

D116995224

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
JAN 13 2017

REGINALD SAWYER,

Appellant,

v.

WHITESTONE NORTH, INC.,

Appellee.

:
:
:
:
:

Case No. A1602431

Judge Ghiz

ENTRY ADOPTING
MAGISTRATE'S DECISION

Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's Decision rendered on December 19, 2016. The objection period has expired with no objections having been filed and no extensions having been granted. The Magistrate's Decision is AFFIRMED.

The Unemployment Compensation Review Commission Decision dated February 25, 2016 is hereby AFFIRMED.

MAGISTRATE

JAN 13 2017

HAS SEEN

COURT OF COMMON PLEAS
ENTER
Leslie E. Ghiz
LESLIE E. GHIZ
THE CLERK SHALL SERVE NOTICE
JUDICIAL PARTIES PURSUANT TO CIVIL
COURT OF COMMON PLEAS
AS COSTS HEREIN.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

REGINALD SAWYER,	:	Case No. A1602431
Appellant,	:	Judge Ghiz
v.	:	
WHITESTONE NORTH, INC.,	:	<u>MAGISTRATE'S DECISION</u>
Appellee.	:	

RENDERED THIS 19th DAY OF DECEMBER, 2016.

This administrative appeal is from a February 25, 2016 decision of the Unemployment Compensation Review Commission ("Review Commission") determining Appellant Reginald Sawyer ("Appellant") was not entitled to unemployment benefits because he was discharged for just cause. This appeal, filed pursuant to R.C. §§ 119.12 and 5101.35(E), was scheduled for oral arguments on September 19, 2016. Before the argument took place, Appellant's counsel notified the court that Appellant wished to waive oral argument. Therefore, the case was taken under submission for decision on September 19, 2016.

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission.¹

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 HAMILTON COUNTY, OH



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¹ Ohio Rev. Code § 4141.282(H) (West 2008).

Otherwise, the court shall affirm the decision.² The reviewing court must follow this same standard in assessing just cause determinations.³ The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.⁴

JUST CAUSE

The Ohio Revised Code states:

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 quit work without just cause or has been discharged for just cause in connection with the individual's work[.]⁵

Each just cause determination must be based upon the merits of the particular case.⁶

‘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.’ ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 73 O.O.2d 8, 9, 335 N.E.2d 751, 752. Just cause determinations in the unemployment compensation context, however, also must be consistent with the legislative purpose underlying the Unemployment Compensation Act. The Act exists “ ‘to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.’ ” (Emphasis *sic.*) *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Leach v. Republic Steel Corp.* (1964), 176 Ohio St. 221, 223, 27 O.O.2d 122, 123, 199 N.E.2d 3, 5. “ ‘The [A]ct was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.’ ” *Irvine* at 17, 19 OBR at 14, 482 N.E.2d at 589, citing *Salzl v.*

² / *Id.*

³ / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

⁴ / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).

⁵ / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).

⁶ / *Irvine*, *supra*, at 17.

Gibson Greeting Cards (1980), 61 Ohio St.2d 35, 39, 15 O.O.3d 49, 52, 399 N.E.2d 76, 79. Thus, while a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination when viewed through the lens of the legislative purpose of the Act.

The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.⁷

DISCUSSION

After reviewing the briefs, the record, and the Commission's decision, the court agrees with the Commission's finding that Appellant was discharged for just cause. The record shows that Appellant was annually required to meet certain vision and hearing requirements as a condition of his employment as an armed security guard. After failing to meet the requirements, Appellant was granted additional time to do so. Appellant eventually met the vision requirements, but did not meet the hearing requirements. Nearly two months after Appellant was required to be re-examined, Appellant informed his employer that he had a serious hearing condition that required surgery. At that point, Appellant was informed he could take a leave of absence under the Family Medical Leave Act in order to have surgery. Appellant declined to take leave under the FMLA and was discharged.

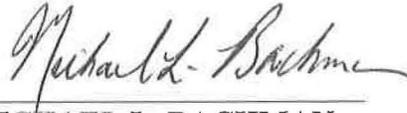
The court finds Appellant's employer gave Appellant ample opportunities to remedy his situation. Appellant was granted additional time to meet the requirements.

⁷ / *Tzangas*, supra, at 697-98.

Appellant was then informed of his right to take a leave absence in order to have the necessary surgery so he could meet the hearing requirements and continue his employment. Appellant refused to avail himself to that opportunity and the employer had no choice but to terminate his employment. Therefore, the Commission's decision was not unlawful, unreasonable, unconstitutional, or against the manifest weight of the evidence.

DECISION

The Unemployment Compensation Review Commission Decision dated February 25, 2016 is hereby AFFIRMED.



**MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION
HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR
ATTORNEYS AS PROVIDED ABOVE.

Date: 12/19/16 Deputy Clerk: 