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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



D95382226

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| KAMILLE STUTSON, | : | Case No: A1104808 |
| Appellant, | : | Judge Marsh |
| v. | : | |
| DIRECTOR, OHIO DEP'T OF | : | <u>MAGISTRATE'S DECISION</u> |
| JOB AND FAMILY SERVICES, et al., | : | |
| Appellees. | : | |

RENDERED THIS 17th DAY OF NOVEMBER, 2011.

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") June 2, 2011 Decision affirming the March 30, 2011 Review Commission Hearing Officer's Decision finding that claimant Kamille Stutson ("Claimant") was discharged by appellant, Huntington National Bank, Inc. ("Huntington"), from her position without just cause.¹ This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' filed briefs on October 28, 2011.

BACKGROUND

Claimant was employed by Huntington from May 16, 2010 until October 27, 2010 as a Customer Experience Specialist.² On October 25, 2010, Huntington was informed by one of its on-site vendors, American Food and Vendors, that Claimant had been stealing certain items from its salad bar.³ Following an investigation into these allegations, Claimant admitted that she had taken the items, but offered what she believed

¹ / *In re claim of Kamille Stutson*, C2010-016900.

² / *Id.*

³ / Brief of Appellee, at 3.

to be valid justification of her actions.⁴ On March 30, 2011, a hearing officer determined that Claimant's explanation of her actions was not valid and found her termination from Huntington to be with just cause in connection with work.⁵ Claimant appealed this determination to the Review Commission, which affirmed the findings of the hearing officer in full.⁶ Claimant now appeals the Review Commission's finding that her discharge was done with just cause to the Hamilton County Court of Common Pleas.

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.⁷ Otherwise, the court shall affirm the decision.⁸ The reviewing court must follow this same standard in assessing just cause determinations.⁹ 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.¹⁰

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: * * *

⁴ / *In re claim of Kamille Stutson*, C2010-016900.

⁵ / *Id.*

⁶ / *Id.*

⁷ / Ohio Rev. Code § 4141.282(H) (West 2008).

⁸ / *Id.*

⁹ / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

¹⁰ / *Tzangas, Plakas and Marnos 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).

(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[.]¹¹

Each just cause determination must be based upon the merits of the particular case.¹²

‘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. 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.¹³

DISCUSSION

Claimant makes the following arguments as bases for a court finding that the Review Commission's determination of discharge with just cause was not proper: (1)

¹¹ / Ohio Rev. Code § 4141.29(D)(2)(a) (West 2008).

¹² / *Irvine*, supra, at 17.

¹³ / *Tzangas*, supra, at 697-98.

Claimant was discharged for conduct which neither constitutes misconduct, nor was “in connection with her work”. (2) The actions of Claimant had no adverse impact on Huntington. (3) The Review Commission’s finding that Claimant’s actions constituted “theft” was not supported by competent or credible evidence. (4) The Unemployment Compensation Policy Guide (“UCPG”) requires uniform rules that are reasonable, known and uniformly applied – which the rules were not in this case.¹⁴ The court will address these issues in turn.

Claimant argues that the incident(s) regarding the items taken from the salad bar had no connection to her employment with Huntington.¹⁵ Huntington asserts that under the relevant Ohio Revised Code statute, a discharged employee is not eligible for unemployment benefits if he or she was discharged because of “dishonesty”, which includes “...the commission of substantive theft.”¹⁶ The court finds, as a matter of law, that a discharged employee is not eligible for unemployment compensation for the duration of that employee’s unemployment if the director finds that he or she was discharged for the commission of the theft.¹⁷ Furthermore, the court finds that, even if the Ohio Revised Code did not specifically highlight theft as a category of misconduct warranting “just cause” for discharge, the commission of a theft bears a significant connection with employment requiring the handling and transaction of others’ funds. The court, therefore, finds that Claimant’s first argument is not well-taken.

¹⁴ / Brief of Appellant, at 5-13.

¹⁵ / *Id.* at 5-9.

¹⁶ / Brief of Appellee, at 6.

¹⁷ / O.R.C. § 4141.29(D)(2)(e)

Claimant next argues that the incident(s) described in the Review Commission's findings had no direct, adverse impact on Huntington.¹⁸ Claimant bases this argument upon provision of the Unemployment Compensation Policy Guide ("UCPG").¹⁹

The court first finds, upon review of the decision of the Review Commission, that it is not bound by the guidelines set forth in the UCPG. According to the pertinent Ohio Revised Code statutes controlling unemployment compensation appeals, the court finds, once again, that the commission of a theft renders the discharged employee ineligible for unemployment compensation.²⁰ Furthermore, the court finds that the commission of a theft by an employee so undermines the integrity and purpose of a financial institution that it has a direct, adverse impact on said financial institution. Therefore, the court finds Claimant's second argument is not well-taken.

Claimant also argues that the Review Commission's findings were neither reasonable, nor supported by competent or credible evidence.²¹ Specifically, Claimant asserts that the determination that a theft occurred resulted from testimony that was based upon inadmissible hearsay and double hearsay.²² Huntington asserts that the formal rules of evidence, including the hearsay rule, do not apply in unemployment compensation hearings.²³

The Ohio Revised Code states, in pertinent part:

In conducting hearings...[H]earing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. No person shall impose upon the claimant or the employer any burden of proof as is required in a court of law.²⁴

¹⁸ / Brief of Appellant, at 12.

¹⁹ / *Id.*

²⁰ / O.R.C. § 4141.29(D)(2)(e).

²¹ / *Id.* at 9.

²² / *Id.* at 9-12.

²³ / Brief of Appellee, at 12.

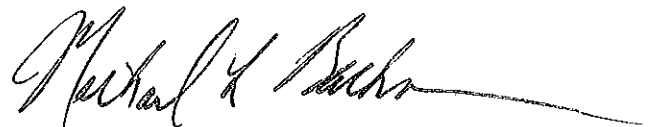
²⁴ / O.R.C. §4141.281(C)(2).

The court finds that a Review Commission determination that a theft occurred based upon hearsay, or evidence otherwise inadmissible in a court of law, is permissible and not grounds for reversal of the Review Commission's decision. Therefore, the court finds that Claimant's third argument is not well-taken.

Finally, Claimant argues that the administration of unemployment compensation regulations against her have been neither reasonable, nor uniformly applied in accordance with the guidelines set for in the UCPG.²⁵ Once again, the court notes that it is bound only by the Ohio Revised Code statutes guiding unemployment compensation appeals and not the UCPG. The court finds that, pursuant to binding authority, a denial of unemployment compensation and finding of discharge for cause based upon a finding that Claimant committed theft is both reasonable and in perfect uniformity with both persuasive and binding authority in this jurisdiction. Therefore, the court finds Claimant's final argument is not well-taken.

DECISION

The unemployment compensation appeal of Appellant Kamille J. Stutson is DENIED. The findings of the Unemployment Compensation Review Commission are AFFIRMED IN FULL. If this Decision is adopted by the trial Court, Claimant must comply fully with the March 30, 2011 Decision of the Unemployment Compensation Review Commission.



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

²⁵ / Brief of Appellant, at 17.

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 of fact 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: 11/18 Deputy Clerk: 