its judgment on factual determinations. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468 (1982). The role of this Court in reviewing the evidence is limited to whether the evidence supports the decision. This means whether reasonable minds could weigh the evidence before the UCRC and arrive at contrary conclusions. In other words, the Court is required to defer to the UCRC’s “determination of purely factual issues that concern the credibility of witnesses and the weight of conflicting evidence.” Brf., Appellee, 4.

The Court has reviewed the record certified to it by the UCRC in this matter. The Court does not find any credibility issues. The Hearing Officer does not determine that any testimony from Mr. Scroggins is not believable. The decision is that Scroggins did not meet legal requirements. He states the promises of annual raises may form the basis of a contractual obligation, but they are not in writing, although they do not have to be, and there may be reasons why the raises were not paid.

#### Failure to pay promised annual raises

The Court finds that the Hearing Officer's decision that is the basis of the UCRC decision that Scroggins is not qualified for unemployment compensation because he quit without just cause, is entirely speculation and conjecture on his part. There is no evidence at the hearing to support this speculation. The only testimony close to a reason the promised raises were not given was Scroggins' testimony that he spoke with his superiors about the raise and the newly hired president, Dennis Perkins, responded "that the owner, Doug Baker, had his hands tied up with money." T., 6. It is unreasonable to conclude from that simple statement that the company was suffering from a "slowdown" and could not afford to pay Scroggins the promised raises. Such conjecture is far removed from issues of credibility. The employer did not contest Mr. Scroggins' application and did not present evidence at the hearing. The Hearing Officer's factual findings, adopted by the UCRC, are not based on any reliable, credible, and probative evidence. No reasonable person could weigh the evidence presented at the hearing and reach the decision reached by the Hearing Officer on behalf of the UCRC.

#### Unsafe working conditions not being addressed

With respect to the safety issue, the Hearing Officer reasoned: "Ohio courts have generally held that an employee is expected to pursue all other available options before deciding to quit employment." Dec., 2. He states as an example, a decision from the Franklin County Court of Common Pleas in *Peters v. Administrator*, Case No. 92 CVD-11-9211 (Jan. 18, 1994), that he states held that not complaining to OSHA before quitting employment means the employee "quit without just cause." Id. The Hearing Officer applied the same reasoning to Mr. Scroggins. His question to Mr. Scroggins was whether he contacted OSHA. Since he did not contact OSHA, the Hearing Officer concluded that Scroggins forfeited the safety issue as a justification for resigning his employment for just cause. That conclusion is unlawful and unreasonable.

There is no discussion of Scroggins' testimony about the very stressful position he was in because of dangerous conditions at the plant and the supervisors' refusal to address them. There is no discussion of the seriousness of the situation and Scroggins undisputed testimony that he felt personally responsible to keep the plant safe and prevent emergencies and injuries, and the inaction by his superiors forced him to resign because of the stress and worry and the impact of his stress and worry on himself and his family. In short, the Hearing Officer totally ignored the essence of the only sworn testimony before the Hearing Officer as the reason Scroggins felt he had no choice but to resign. The undisputed evidence is that Scroggins was not being paid the promised raises for supervising the plant and, more immediately, he had responsibility for the safety of the plant for the workers and the environment and the plant equipment, and his superiors would not address those serious issues.

There is nothing in the statute or the governing case law that requires an employee who is forced to resign because hazardous working conditions are being ignored by management, to first pursue the matter with OSHA or other governmental agencies, before resigning can be considered to be for "just cause" or as Scroggins presented at the hearing, "what I felt was right to do." T., 9. The undisputed evidence is that Scroggins was even fearful that as a responsible supervisor he could be held criminally liable for injuries that resulted from explosions from the dangerous conditions. There is no basis in the unemployment compensation scheme to deny compensation because such an employee chose to resign and did not call federal authorities who might impose civil fines or even criminal sanctions on the company and his supervisors or even force closure of the plant, leaving other employees without a job. Such a narrow interpretation of the language "quit without just cause" is contrary to the duty to construe the statute liberally in favor of granting unemployment compensation to the recently unemployed person. *Clark Cty. Bd. Of Mental Retardation & Dev. Disabilities v. Griffin*, Clark App. No. 2006-CA-32, 2007-Ohio-1674 (2d Dist.

Clark County 2006), ¶10. This Court is not bound by the Hearing Officer's reasoning that conflicts with the purposes of the statute and the evidence presented at the hearing.

Whether an employee has caused the termination of his employment for "just cause", including safety reasons, depends on the totality of the circumstances involved. *Schadek v. Admr. Ohio Bur. Of Emp. Serv.*, Montgomery App. No. 11569, 1990 Ohio App. LEXIS 2365 (2d Dist. 1990). Contrary to the Hearing Officer's reasoning, courts look at the extent to which the employee has exhibited a disregard of his employer's interests. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 463 N.E.2d 1280 (10<sup>th</sup> Dist. 1983). "A reasonable fear for one's personal safety is a proper reason for leaving employment." *Underhill v. Unemployment Comp. Review Comm'n*, Franklin App. No. 10AP-617, 2011-Ohio-1598 (10<sup>th</sup> Dist., March 31, 2011), ¶18. In fact, one court has stated: "Typically, an employee must first notify the employer of the problems prior to quitting, or they risk a finding that they quit without just cause." *Underhill, supra*, ¶19, citing *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (1996). Furthermore, "where an employee's initial complaints do not prompt the employer to change her working conditions, the employee may be relieved of her duty to further pursue internal remedies." *Id.*, ¶20. Likewise, "although employees must make reasonable efforts to solve a problem before quitting, an employee with a reasonable fear for his personal safety cannot be expected to remain on the job until an actual physical assault takes place." *Id.*, citing *Taylor v. Bd. Of Rev.*, 20 Ohio App. 3d 297, 299, 485 N.E.2d 827 (1984).

The same reasoning applies to an employee like Scroggins, who is the plant supervisor and responsible for the safety of himself and other employees working in the plant, and sees and is informed of seriously dangerous conditions in the workplace, informs his supervisors and requests corrections, and the issues are not addressed. The reasoning of the Hearing Officer adopted by UCRC is contrary to and not supported by the undisputed evidence presented at the hearing and the controlling case law. The decision is contrary to the weight of the evidence, and is unlawful and



unreasonable. “The existence of hazardous conditions in employment constitutes just cause for quitting.” *McCartney v. Bd. Of Rev.*, Cuyahoga App. No. 38993, 1979 Ohio App. LEXIS 10232 (8<sup>th</sup> Dist. May 31, 1979). “Just cause, in the statutory sense, is that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995), quoting *Irvine v. Unemployment Comp. Bd. Of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). Disqualification for unemployment is based on the termination being the fault of the employee seeking compensation and not the employer. *Id.* In this case, the undisputed evidence presented is that Scroggins’ was not at fault; he did not voluntarily resign from his employment. The nature of his responsibilities and the dangerous conditions that were not being addressed and the stressful impact on him led to the resignation. It is the action that an ordinary intelligent person would do under the totality of the circumstances presented in this matter.

The Court concludes that the reasons presented for the resignation that the employer had failed to comply with its agreement to give him annual raises and, more immediately, the failure to address serious safety conditions in the workplace, coupled together, clearly provided “just cause” for Mr. Scroggins’ resignation as plant supervisor. Thus, he is qualified for and entitled to unemployment compensation. The decision to the contrary is unlawful, unreasonable, and against the weight of the evidence. The decision of the UCRC is reversed and this matter is remanded to the Director to begin providing unemployment compensation to Mr. Scroggins forthwith.

SO ORDERED:

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JUDGE RICHARD S. SKELTON

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**Type:** Decision  
**Case Number:** 2015 CV 06102  
**Case Title:** NATHAN A SCROGGINS vs R D BAKER ENTERPRISES INC

So Ordered

A handwritten signature in blue ink, appearing to read "W. S. Skelton".