

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NINA'S HEALTH CARE SERVICES LLC.,

Case No: 15CVF-08-6852

Appellant,

JUDGE WOODS

-vs-

**OHIO STATE DEPARTMENT
OF JOB AND FAMILY SERVICES, ET AL.,**

Appellees.

DECISION AND ENTRY
AFFIRMING THE DECISION DISALLOWING REQUEST FOR REVIEW AS MAILED
ON JULY 8, 2015

WOODS, JUDGE

The above-styled case is before the Court on Nina's Health Care Services LLC. (Appellant) appeal from the July 8, 2015 Decision Disallowing a Request for Review issued by the Unemployment Compensation Review Commission (Commission). The Appellant named the Ohio Department of Jobs and Family Services (Appellee), the Commission and the Appellant's former employee Charlese Outlaw. After requests to extend the briefing schedule were granted the Appellant filed its Brief on April 15, 2016. The Appellee filed its Brief on April 28, 2015. The Appellant filed its Reply Brief on May 3, 2016. Ms. Outlaw and the Commission have yet to move or plead.

For the reasons that follow, this Court **AFFIRMS** the Commission's Decision of July 8, 2015 that disallowed the request for review.

I. STATEMENT OF THE CASE:

Appellant filed a Notice of Appeal with this Court. The Notice of Appeal asserted that the Commission's Decision of July 8, 2015 was in error. The Appellant asserted that Ms. Outlaw walked off the job by not accepting an offer to return to her old work for the Appellant.

II. STATEMENT OF THE FACTS:

Ms. Outlaw was hired by the Appellant on March 25, 2013. Ms. Outlaw was hired as an off-site home health aide. On December 3, 2014 the Appellant changed Ms. Outlaw's position to one in its office. (Hr. Tr. Page 8, Line 25 – 26) On March 6, 2015 Ms. Outlaw claimed that she and other employees of the Appellant were fired. Ms. Outlaw then requested benefits stating that she had been fired by the Appellant. She filed her request on March 9, 2015. According to the calendar, March 6 was a Friday and March 9 was a Monday in 2015.

Mr. Nkwenya testified on behalf of the Appellant. He testified that Ms. Outlaw was not in fact terminated, but merely offered another job due to her inability to handle the office job. Mr. Nkwenya testified that the Appellant was offered work in her old position as a home care provider as early as March 9, 2015. However, Mr. Nkwenya's testimony seemed to be hard to understand. Also, the dates and events he testified about seemed to change during his testimony.

Ms. Outlaw testified that she was contacted by the Appellee following her termination and she was offered work on March 20, 2015. She felt she got the call because the Appellant had received her request for unemployment compensation. (Hr. Tr. Page 16, Lines 15 - 16) Ms. Outlaw testified that the Appellant had used a similar tactic in the past to avoid paying unemployment compensation. (Hr. Tr. 18, Lines 1 – 8)

The Hearing Officer issued her Decision on June 1, 2015. The Hearing Officer explained how she weighed the evidence and came to the conclusion that the employee's version of the facts was more credible. The Appellant appealed. The Appellant appeared to present additional evidence attached to its appeal. In the end, the Commission disallowed the request for review and this appeal was commenced.

The parties requested that the original briefing schedule be changed and that request was granted. Then the parties briefed the issues. This matter is ready for review.

III. STANDARD OF REVIEW:

R.C. §4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. Please note the following:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission. R.C. §4141.282(H)

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission's decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162.

In regard to the right to unemployment compensation, the following is applicable to the issues raised in this appeal:

The Act's existence is not to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, the employee is directly responsible for his own predicament, and such fault separates the employee from the Act's intent and the Act's protection. *Scouler v. Ohio Dept. of Family Servs.*, 2007-Ohio-2650

Finally, the existence of 'just cause' is at issue in this appeal. Just cause "is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd. of Review* (1995), 19 Ohio St.3d 151t 17. Just cause must be determined on a case by case basis." *Id.*

From within this framework, this Court will render its decision.

IV. ANALYSIS:

This Court has reviewed the Briefs and has also reviewed the certified record. The testimony and evidence indicated that there existed competing evidence as to what transpired on March 6, 2015. As already noted, Ms. Outlaw stated that Mr. Dumas fired her. Ms. Outlaw testified that Mr. Dumas stated that she and other employees were being terminated pursuant to a restructuring of the office staff of the Appellant. (Tr. 15., Lines 8 – 26).

The Hearing Officer heard the testimony of Ms. Outlaw that she was terminated by the Appellant. The Hearing Officer also heard the testimony of Mr. Nkwenya on behalf of the Appellant. The Hearing Officer clearly decided that the testimony of Ms. Outlaw was more credible.

Appellant claimed that the Hearing Officer had made an erroneous evidentiary finding. The Appellant claimed that the Hearing Officer misapplied the rules of evidence and in fact excluded the testimony of Mr. Nkwenya. Appellant also claimed that the Hearing Officer excluded the Appellant's exhibit concerning the alleged termination letter.

However there was never a ruling that the testimony or exhibit were excluded. The Hearing

Officer merely judged Ms. Outlaw's testimony to be more credible. As noted *supra*, it is not this Court's role to replace the credibility findings of the Hearing Officer.

The Appellee's Brief established the numerous points in the testimony where the claims of Ms. Outlaw – if believed – clearly contested the claims of the Appellant's testimony and documentary evidence. The Appellee also established that the Appellant's evidence never established the 'cause' aspect of the case.

The Appellant concentrated on its belief that Ms. Outlaw was not terminated and therefore – if anything – she voluntarily left her employment by not accepting the subsequent job offers. The Appellant presented very little if any evidence that Ms. Outlaw was not performing her job prior to the claimed termination date. In fact, the document relied upon by the Appellant to establish that Ms. Outlaw was not fired states:

Nina's Health Care will (sic) like to thank you for your 3 months service of hard work and diligence to the company as an office staff. Effective 3/9/15 you will be transferred to the field.

That language contradicted the testimony at the hearing from Appellant's witness that Ms. Outlaw was not performing her job. When coupled with the established fact that other office employees were terminated at the same time Ms. Outlaw stated she was terminated, the Hearing Officer's decision that Ms. Outlaw was in fact terminated is logical.

The Hearing Officer came to the conclusion that Ms. Outlaw's version of the facts was more credible than the testimony and evidence produced by the Appellant. As such the Hearing Officer's Decision is supported by the law and the evidence.

The Commission's decision to disallow further review is **AFFIRMED**.

V. DECISION:

The Commission's Decision to disallow further review, as mailed July 8, 2015 is lawful, reasonable and supported by the evidence. It is **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER

Judge William Woods

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Franklin County Court of Common Pleas

Date: 05-31-2016
Case Title: NINAS HEALTH CARE SERVICES LLC -VS- CHARLESE A
OUTLAW
Case Number: 15CV006852
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "W. H. Woods", is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge William H. Woods

Court Disposition

Case Number: 15CV006852

Case Style: NINAS HEALTH CARE SERVICES LLC -VS-
CHARLESE A OUTLAW

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes