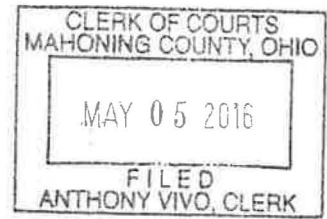


9



IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

ROSANNE SANDORA	)	CASE NO. 15 CV 1636
	)	COURTROOM NO. 4
	)	
APPELLANT	)	JUDGE JOHN M. DURKIN
	)	
VS.	)	
	)	JUDGMENT ENTRY
DIRECTOR, ODJFS, ET AL	)	
	)	
APPELLEES	)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to Ohio Revised Code Section 4141.282.

The record before the Review Commission establishes that Appellant, Rosanne Sandora (“Sandora”) worked as a Registered Nurse for Renal Care Group, Inc. (“RCGI”) from January 2009 until she was discharged from employment on December 1, 2014.

While employed at RCGI, Sandora’s duties included following physician’s orders concerning foot checks on certain patients. In June and September 2014, Sandora attended educational sessions by RCGI concerning the importance of following physician’s orders regarding monthly patient foot checks.

During 2014, Sandora received a number of warnings from RCGI for her work performance. On April 28, 2014 she received counseling for failing to complete nursing rounds; On June 3, 2014 she received a warning for causing 10 medication errors; and on August 22, 2014 she received a final warning for being tardy to work.



In October 2014, Sandora was required to perform foot checks on 8 to 10 patients. Sandora did not complete these required foot checks and she was terminated.

Thereafter, Sandora filed an application for unemployment benefits. The Director, Ohio Department of Job and Family Services (“Director”) issued an initial determination on December 19, 2014 that Sandora was discharged from employment with just cause and disallowed Sandora’s application for benefits.

Sandora timely appealed the Director’s determination and on January 27, 2015, the Director affirmed the initial determination disallowing Sandora’s claim for benefits. Sandora filed a timely appeal and the matter was transferred to the Review Commission on February 17, 2015.

A telephonic evidentiary hearing was held before the Review Commission on March 14, 2015. The Review Commission issued a decision affirming the redetermination by the Director disallowing Sandora’s claim for benefits. The Review Commission found that Sandora was discharged with just cause and was therefore ineligible for unemployment benefits.

Sandora’s request for further review by the Review Commission was granted. On May 20, 2015, the Review Commission affirmed the decision finding that Sandora was discharged with just cause and was therefore ineligible for unemployment benefits. This appeal followed.

The procedure for reviewing a Review Commission’s decision is set forth in R.C. 4141.282(H) which provides as follows:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or

remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

To reverse, vacate or remand the matter, this Court must find that the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to support the Review Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4<sup>th</sup> Dist. 1965); *Roberts v. Hays*, 9<sup>th</sup> Dist. No. 21550, 2003-Ohio-5903, paragraph 12.

The determination of factual questions is a matter primarily for the hearing officer and the Review Commission. *Brown-Brockmyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E.2d 79 (1947). If some credible evidence supports the Review Commission's decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In this case, Sandora was discharged from her employment with RCGI with just cause pursuant to R.C. 4141.29(D)(2)(a). That section concerns eligibility for employment benefits and provides in part as follows:

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual ... has been discharged for just cause in connection with the individual's work...

"Traditionally, 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." *Irvine v.*

*Unemp. Comp. Bd.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985). The Seventh District Court of Appeals considered the “just cause” issue in *Kosky v. American Gen. Corp.*, 7<sup>th</sup> Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

In this case, the issue before the Review Commission was whether or not Sandora was terminated with just cause. There is evidence in the record that Sandora was given corrective action on a number of occasions and she admitted not completing the October foot checks. Thus, the record as a whole supports the finding that RCGI had just cause to terminate Sandora. While there was conflicting testimony, it is not the duty of this Court to make factual findings or to determine the credibility of witnesses. Rather, it is the duty of the Review Commission to determine those matters.

Sandora’s argument that her termination was against the manifest weight of the evidence is without merit. Sandora argues that had her witnesses been able to testify, the result would have been different since such testimony would have shown the quality of her work, the work environment at RCGI, as well as her schedule.

In this administrative appeal the issue is whether or not Sandora was discharged with just cause. That analysis is concerned with the employee’s conduct, not the motivation or correctness of the decision. *See Westphal v. Cracker Barrel Old Country Store*, 9<sup>th</sup> Dist. No. 09CA009602, 2010-Ohio-190. In conducting the hearing, the Hearing Officer has wide latitude, including the ability to disallow evidence. R.C. 4141.281. While Sandora was permitted to proffer testimony from two witnesses, the Hearing Officer was permitted to disallow such evidence. Considering the record as a whole, the

decision of the Review Commission was supported by the manifest weight of the evidence.

This Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

DATE: \_\_\_\_\_

4/5/14



\_\_\_\_\_  
JUDGE JOHN M. DURKIN