

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

LEANDRA D. MIDDLEBROOK,	:	
	:	
Appellant,	:	Case No. 16CVF-005802
	:	
v.	:	JUDGE SCHNEIDER
	:	
UNITED COLLECTION BUREAU,	:	
	:	
Appellee.	:	

**DECISION AND JUDGMENT ENTRY AFFIRMING THE DECISION OF  
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION ISSUED  
ON JANUARY 27, 2016  
AND  
NOTICE OF FINAL APPEALABLE ORDER**

**SCHNEIDER, JUDGE**

This matter comes before this court upon an appeal pursuant to R.C. 4141.282(H) from a June 8, 2016 Decision of the Unemployment Compensation Review Commission (“Commission”) Disallowing Request for Review.

**I. STATEMENT OF THE CASE AND FACTS**

Appellant Leandra D. Middlebrook was employed by Appellee United Collection Bureau as a collector/dialer for ten months, from May 11, 2015 to March 2, 2016. United Collection Bureau had a no-fault attendance policy that required employees to work thirty-five (35) hours a week and provided that employees would be terminated after seven incidents of non-compliance in a 12 month rolling period. Between July 4, 2015 through the week of September 25, 2015, Appellant Middlebrook accrued six attendance occurrences under United Collection Bureau’s policy. She received an oral warning on August 19, 2015, informing her she was in violation of the Employer’s

attendance policy. She received a written warning regarding her attendance after her fifth occurrence for the week of September 5, 2015. She received a one-day suspension following her sixth occurrence for the week of September 26, 2015 and was put on notice that if she continued to violate the Employer's policy, she would be terminated. The seventh occurrence was for the week of February 26, 2016, and Appellant was then discharged on March 2, 2016 for violation of the attendance policy.

Appellant Middlebrook applied for unemployment compensation benefits on March 3, 2016. On April 6, 2016, Appellee ODJFS issued a Redetermination that Appellant Middlebrook was discharged for just cause and not eligible for benefit. Appellee Sarlak appealed the decision and the case was transferred to the Unemployment Compensation Review Commission.

A telephone hearing was held on May 10, 2016. On April 26, 2016, the Hearing Officer issued a Decision finding that Appellant Middlebrook was discharged for just cause, reasoning as follows:

The facts establish that claimant was discharged for just cause in connection with work. Claimant violated a known and reasonable policy of the employer. The hearing officer makes this finding even though the last instance involves issues concerning a protection order.

Claimant did not act reasonably. She continued to miss work throughout her employment and placed herself in a position of jeopardy. She violated the policy and such actions are sufficient to create just cause in connection with work for one's discharge.

Claimant's benefits are suspended as a result of the separation.

(R. p. 123).

Appellant Middlebrook filed a request for review by the Commission. On June 80, 2016, the Commission disallowed the request for further review.

On June 20, 2016, Appellant Middlebrook filed this appeal from the Commission's Decision.

## II. LAW AND ARGUMENT

### Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this court must affirm the commission's decision unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). The court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission's province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696.

Indeed, the Hearing Officer and the Review Commission are primarily responsible for the factual determinations and for the judging of the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 162 (1983). If an employer has been reasonable in finding fault on behalf of the employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

Consequently, it is the duty of this court to determine whether the decision is supported by the evidence in the record. *Tzangas* at 696; *Irvine* at 18. "If some competent, credible evidence supports the commission's decision, then the court must

affirm the decision.” *Moore v. Ohio Unemp. Comp. Rev. Comm.*, 2012-Ohio-1424, ¶ 20. A court cannot reverse the commission’s decision merely because reasonable minds might reach different conclusions based on the evidence in the record. *Id*; *Tzangas* at 697; *Irvine* at 18. Moreover, when evaluating whether the decision is supported by the evidence, “[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the commission].” *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988). As a result, this Court will defer to the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski, supra* at 162.

### **III. THE COURT’S FINDINGS AND CONCLUSIONS**

In this appeal, Appellant Middlebrook contends that she was not discharged for just cause and questions the credibility of the Employer’s evidence. Notably, however, Appellant does not dispute the Commission’s findings in her brief filed with the Court on December 29, 2016.

A review of the record on appeal shows that both Appellant Middlebrook and Appellee United Collection Bureau via Mr. Randy Winkle offered testimony at the May 10, 2016 hearing before the Commission. (R. p. 97). At the hearing, Appellant Middlebrook admitted that she was aware of Appellee United Collection Bureau’s attendance policy, (R. p. 111), and the evidence established that she was trained on this policy at the beginning of her employment and issued progressive discipline after her fourth, fifth and sixth occurrences under the policy. Appellant Middlebrook also admitted that she missed work on numerous occasions, but asserted that she had

paperwork and reasons for some of her absences, which should be considered excused. (R. p. 116-17).

As established by the above authority, the Court is not to make factual findings or substitute its judgment for that of the Commission. The Employer, United Collection Bureau presented evidence in the hearing before the Commission that it has a written, documented attendance/absentee policy that states there are no excused or unexcused absences from work. Instead, individuals are required to work 35 hours a week and are given the flexibility to adjust their schedules, but they must ensure that they work thirty-five hours per week. (R. p. 103). If an employee fails to work thirty-five hours within a week and does not have sufficient time off to cover the time missed, the employee will be issued an occurrence. *Id.* According to the Employer's evidence at the hearing, individuals can have up to seven occurrences, and they receive verbal and written notices of the occurrences beginning with the fourth incident. *Id.* On the seventh occurrence, their position is terminated. *Id.* The Employer, United Collection Bureau, presented undisputed and uncontested evidence in the hearing before the Commission that Appellant Middlebrook's employment was terminated after she had seven occurrences under the Employer's attendance policy between July 4, 2015 and February 26, 2016. (R. p. 104-106).

The Employer presented evidence that the decision to discharge Claimant was made due to violations of the Employer's attendance policy, which Appellant Middlebrook acknowledge in writing receiving on May 11, 2015. (R. p. 104). While the Appellant Middlebrook attributed some of her attendance issues to a thyroid condition and a show cause order for a protection order related to an assault charge against her, she

was only able to address her first and last occurrences under the attendance policy. (R. p. 114-15). Appellant Middlebrook did not contest that she had seven incidents in less than a year where she worked less than thirty-five hours a week for the Employer. Instead, she claimed that at least two of the incidents were justified and should have been deemed “excused” absences, even though there are no excused absences under the Employer’s no-fault attendance policy. As the finder of fact, the Commission was entitled to find the evidence from the Employer credible.

After reviewing the record, the Court finds that the Commission’s Decision is not unlawful, unreasonable, or against the manifest weight of the evidence. The Court finds the Commission’s January 27, 2016 Decision is supported by the facts and is lawful. Accordingly, the Commission’s Decision is hereby AFFIRMED.

**DECISION**

Based on the foregoing, and upon a review of the record, this Court concludes that there is reliable, probative and substantial evidence supporting the January 27, 2016 Decision of the Unemployment Compensation Review Commission. Moreover, this Court concludes that the Commission’s Decision is in accordance with law. The January 27, 2016 Decision of the Unemployment Compensation Review Commission is hereby **AFFIRMED.**

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

**(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the

appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

**THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY.**

**THIS IS A FINAL APPEALABLE ORDER.** Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

**IT IS SO ORDERED.**

*Electronic notification to counsel and parties.*

Franklin County Court of Common Pleas

**Date:** 01-24-2017  
**Case Title:** LEANDRA D MIDDLEBROOK -VS- UNITED COLLECTION BUREAU  
**Case Number:** 16CV005802  
**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider



Court Disposition

Case Number: 16CV005802

Case Style: LEANDRA D MIDDLEBROOK -VS- UNITED  
COLLECTION BUREAU

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes