

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

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| Anthony Richards, | | Case No. 15CV-06091 |
| | | |
| Appellant, | | Judge McIntosh |
| | | |
| vs. | | |
| | | |
| Director, Ohio Department of Job and | | |
| Family Services, et al., | | |
| | | |
| Appellees. | | |

**Decision and Judgment Entry Affirming Decision of Ohio
Unemployment Compensation Review Commission**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 4141.282 administrative appeal by Anthony Richards (Appellant) from a “Decision Disallowing Request for Review” issued on June 17, 2015 by the Ohio Unemployment Compensation Review Commission. In that Decision, the Commission denied Appellant’s request for further review of a Hearing Officer’s Decision, in which the Hearing Officer disallowed Appellant’s application for unemployment compensation benefits.

The record that the Commission has certified to the Court reflects the following facts and procedural history. Italicized references are to the transcript of the hearing conducted by the Hearing Officer on April 16, 2015. See *Transcript of Testimony, April 16, 2015 (T.) 1-45*.

Facts and Procedural History

On April 25, 2014, Ohio Bell Telephone Company (Ohio Bell) hired Appellant as a Premises Technician in the company’s Technology Operations Department. *T. 9-10, 32*.

At all relevant times, Ohio Bell had a written “Code of Business Conduct (COBC)” that was given to all new employees, including Appellant at the time he was hired. *T. 13, 20.* The COBC obligated employees to report their criminal convictions to Ohio Bell. *T. 11-12, 20, 30.*

In Appellant’s job application, he was asked:

Have you ever been convicted of a crime, whether a misdemeanor, felony or other (including traffic violations) but excluding minor non-moving violations such as parking tickets? (Do not include information about arrests that did not result in conviction.) *T. 28-30.*

In response to that question, Appellant disclosed several criminal convictions. *T. 29.* He did not, however, disclose that he was convicted of Menacing by Stalking in October 2000.

When Appellant submitted his job application to Ohio Bell, he provided the following certification:

I hereby state that all the information I have provided on this application *** is true, complete, and correct. I have withheld nothing that would, if disclosed, affect this application unfavorably. I understand and agree that the Company may refuse to hire me or, if already hired, terminate me from employment if I provide false, misleading or incomplete information in this employment application ***.

On June 6, 2014, Appellant was temporarily separated from his employment with Ohio Bell because he failed to provide his employer with a birth certificate. *T. 10, 24, 32.*

On July 3, 2014, while Appellant was separated from his employment with Ohio Bell, he was living in an abandoned house that was raided by police. *T. 11, 19, 36, 40.* The police found heroin in the house. *T. 11.* Appellant was not arrested, but he was transported to the police station and fingerprinted. *T. 15, 19, 24, 35-36, 39.*

On August 1, 2014, as the result of an agreement between Appellant’s union and Ohio Bell, he was reinstated to his employment, and the period of June 6 through July 31, 2014 was treated as a leave of absence. *T. 9-10, 13, 32, 39.*

When Appellant returned to work on August 1, 2014, he did not disclose the events of July 3, 2014 to Ohio Bell. *T. 13.*

On or about November 8, 2014, when Appellant retrieved his mail from his post office box, he learned that he was being charged with Possession of Drugs as a result of the raid on July 3, 2014. *T. 13-14, 18-19.*

At all relevant times, Michael Mitchell was employed by Ohio Bell as an Area Manager in the company's Technology Operations Department, and James Sargent was employed as a Senior Investigator in the company's Asset Protection Department. *T. 9, 23-24.*

On November 10, 2014, Appellant reported his pending Possession of Drugs charge to Mitchell. *T. 11-12, 19, 24-25, 36.* Appellant reported that he had learned of the criminal charge a few days earlier, when he retrieved his mail from his post office box. *T. 13-14, 19.*

After Appellant's disclosure on November 10, 2014, Sargent conducted an investigation to verify the information provided by Appellant, and to determine if there were any other undisclosed criminal convictions in Appellant's background. *T. 12-13, 15-19, 23-28.* In the course of the investigation, Sargent determined that the Possession of Drugs charge had not been filed against Appellant until September 16, 2014. *T. 25-26.*

In the course of Sargent's investigation, he also discovered that Appellant had not disclosed, in his job application, that he was convicted of Menacing by Stalking in October 2000. *T. 26-27.* When Sargent asked Appellant about that conviction, Appellant told Sargent that Appellant had discussed the conviction with an Ohio Bell recruiter named Juanita Bell. *T. 27, 34.* When Sargent contacted Bell, however, she had no documentation in Appellant's file that he had disclosed the Menacing by Stalking conviction to her. *T. 27.*

On November 18, 2014, Sargent submitted an investigative report to Ohio Bell's Human Resources Department. *T. 24-25, 27.*

On December 12, 2014, Ohio Bell terminated Appellant from his employment, for having failed to fully disclose his criminal convictions prior to being hired in April 2014. *T. 10-11, 18, 32-34.*

On January 7, 2015, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning January 4, 2015.

