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**FILED**

**IN THE COURT OF COMMON PLEAS**

2016 MAY 13 A 8:49

**ASHTABULA COUNTY, OHIO**

TAMI PENTEK  
CLERK OF COURTS  
COMMON PLEAS COURT  
ASHTABULA CO OH

CITY OF ASHTABULA	*	CASE NO. 2013 CV 731
	*	
Appellant	*	JUDGE GARY L. YOST
	*	
-vs-	*	<b>JUDGMENT ENTRY</b>
	*	
ANTHONY R. DEGENNARO, ET AL.	*	
	*	
Appellees	*	

**Proceeding:** City of Ashtabula's Appeal filed September 24, 2013, from the Decision of Unemployment Compensation Review Commission, mailed September 4, 2013.

The Appellant, City of Ashtabula, filed a timely Notice of Appeal in this Court from the Decision of the Unemployment Compensation Review Commission of September 4, 2013, which refused to review the Commission's determination of allowance of unemployment benefits to Appellee, Anthony Degennaro. Mr. Degennaro's initial application for unemployment benefits was granted with a determination that his discharge was without just cause. After the employer's appeal from the initial determination, a redetermination was issued affirming the allowance of benefits to Mr. Degennaro. The City appealed the redetermination, and the appeal was transferred to the Unemployment Compensation Review Board.

Following a hearing, the Hearing Officer found that the claimant's employment was terminated without just cause and the previous determinations were upheld. The City's request for review of that decision was denied, and the City now appeals to this Court.

The Hearing Officer made the following findings of fact. Mr. Degennaro was employed full time by the City of Ashtabula from June 2004 until he was terminated on February 25, 2013. Mr. Degennaro's most recent position was as a plow truck operator. He was discharged after the occurrence of two minor traffic accidents while backing up the City's plow truck. The Unemployment Review Commission Hearing Officer found that this discharge was not in accordance with the City's progressive discipline policy.

The City of Ashtabula presented evidence that it had two classes of offenses in its workplace discipline policy. Class I offenses result in immediate termination, while Class II offenses result in progressive discipline. The City claimed that Mr. Degennaro's traffic accidents could be classified as both Class I offenses of incompetent or negligent performance of work, and as Class II offenses of negligent or careless use of City equipment or property, and that his employment was therefore terminated with just cause. After analyzing the disciplinary policy language and the facts surrounding the traffic accidents at issue, the Hearing Officer found that the two traffic accidents were more appropriately characterized as Class

II offenses. The Hearing Officer further found that these offenses triggered the progressive discipline policy, and that the policy was not followed. As a result, the Hearing Officer determined that Mr. Degennaro was discharged without just cause.

It is well settled that the decision of the Review Commission must be affirmed, unless it was unlawful, unreasonable or against the manifest weight of the evidence. R.C. §4141.282(H). The only authority of a Common Pleas Court is to determine whether the decision of the Board of Review is supported by the evidence in the record. *Kilgore v. Board of Review*, 2 Ohio App.2d 69 (1965). The Court cannot substitute its judgment for a decision that is lawful, reasonable and supported by credible evidence. The issue before the Court is whether Mr. Degennaro was discharged with just cause. "There is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. Traditionally, 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." *Peyton v. Sun T.V. & Appliances et al.*, 44 Ohio App.2d 10, 12 (1975).

Where an employer has a mandatory progressive discipline policy, the failure to follow that policy when discharging an employee results in the discharge being without just cause for purposes of unemployment benefit

determination. See *Groves v. Dir. Ohio Dept. Of Job & Family Servs.*, 11<sup>th</sup> Dist. Ashtabula No. 2008-A-0066, 2009-Ohio-2085. Therefore, the dispositive issue in this case is whether the two accidents were Class I or Class II offenses under the City's disciplinary policy for employees. This is a question of fact, which the Hearing Officer resolved by analyzing the nature of Mr. Degennaro's traffic accidents and finding that they were minor and occurred while following the protocol dictated by the City for operating the City's plows. The Hearing Officer next analyzed the language of the City's disciplinary policy, and found that the nature of offenses included as Class I offenses were more severe than the traffic accidents at issue here. The Hearing Officer concluded that the traffic accidents were Class II offenses. As the decision of the Hearing Officer is supported by the record, the Unemployment Review Commission Decision is affirmed.

In a case of this nature, it is perhaps arguable that reasonable minds could reach different conclusions on the basis of the evidence presented to the Hearing Officer. However, that is not a basis to reverse, vacate, or modify the decision of the Hearing Officer. In this regard, the Court may not weigh the evidence or substitute its own determination for the factual findings of the Administrative Hearing Officer. The Court holds that the findings of the Hearing Officer are adequately supported by credible evidence. No error of law has been demonstrated. The Court further finds

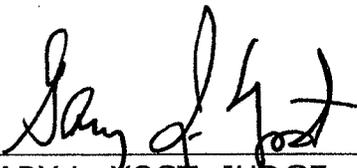
that the decision of the Hearing Officer is reasonable.

**Order:**

1. The Decision of the Unemployment Compensation Review Commission, mailed September 4, 2013, is affirmed.
2. Costs are assessed against the Appellant.

Within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and the date upon every party who is not in default for failure to appear and shall note the service in the appearance docket.

The Clerk is directed to serve notice of this judgment and its date of entry upon the journal upon the following: Martin S. Hume, Esq.; Laurence Snyder, Esq.; Lori Lamer, Esq.; and Unemployment Compensation Review Commission.

  
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GARY L. YOST, JUDGE  
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GLY/cfr