

SANDRA KURT
IN THE COURT OF COMMON PLEAS
2016 APR 29 PM 3:21
COUNTY OF SUMMIT

QUALITY SYNTHETIC RUBBER CO., INC.,
Appellant
-vs-
BONNIE V. VANDERPOOL, et. al.,
Appellees

SUMMIT COUNTY
CLERK OF COURTS

CASE NO. CV 2015-12-5716

JUDGE MCCARTY

ORDER

Appellant, Quality Synthetic Rubber Co, Inc., (“QSR”), filed this administrative appeal on December 18, 2015. QSR appeals the Final Order of the Unemployment Compensation Review Commission (“Commission”), dated November 19, 2015, upholding the September 4, 2015 Determination of Hearing Officer Paulette Johnson, which reversed the Director’s Redetermination issued July 23, 2015. The three-part transcript of proceedings was filed on January 15, 2016. QSR filed its brief on February 16, 2015. Appellee, Director, Ohio Department of Job and Family Services (“ODJFS”), filed a brief in response, to which QSR replied. Claimant-Appellee, Bonnie V. Vanderpool, filed a merit brief, which QSR opposed. The court declines to grant leave for any additional briefing. The issues raised by this administrative appeal are now deemed submitted.

FACTUAL BACKGROUND

The issue central to this administrative appeal is whether Vanderpool was discharged from employment with QSR for just cause in connection with work. QSR argues that the Hearing

Officer failed to consider competent and credible evidence offered by QSR, and made a determination that was unlawful, unreasonable, and/or against the manifest weight of the evidence. Vanderpool contends that the Hearing Officer considered all of the evidence, weighed such evidence, and reached a decision that is not unreasonable, unlawful, nor contrary to the manifest weight of the evidence. ODJFS contends that the evidence in the record supports the Hearing Officer's decision that Vanderpool was discharged without just cause, and that this court cannot reweigh evidence and reassess credibility to reach a different conclusion.

The record reflects that QSR employed Vanderpool from July 22, 1991 through May 22, 2015. QSR terminated Vanderpool's employment based on Vanderpool's "inappropriate conduct and discriminatory comments/inappropriate language toward fellow employees." Citing the company's "zero tolerance" policy regarding such behavior, QSR effectively terminated Vanderpool on May 22, 2015.

On May 20, 2015, QSR received a report from one of Vanderpool's coworkers claiming that he overheard Vanderpool call another employee a "stupid fucking nigger." QSR has a written statement from the employee; however, they redacted the name and declined to disclose the identity of the employee making the claim. After this report, QSR terminated Vanderpool without providing her with specific details of the allegation or an opportunity to defend herself, and despite her adamant protest that she had not uttered a racial slur.

Vanderpool's initial Application for Determination of Benefit Rights was allowed. The Director issued a Redetermination disallowing the application on July 23, 2015, finding that Vanderpool had been discharged from employment for just cause. Vanderpool filed an appeal from the Redetermination, ODJFS transferred jurisdiction to the Commission, and a telephone hearing was held before Hearing Officer Paulette Johnson.

The Hearing Officer reversed the Director's Redetermination in her September 4, 2015 decision, finding that Vanderpool was discharged by QSR without just cause. QSR appealed the Hearing Officer's decision, and the Commission allowed the Request for Review. Upon review of the record, the Commission concluded that the Hearing Officer's decision should be affirmed, and issued such decision on November 19, 2015. QSR then appealed that decision to this court.

