

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

RED LOBSTER RESTAURANT, LLC)	CASE NO. 2016CV1650
)	COURTROOM NO. 1
APPELLANT)	
)	JUDGE ANTHONY D'APOLITO
)	
VS.)	
)	JUDGMENT ENTRY
WILLIAM A. ZACKASEE, 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.

In this case, the record before the Review Commission establishes that the Director, Ohio Department of Job and Family Services ("Director") issued an initial determination on January 25, 2016 that Appellee, William A. Zackasee ("Zackasee") was discharged with just cause pursuant to Ohio Revised Code Section 4141.29(D)(2)(a) and disallowed Zackasee's claim for benefits. Zackasee timely appealed the Director's determination and on February 23, 2016 the Director affirmed the initial determination disallowing Zackasee's claim for benefits. Thereafter, Zackasee filed another timely appeal and the matter was transferred to the Review Commission on March 18, 2016.

An evidentiary hearing was held before the Review Commission on April 6, 2016. On April 14, 2016, the Review Commission issued a decision reversing the determination by the Director disallowing Zackasee's claim for benefits. The Review Commission found that Zackasee was discharged from his employment with Appellant



without just cause in connection with work and was therefore eligible for unemployment benefits. Appellant timely requested a further review by the Review Commission. On May 25, 2016 the Review Commission disallowed Appellant's request. This appeal followed.

In this case, the record before the Review Commission establishes that Zackasee began his employment with Appellant on August 1, 1999. Zackasee was discharged on January 4, 2016 after several female employees accused Zackasee of sexual harassment. Zackasee denied the allegations.

The record reveals that between December 21, 2015 and December 31, 2015, six (6) female co-workers of Zackasee filed complaints (one being of such poor copy quality that it was unreadable) with Appellant alleging inappropriate touching and advances by Zackasee. None of the actions alleged in the complaints were witnessed by any other co-workers at the time the alleged act was committed. Also, the time-frames of the alleged acts varied, yet all complaints were filed relatively at the same time.

Neither Appellant, nor Zackasee appeared before the Review Commission on April 6, 2016 to present evidence or testimony in support of their respective positions. However, Mr. Landon Fortunato did appear on behalf of Zackasee. As it is learned through the transcript of the proceedings, Mr. Fortunato is Zackasee's non-attorney brother-in-law. Mr. Fortunato was advised that he would not be able to offer evidence or testimony, but was entitled to make a closing argument on Zackasee's behalf. In his closing statement, Mr. Fortunato challenged the veracity and reliability of the written statements by the female co-workers. Mr. Fortunato also asserted a bias argument, alleging that one of the complaining co-workers was Zackasee's ex-girlfriend's sister and

that Zackasee and his ex-girlfriend had a difficult break-up. Finally, Mr. Fortunato made argument and offered documentation seeming to purport that Zackasee suffered from health conditions that may have caused him to be unsteady on his feet and accidentally bump into co-workers. There is no evidence in the record that the Review Commission considered this information in reaching its decision.

The procedure for reviewing a Review Commission's decision is plainly set forth in R.C. 4141.282(H). 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.

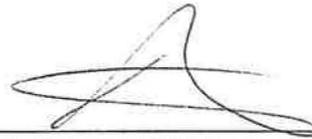
The record before the Review Commission reveals that there were allegations of inappropriate sexual touching and a denial of those allegations, along with explanation as to why some of the complaints should not be believed. It is the duty of the Review Commission hearing officer to give weight to the evidence before her. After considering the available evidence, the Hearing Officer came to the conclusion that Zackasee was terminated without just cause.

The record does not support Appellant's position that the Review Commission hearing officer's decision was unlawful, unreasonable or against the manifest weight of the evidence. Further, the record does not support Appellant's position that the Review Commission hearing officer improperly placed the burden of proof with Appellant, or that the hearing officer improperly considered new evidence offered by Mr. Fortunato. It

is not for this Court to substitute its judgment for that of the Review Commission merely because this Court may have reached a different result.

After a review of the record herein, the 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 Review Commission is hereby affirmed.

DATE: 1-27-17



JUDGE ANTHONY M. D'APOLITO

CLERK TO SEND COPIES TO
ALL ATTORNEYS AND
UNREPRESENTED PARTIES