In an initial Determination issued on January 28, 2015, ODJFS allowed Appellant's application for benefits, having determined that he was discharged without just cause in connection with his work. Ohio Bell appealed the initial Determination.

In a Director's Redetermination issued on March 3, 2015, the Director of ODJFS affirmed the initial Determination. Ohio Bell appealed the Director's Redetermination.

On March 20, 2015, the Director transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission.

On April 16, 2015, a Hearing Officer conducted a hearing on the appeal. Ohio Bell presented the testimony of Mitchell and Sargent, which is reflected in the recitation of facts, above. Appellant testified that, "as far as [he] could remember," he disclosed the October 2000 Menacing by Stalking conviction in a conversation with Ohio Bell recruiter Juanita Bell. *T. 34.*

On May 4, 2015, the Hearing Officer issued a Decision in which he reversed the Director's Redetermination, having found that Appellant was discharged for just cause in connection with his work. The Hearing Officer rendered the following findings of fact:

Claimant initially began work with The Ohio Bell Telephone Company on or about April 25, 2014. He was employed as a premise technician.

On his employment application, claimant was asked, "Have you ever been convicted of a crime, whether a misdemeanor, felony, or other (including traffic violations) but excluding minor non-moving violations such as parking tickets?"

Claimant answered yes and accurately reported any traffic violations. He also reported the following convictions:

Intimidation of Witness; Charged 12/2003, Alford Plea 04/2005;
Will discuss at Interview.

Violation of Civil Stalking Protection Order; Charged 11/2000;
Plead 06/2001; will discuss.

Violation of Civil Stalking Protection Order; Charged 08/2000;
Plead 10/2000; will discuss. ***

On June 6, 2014, claimant was separated from The Ohio Bell Telephone Company for failure to produce a birth certificate.

In July 2014, police raided an abandoned house that claimant was living in at the time along with at least one other individual. Claimant, who was not at the house at the time of the raid, was transported to the police department for fingerprinting to confirm his identity and then released. He was not placed under arrest at that time.

Claimant was reinstated as an active employee with The Ohio Bell Telephone Company on August 1, 2014. The period of June 6, 2014 through July 31, 2014, was labeled a leave of absence.

On or about November 8, 2014, claimant discovered that he had recently been charged with drug possession in relation to the police raid in July 2014. Claimant notified his supervisor of the pending charge. Pursuant to company policy, his supervisor then notified The Ohio Bell Telephone Company's Asset Protection Department for further investigation.

As a result of the background investigation, the employer concluded that claimant had failed to report a conviction for Menacing by Stalking in October 2000 as well as at least one conviction for violation of civil stalking protection order in October 2000.

When questioned by the employer, claimant did not dispute the prior convictions. He asserted that he had disclosed and discussed all convictions with his recruiter prior to hire.

Asset Protection concluded that claimant had properly notified the employer about the 2014 pending drug charge, but that he had failed to disclose prior convictions on his employment application.

The Ohio Bell Telephone Company discharged claimant.

The Hearing Officer provided the following reasoning for the Decision:

The employer initially argued that claimant's discharge was based, at least in part, on his failure to report the police action in July 2014 upon his return to work on August 1, 2014. However, claimant was not an active employee at the time of the incident, was not placed under arrest, and no charges were filed in relation to that incident until September 2014. The employer did not provide a documented policy which establishes that claimant was required to report such an incident at that time. Additionally, the employer's own investigator testified that he concluded that claimant had properly notified The Ohio Bell Telephone Company of the matter.

The employer contended that claimant's discharge was also based on his failure to disclose prior criminal convictions on his employment application. There is some dispute between the parties as to what claimant disclosed on the application. The employer's evidence and testimony is inconsistent as to whether claimant reported the June 2001 conviction for violation of civil protection order. However, the employer consistently argued that claimant failed to disclose the October 2000 convictions for menacing by stalking and violation of temporary restraining order.

Claimant does not dispute the convictions discovered by the employer. He argued that he had properly disclosed all prior convictions on his employment application and discussed those matters with his recruiter. In support of his contention, claimant submitted copies of his application profile with The Ohio Bell Telephone Company. Based on that profile, claimant contends that he reported the following prior convictions:

Intimidation of Witness; Charged 12/2003; Alford Plea 04/2005;
Will discuss at Interview.

Violation of Civil Stalking Protection Order; Charged 11/2000;
Plead 06/2001; will discuss.

Violation of Civil Stalking Protection Order; Charged 08/2000;
Plead 10/2000; will discuss. ***

Even if these documents were viewed as the most accurate representation of those criminal convictions disclosed by claimant, claimant still failed to disclose at least one prior criminal conviction on his employment application. This list does not include the October 2000 conviction for menacing by stalking.

An employee may be subject to discharge for failing to provide complete and accurate information on his employment application. Claimant failed to disclose all criminal convictions on his application with The Ohio Bell Telephone Company. Accordingly, claimant must be found to have been discharged for just cause in connection with work.

The Hearing Officer reversed the Director's Redetermination and disallowed Appellant's application for unemployment compensation benefits.

On May 26, 2015, Appellant requested that the Commission review the Hearing Officer's Decision.

On June 17, 2105, the Commission disallowed Appellant's request for further review of the Hearing Officer's Decision.

On July 17, 2015, Appellant appealed the Commission's Decision to this Court.

Standards of Appellate Review

Revised Code 4141.282(H), which governs this appeal, provides:

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.

A reviewing court employs a well-established standard of review in appeals involving the Commission: "[A] reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Loughman v. Ohio Dept. of Pub. Safety*, 10th Dist. No. 15AP-473, 2016-Ohio-1086, ¶ 7, quoting *Tzangas, Plakas & Mannor v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 697 (1995). When a reviewing court applies this standard, it may not make factual findings or determine witness credibility. *Loughman*, ¶ 7, citing *Irvine v. State Unemp. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 18 (1985). Factual questions remain solely within the Commission's province. *Loughman*, ¶ 7, citing

Tzangas at 696. Thus, a reviewing court may not reverse the Commission's decision simply because "reasonable minds might reach different conclusions." *Loughman*, ¶ 7, quoting *Irvine* at 18.

In determining whether the Commission's decision is or is not supported by the manifest weight of the evidence, a reviewing court applies the civil manifest weight of the evidence standard set forth in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279 (1978), syllabus, which holds: "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Loughman*, ¶ 7.

Analysis

The purpose of Ohio's Unemployment Compensation Act is to provide financial assistance to persons who are without employment through no fault of their own. *Kohl v. Health Mgt. Solutions, Inc.*, 10th Dist. No. 15AP-17, 2015-Ohio-4999, ¶ 17. A claimant who has been discharged for just cause in connection with his work is disqualified from receiving unemployment compensation benefits. R.C. 4141.29(D)(2)(a). 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. *Kohl, supra*, ¶ 18. The critical issue is not whether an employee has technically violated some company rule, but rather, whether the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests. *Kiika v. Adm., Ohio Bur. of Emp. Servs.*, 8th Dist. No. 48531, 21 Ohio App. 3d 168, 169 (1985).

The issue in this appeal is whether the Commission's determination, that Appellant was discharged for just cause in connection with his work, is supported by evidence in the record.

The Court concludes that the Commission's determination is so supported, specifically, by the testimony of Michael Mitchell and James Sargent.

Mr. Mitchell and Mr. Sargent testified that:

- When Appellant was hired by Ohio Bell, he was given a copy of the company's "Code of Business Conduct," which obligated employees to report their criminal convictions to Ohio Bell.
- In Appellant's job application, he disclosed several criminal convictions, but he did not disclose his conviction for Menacing by Stalking in October 2000.
- In Appellant's job application, he certified that the information he provided in the application was complete and he certified that he understood that, if he provided incomplete information in the application, Ohio Bell could terminate him from employment.
- Ohio Bell conducted a background investigation, in the course of which the employer discovered that Appellant had not disclosed, in his job application, that he was convicted of Menacing by Stalking in October 2000.
- When Appellant told Sargent that Appellant had discussed the Menacing by Stalking conviction with recruiter Juanita Bell, Sargent contacted Bell, who had no documentation that Appellant had disclosed the Menacing by Stalking conviction to her.

There is evidence in the record, provided by the testimony of Mr. Mitchell and Mr. Sargent, that Appellant failed to disclose his Menacing by Stalking conviction to Ohio Bell, thereby demonstrating an unreasonable disregard for his employer's best interests. The manifest weight of the evidence supports the Commission's determination that Appellant was discharged for just cause in connection with his work, and that he was therefore disqualified from receiving unemployment compensation benefits. R.C. 4141.29(D)(2)(a).

Appellant has argued, in support of this appeal, that the Hearing Officer violated Appellant's procedural due process rights by not permitting Appellant to present the testimony of union representative Glen Skeen, whom Appellant had subpoenaed to testify at the hearing on

April 16, 2015. For the following reasons, the Court does not find Appellant's argument to be well taken.

At the hearing, the Hearing Officer asked Appellant, "[W]hat type of testimony do you anticipate [Mr. Skeen] will provide?" *T. 41*. Appellant answered, "He will be able to provide that the company terminated me without just cause." *T. 41*. When the Hearing Officer said that he did not need to hear Mr. Skeen's testimony, Appellant did not object. Nor did Appellant proffer into the record what he believed Mr. Skeen's testimony would show. Indeed, in Appellant's brief, he acknowledges that he does not know what testimony Mr. Skeen would have given, "only that [Mr. Skeen] informed [Appellant] that [Mr. Skeen] would provide testimony in an Unemployment Benefit hearing on Appellant's behalf if Appellant requested it[.]" *Appellant's Brief, Oct. 30, 2015, p. 8*.

A hearing officer has the discretion to exclude evidence that is cumulative or irrelevant. R.C. 4141.282(C)(2). At the hearing on April 16, 2015, the Hearing Officer exercised his discretion and concluded the hearing. In the absence of a proffer, this Court cannot say that the Hearing Officer abused his discretion in excluding the testimony of Mr. Skeen.

Appellant has also argued, in support of this appeal, that he should have been permitted to cross-examine the Ohio Bell recruiter, Juanita Bell, who was not a witness at the hearing on April 16, 2015. However, Ohio Adm. Code 4146-15-01 provides:

Upon the request of an interested party, *** the review commission or a hearing officer may, at any time, issue subpoenas to compel the attendance and testimony of witnesses *** at any hearing. If an interested party desires the issuance of subpoenas in order to compel the attendance of witnesses *** at a scheduled hearing, the party's request should be filed with the review commission at least five calendar days in advance of the date of the hearing ***.

Appellant had the right to have Ms. Bell subpoenaed to testify at the hearing, but he did not exercise that right. His inability to cross-examine Ms. Bell was the result of his own inaction, and not the result of any procedural error committed by the Commission or its Hearing Officer.

In closing, the Court is compelled to direct Appellant's attention to Local R. 12, which provides:

RULE 12 - PAGE LIMITATIONS

12.01 A supporting or opposing memorandum or brief including administrative appeals, shall not exceed fifteen (15) pages exclusive of any supporting documents. Any supporting or opposing memorandum which exceeds fifteen (15) pages shall not be accepted for filing without prior leave of the Court.

12.02 A reply memorandum or brief including administrative appeals shall not exceed seven pages and shall be restricted to matters in rebuttal. Any reply memorandum or brief which exceeds seven pages shall not be accepted for filing without prior leave of the Court.

12.03 A motion for leave to file a memorandum or brief in excess of the page limitations set forth in 12.01 and 12.02 above shall be made by no later than seven days prior to the time for filing the brief and a time-stamped copy be hand delivered to the judge's chambers. Such motion shall set forth the unusual and extraordinary circumstances which necessitate exceeding the page limitation.

Appellant's initial brief, which was filed on October 30, 2015, contains thirty-four (34) pages, exclusive of any supporting documents. Appellant's reply brief, which was filed on November 23, 2015, contains eighteen (18) pages, exclusive of any supporting documents. Appellant did not seek the Court's leave to file briefs in excess of the page limitations set forth in Local R. 12.

Appellant is cautioned that, if he files documents with this Court in the future, he shall comply with the page limitations set forth in Local R. 12, as well as all of the Local Rules of this Court. The Court is mindful of the fact that Appellant is not an attorney and that he has chosen to represent himself in this appeal. However, as a pro se party, Appellant is held to the same

rules, procedures, and standards as those litigants represented by counsel and therefore must accept the results of his own mistakes and errors. *Discover Bank v. Doran*, 10th Dist. No. 10AP-496, 2011-Ohio-205, ¶ 6.

Conclusion

Having reviewed the record certified to the Court by the Ohio Unemployment Compensation Review Commission, the Court concludes that the Commission's June 17, 2015 "Decision Disallowing Request for Review" was not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 05-19-2016
Case Title: ANTHONY RICHARDS -VS- OHIO STATE DEPARTMENT JOB & FAMILY SRVCS
Case Number: 15CV006091
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, which appears to read "Stephen L. McIntosh", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the center, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 15CV006091

Case Style: ANTHONY RICHARDS -VS- OHIO STATE
DEPARTMENT JOB & FAMILY SRVCS

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes