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OTTAWA COUNTY, OHIO

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IN THE COMMON PLEAS COURT OF OTTAWA COUNTY, OHIO

JOHN W. SWIGART	)	Case No. 2015 CV 173 F
Plaintiff-Appellant,	)	Judge Bruce Winters
v.	)	
LAFARGE NORTH AMERICA, et al.	)	<u>DECISION AND JUDGMENT</u>
Defendant-Appellees.	)	<u>ENTRY ON APPEAL FROM</u>
	)	<u>ODJFS REVIEW COMMISSION</u>

This R.C. 4141.282 administrative appeal arises from the Ohio Unemployment Compensation Review Commission’s May 6, 2015 final decision disallowing unemployment benefits to the appellant, John W. Swigart. The court has reviewed the certified record submitted by the Review Commission, and the brief of appellant, briefs of appellees, and appellant’s response brief to appellees’ briefs. For the following reasons, the court AFFIRMS the decision of the Review Commission.

Facts

As the certified record shows, Mr. Swigart worked for Lafarge North America, Inc. (“Lafarge”) as a dock worker and quarry laborer, and as such was a member of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industry and Service Workers International Union, AFL-CIO-CLC, Local 1117 (the “Union”). The Union and Lafarge were parties to a collective-bargaining agreement (“CBA”). Though

the CBA expired on May 15, 2014, its terms automatically renewed and remained binding year-to-year while the parties negotiated a new contract.

On May 25, 2011, Mr. Swigart tested positive for marijuana following a work-related incident. As a result, and in accordance with the relative rights of Lafarge and Mr. Swigart under the CBA, they entered into a "Last Chance Agreement" ("LCA") dated May 25, 2011, which provided, inter alia, for Mr. Swigart's return to work under the condition that he submit to random follow-up drug testing. Failure to submit to a test or to test positive would result in termination under the LCA. The agreement was for 4 years, until May 25, 2015. On August 26, 2014, Mr. Swigart was asked to submit to a random follow-up drug test under the LCA. Mr. Swigart subsequently complained about knee pain, and said that he would submit to the drug test only if instructed to do so by a union representative. Mr. Swigart was informed that refusal to take the test was a violation of the LCA, he nevertheless refused the test, offering to take it the next day, and left the workplace. He was subsequently fired for refusing to take the drug test under the LCA.

Mr. Swigart applied for and was allowed unemployment benefits scheduled to begin on December 22, 2014. On November 6, 2014, the ODJFS issued a Redetermination which held that Appellant was discharged for just cause and suspended Appellant's unemployment benefits. On November 26, 2-14, Appellant filed an appeal of the Redeterminntion. On November 28, 2014, ODJFS referred the appeal to the Ohio Unemployment Compensation Review Commission ("UCRC"). A telephone hearing was conducted on December 16, 2014 and the UCRC hearing officer affirmed the Redetermination on December 22, 2014. Appellant filed a Request for Review. On March 20, 2105, the Review was heard by telephone. On May 6, 2015, the Decision

affirming the previous Redetermination was mailed. On June 4, this appeal was taken. On June 29, 2015, the certified record was filed with this Court.

The appellant argues that, because the CBA had been terminated by letter notice, that it somehow also terminated the LCA, although there was no reference made to the LCA in the CBA termination letter. The appellant cites no law to support his contractual argument.

The appellees showed that the CBA contains a provision that allows the Union to terminate the CBA by notice, and that the CBA's terms control the relationship between the Union and Lafarge while the parties negotiate a new collective bargaining agreement.

#### Standard of Review of Review Commission's Decision

The standard for review on appeal from a ODJFS Review Commission is:

“The court shall hear the appeal on the certified record provided by the commission. 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.” (*Ohio Rev. Code Ann. § 4141.282 (Page, Lexis Advance through file 124 (HB 260))*)

A decision by the Review Commission must be affirmed if some competent, credible evidence in the record supports it. *Cent. Ohio Vocational School Dist. Bd. Of Edn. V. Admr., Ohio Bur. Of Emp.Services*, 21 Ohio St.3d 5, 8(1986).

Only a decision that is so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete

violation of substantial justice is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. Of Emp. Servs.*, 6<sup>th</sup> Dist. Sandusky No. 5-88-8, 1988 WL 88787, \*2 (Aug. 26, 1988).

Conclusion

In the instant case, there is no factual dispute in the evidence. The argument comes down to one of law as to whether or not the termination of the CBA by the Union had any legal effect on the viability of the LCA. This court finds that the redetermination by the OJDFS finding the CBA has no legal effect on the terms of the LCA is not against the manifest weight of the evidence; nor was it unlawful or unreasonable.

It is therefore ORDERED, ADJUDGED and DECREED as follows:

Appellant's appeal is DISMISSED and the Review Commission's Decision is UPHELD.

  
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JUDGE BRUCE WINTERS