COMMON PLEAS COURT
WASHINGTON COUNTY, OHIO

Adam E. Gorham,	:	
Appellant,	:	Case No. 16 AA 96
vs.	:	Judge Mark Kerenyi
Waterford Tank and Fabrication, Ltd., et al.	:	
Appellees.	:	DECISION

The above styled action came before the Court on an appeal of a determination that disallowed unemployment benefits. The Appellant herein, Adam E. Gorham, is a former employee of Waterford Tank & Fabrication, Ltd.

The Appellant was discharged from his employment with Employer for job abandonment. On October 28, 2015, Appellant applied for unemployment compensation benefits. Appellant's stated reason for separation from employment with Employer was lack of work.

Appellant's claim for unemployment compensation benefits was initially allowed on the ground that he had been discharged from his employment without just cause.

On appeal, the Ohio Department of Job and Family Services ("ODJFS") transferred jurisdiction to the Unemployment Compensation Review Commission ("UCRC") for a hearing. The Employer reported that the Appellant had been discharged for job abandonment. Following a hearing, the Hearing Officer reversed the ODJFS and held that Appellant had been discharged for just cause in connection with work

The Appellant requested review of the Hearing Officer's decision by the UCRC. The

UCRC disallowed the request.

A party dissatisfied with the UCRC's final decision may appeal to the appropriate Court of Common Pleas, which shall hear the appeal on the record certified by the UCRC. Pursuant to R.C. 4141.282(H), "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." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694 (1995).

The duty of the courts is to determine whether the evidence in the record supports the decision of the UCRC and whether that determination applied the correct legal standard. Where the UCRC might reasonably decide either way, courts have no authority to upset the UCRC's decision. *Charles Livingston & Sons, Inc., v. Constance*, 115 Ohio App. 437 (1961). Judgments supported by some competent, credible evidence on the essential elements of the controversy may not be reversed as being against the manifest weight of the evidence. *C. E. Morris Co., v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1987). The Court is not permitted to reinterpret the facts.

The unemployment Compensation 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. R. C. 4141.29(C)(2)(a), in pertinent part, as follows:

> [N]o individual may serve a waiting period or be paid benefits ***:
>
> (1) 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***.

"Just cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable

reason for doing or not doing a particular act." *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15 (1985). The *Irvine* Court further stated, "Each case must be considered upon its particular merits." *Id.*

Ohio law provides that no individual discharged for just cause may receive unemployment benefits. *Tzangas, supra*; R.C. 4141.29(D)(2)(a). Fault on behalf of the employee is an essential component of a just cause termination. *Tzangas, supra.*

As noted by the Courts, "[t]he critical issue is not whether the employee has technically violated some company rule." *Piazza v. Ohio Bur. of Emp. Serv.*, 72 Ohio App.3d 353 (1991). Rather, just cause for dismissal exists when an employee's actions demonstrate an unreasonable disregard for an employer's best interests. *Kiikka v. Ohio Bur. of Emp. Serv.* (1985), 21 Ohio App.3d 168 (1985).

Appellant worked for Employer as a welder from June 11, 2015 through July 14, 2015. Appellant did not report to work or call off from work on July 13 and 14, 2015. The Appellant violated the employer's work rules with regard to attendance contained in the employee handbook that he received and signed for at the time of hire. The work rules provide that, if an employee is absent without prior approval, or fails to call in for an absence lasting two days, the employee is considered to have voluntarily abandoned his job. Thus, the employer terminated Appellant's employment on July 14, 2015 for job abandonment.

In this case, the UCRC properly found that, as a result of Appellant's combined absences and his failure to notify his Employer concerning his absences he was terminated with just cause and not entitled to unemployment compensation benefits. Appellant's failure to report to work, his failure to call off from work and his failure to notify his Employer of his intention to remain in his job, demonstrate that Appellant had abandoned his job. It is a well-settled principle that

unemployment compensation benefits are to help those who are without employment due to no fault of their own. *Nunamaker v. U.S. Steel Corp.*, 2 Ohio St.2d 55 (1965).

An employer has just cause to discharge an employee for being absent from work without excuse or failing to call in pursuant to the employee handbook. *Rayburn v. Kokosing Constr. Co.*, 2002 Ohio 3604. An employer also has just cause to discharge an employee for violation of a known and uniformly enforced company policy. *Harp v. Adm., Bur. of Emp.* (1976), 12 Ohio Misc. 34. Here, the Appellant violated the work rules with regard to attendance.

Appellant did not report to work or call off from work on July 13 and 14, 2015, in violation of the work rules. What's more, he never returned or communicated with the Employer after his last day at work, July 11, 2015. The Appellant gave no written or verbal notice of quitting. He was a no called/no showed for his next scheduled shifts on July 13 and 14, 2015 and the Employer has not heard from him since then. Appellant's actions demonstrated that Appellant had abandoned his employment, and the Employer was not unreasonable in interpreting them in such a way. Appellant's job abandonment exhibited an unacceptable disregard for his employer's best interests. *Id.*

Appellant does not contest that he quit. Appellant argues, instead, that he was relieved of his obligation to call off because he informed the Employer at the time of hire that he would be returning to his union job when recalled by the union. Even if this allegation is true, Appellant was not relieved of his obligation to call off. There was no way for the Employer to know the Appellant's whereabouts unless the Appellant contacted the Employer and informed him he had returned to a union job.

In the present case, Appellant ignored a clear work rule. By failing to notify the Employer of two consecutive absences, he disregarded his employer's best interests, and he is at

fault. He is not "the victim of fortune's whims, but is instead directly responsible for his own predicament." *Kiikka, supra.* The UCRC's decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

Therefore, this Court affirms the decision of UCRC to deny benefits.

SO ORDERED.

ENTER AS OF DATE OF FILING:

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Judge Mark Kerenyi

c: Attorney Hoskins
A. Gorham
Waterford Tank & Fabrication