

APR 20 2016

*[Signature]*, CLERK  
OF COMMON PLEAS COURT

IN THE ATHENS COUNTY COURT OF COMMON PLEAS

ATHENS, OHIO

OU Real Estate Inc., : Case No. 15CI0140  
: Judge Patrick J. Lang  
Appellant, :  
: DECISION AND JUDGMENT ON  
vs. : ADMINISTRATIVE APPEAL; FINAL  
Ohio Unemployment Compensation : APPEALABLE ORDER  
Review Commission, et al., :  
Appellees. :

I. PROCEDURAL HISTORY

Appellant OU Real Estate Inc. appeals the order of the Unemployment Compensation Review Commission disallowing further review of the case, thereby granting unemployment compensation benefits to appellant's former employee, Tre M. Wallace. The agency determined that Wallace was terminated without just cause. The administrative record has been filed, appellant and appellee Director of ODJFS have briefed their positions, and the appeal is submitted for decision. Although he participated in the administrative process, Wallace has not appeared in appellant's judicial appeal.

II. STANDARD OF REVIEW

The following standard of judicial review governs this appeal:

When reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court must affirm unless it concludes that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. \* \* \* All courts, whether common pleas or appellate, must apply this same standard. \* \* \* [T]he Review Commission remains the finder of fact. The fact that reasonable minds may have reached a different decision than the Review Commission is not a basis for reversal.

Dodridge v. Ohio Dept. of Job and Family Services, 4<sup>th</sup> Dist. No.

09CA3292, 2010-Ohio-696.

### III. DISCUSSION

The record supports the agency's resolution of the "without just cause" discharge issue.

The agency, through its hearing officer, is the fact finder, and its factual findings are entitled to deference where supported by some competent, credible evidence in the record. The hearing officer, of course, has broad discretion to weigh witness credibility and evidentiary strength.


Appellant did not participate at the administrative hearing, an occurrence that no doubt impaired its chances of prevailing. As it was, the hearing officer heard only Wallace's version of the event that immediately precipitated his termination, and the hearing officer was in the best position to weigh Wallace's testimony on the matter. Apparently, the hearing officer believed Wallace, and it was her prerogative to do so.

Appellant maintains, however, that other evidence in the administrative record contradicts and manifestly outweighs Wallace's testimony. The Director disagrees on the issue of manifest weight, and the Court concurs with the agency's position. The Court agrees with appellant that Wallace did not genuinely dispute several prior instances of misconduct or ineptitude. However, to the extent questioned by the hearing officer, Wallace did contradict appellant's account of the event that actually and immediately led to his termination, i.e., the "four-wheeler" incident. It was this incident that the hearing officer focused upon. Had appellant participated at the hearing, perhaps it could have more fully developed a record of

the event and persuasively demonstrated insubordinate behavior. But appellant did not appear, and the hearing officer had no duty to develop appellant's position in its absence. See Heller v. Ohio Dept. of Jobs and Family Servs., 8<sup>th</sup> Dist. No. 92965, 2010-Ohio-517, ¶ 31. Although the record contains an "Employee Warning Notice" regarding the "four-wheeler" incident that appears to contradict Wallace's testimony, the hearing officer was free to weigh the evidence and assess credibility.

#### IV. CONCLUSION AND JUDGMENT

At most, reasonable minds could view the record differently. But the Court does not conclude that the manifest weight of the evidence dictates a decision for appellant. Accordingly, the Court finds the Commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision granting Wallace unemployment benefits is AFFIRMED.

  
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Judge Patrick J. Lang

**This is a judgment or final order, which may be appealed. The Clerk, pursuant to Civ.R. 58(B), shall serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the Clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B) and shall note the service in the appearance docket.**

cc: Alan Schwepe, Asst. Ohio Atty. Gen.  
Kenneth E. Ryan, Esq.