LAW & ANALYSIS

The role of the court of common pleas upon appeal from the Unemployment Compensation Review Commission is to determine whether the decision is supported by evidence in the record. The jurisdiction of the court is limited to a determination, upon review of the record, of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694 at 696-697 (1995). Upon review, the court is not permitted to make factual findings or to determine the credibility of witnesses, but has the duty to determine whether the board's decision is supported by the evidence in the record. *Irvine v. State, Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). The court may not substitute its judgment for that of the Commission, nor reverse the decision based on a differing interpretation of the evidence. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 161, 463 N.E.2d 1280 (10th Dist.1983). A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. *Id.*

Christine Delmore, QSR's Human Resources Director, testified before the Hearing Officer that the HR department received numerous informal complaints about Vanderpool's behavior in the workplace, although she was unable to provide specific example or dates of those alleged incidents. The alleged inappropriate and harassing conduct apparently spans back to the end of 2014.

The parties acknowledge that Vanderpool was involved with efforts to unionize, and presented QSR with notice of the intention in March of 2015. Vanderpool believes that her involvement with the union efforts was a motive for QSR to terminate her. Vanderpool acknowledged and apologized for prior incidents, including an outburst and inadvertently cursing in front of a customer. She adamantly denies having ever called a fellow employee a "stupid fucking nigger" and claims that she does not make such racial slurs. While the parties agree that QSR did address Vanderpool's behavior and attitude verbally, it is clear that no subsequent formal steps were taken in accordance with QSR's progressive disciplinary policy prior to her termination.

The record reflects the Hearing Officer considered evidence showing that Vanderpool was verbally counseled, but was neither formally disciplined nor discharged regarding prior complaints of her negative attitude, hostility, and harassment. QSR cited the reported incidence of Vanderpool uttering a racial slur at a black employee—and their zero tolerance for such a serious offense—as the reason for terminating Vanderpool without following the steps in the disciplinary policy. Absent a finding that the racial slur incident occurred, the Hearing Officer was left with the vague and unspecified complaints of behavior that did not even trigger the implementation of disciplinary steps, let alone warrant a termination, which QSR asserts should have sufficed as independent grounds of just cause for termination.

The court disagrees with QSR's argument that the Hearing Officer blindly credited self-serving and irrelevant testimony simply because it was live. The Hearing Officer's reasoning and analysis contradicts QSR's claim that the sole basis for the credibility assessment was to give more weight to live sworn testimony over hearsay evidence without regard to substance. QSR implies a burden on Vanderpool to affirmatively disprove the allegation that she had made the racial slur. The Hearing Officer was presented with Vanderpool's testimony and two corroborating witnesses who expressed doubt that Vanderpool would have uttered the racial slur. In contrast the Hearing Officer considered a redacted version of the statement to the HR department that a coworker heard Vanderpool say "stupid fucking nigger," and Christine Delmore's assurances that she confirmed the circumstances of this unidentified individual in his claim that Vanderpool had made the racial slur; a claim which Vanderpool herself had no opportunity to challenge or to cross-examine. QSR has not identified any basis in the record for finding that just cause existed for terminating Vanderpool in the absence of the culminating event that triggered her termination.

The court finds, based on a review of the evidence, the Hearing Officer was not unreasonable in affording QSR's evidence less credibility than the contrary testimony of Vanderpool and her witnesses. The court further finds that the Hearing Officer was not unreasonable in determining that the evidence did not support a finding that Vanderpool had engaged in the alleged conduct. The court further finds that there is no support for the contention that the Hearing Officer should have found that QSR had an independent justification for terminating Vanderpool based on the other evidence of improper conduct, in the face of a finding that she did not utter the racial slur as alleged. Upon due consideration of QSR's arguments, and a thorough review of the record, the court finds the Commission's decision, from which this

appeal is taken, as well as the Hearing Officer's decision, which it affirms, to be lawful, reasonable, and in accord with the competent, credible evidence in the record.

The decision of the Ohio Unemployment Compensation Review Commission is
AFFIRMED.

This shall serve as a final appealable order. There is no just cause for delay.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Alison McCarty".

JUDGE ALISON MCCARTY

cc: Attorney W. Eric Baisden
Attorney Josephine S. Floyd
Attorney S. David Worhatch
Assistant Attorney General Laurence R. Snyder