

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

BRITTANY N. CLARK,

CASE NO.: 2016 CV 05808

Appellant,

JUDGE STEVEN K. DANKOF

-vs-

CHERRYHILL MANAGEMENT INC. et al,

**ORDER AFFIRMING DECISION OF  
UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION DENYING  
BENEFITS**

Appellees.

---

This matter is before the Court on Appellant's November 14, 2016 Notice of Administrative Appeal pursuant to R.C. § 4141.282 of the Ohio Unemployment Compensation Review Commission's October 14, 2016 decision denying Appellant unemployment compensation benefits (the "Denial").

On December 14, 2016, the Commission" filed the Certified Transcript of the Record of the Proceedings. Pursuant to the Court's December 29, 2014 Briefing Schedule, Appellant filed her Brief ("Appellant's Brief") on January 23, 2017. On February 3, 2017, Appellee Cherryhill Management, Inc. ("Cherryhill") filed its Response ("Cherryhill Response"). On February 14, 2017, Appellee Ohio Department of Job & Family Services ("ODJFS") filed its Response ("ODJFS Response"). On February 17, 2017, Appellant filed her Reply to both Responses ("Appellant's Reply").

For the following reasons, the Court **AFFIRMS** the Commission's denial.

**I. Procedural Posture**

Appellant was discharged by her employer, Cherryhill, on June 30, 2016. On July 1, 2016, Appellant applied for unemployment compensation. On July 22, 2016, the Office of Unemployment Compensation issued its initial determination allowing Appellant's application. Following Cherryhill's appeal of the decision, the Office of Unemployment Compensation, on August 15, 2016, affirmed its initial determination. Thereafter, Cherryhill appealed to the Commission. On September 13, 2016, the Hearing Officer conducted a telephone hearing during which Judy Negrete, the store manager for Cherryhill, and Appellant testified.

On September 14, 2016, the Hearing Officer issued his decision reversing the approval of unemployment benefits, finding that Appellant was fired for just cause and therefore ineligible for benefits. Appellant timely appealed the Hearing Officer's decision, and, on October 14, 2016, the Commission issued the Denial, disallowing Appellant's claim for unemployment benefits. This appeal followed.

## II. Law

Revised Code § 4141.282 provides that any interested party may appeal a final decision of the Commission to the court of common pleas within 30 days of the issuance of the decision.<sup>1</sup> For an employee appellant who resides in or was last employed in Ohio, the appeal shall be filed in the county where the appellant resides or was last employed.<sup>2</sup> Upon notice of appeal, the Commission must file, within 45 days, a certified transcript of the record of the proceedings.<sup>3</sup> Thereafter, the court

“shall hear the appeal on the certified record provided by the [C]ommission. If the court finds that the decision of the [C]ommission 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 [C]ommission.”<sup>4</sup>

“[A] reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if *some* competent, credible evidence in the record supports it. In other words, a reviewing court *may not* reverse the commission's decision simply because ‘*reasonable minds might reach different conclusions.*’”<sup>5</sup>

Pursuant to § 4141.29(D)(2)(a), an individual is not eligible for unemployment benefits “if the director finds that . . . [t]he individual . . . [was] discharged for just cause in connection with the individual's work[.]”<sup>6</sup> “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.”<sup>7</sup>

## III. Analysis

As an initial matter, Appellant was last employed in Montgomery County, Ohio, and her appeal to this Court was timely filed. Further, the Commission timely filed the certified transcript. Thus, the only

<sup>1</sup> § 4141.282(A).

<sup>2</sup> § 4141.282(B).

<sup>3</sup> § 4141.282(F).

<sup>4</sup> § 4141.282(H) (emphasis added).

<sup>5</sup> *Folck v. Patton*, 2014-Ohio-2304 at ¶ 23 (2<sup>nd</sup> Dist. Clark) quoting *Irvine v. Enemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18 (1985) (emphasis added).

<sup>6</sup> R.C. 4141.29(D)(2)(a).

<sup>7</sup> *Folck, supra*, at ¶ 22 quoting *Irvine*, 19 Ohio St.3d at 17.

remaining issue for the Court's determination is whether the Commission's October 14, 2016 Denial was based on *some* competent, credible evidence in the record.

The Hearing Officer made the following findings of fact:

"Claimant began work with [Cherryhill] on or about May 21, 2007. She was employed as assistant store manager. She most recently acknowledged having reviewed and understood the employer's work rules in February 2016.

Claimant's last day at work was on or about June 12, 2016. Although she was scheduled to work June 13, 2016, claimant called off and gave the employer a doctor's note taking claimant off work from June 13, 2016 to June 15, 2016.

On June 16, 2016, claimant gave the employer a doctor's note stating she should be excused from work for the period of June 13, 2016 to June 27, 2016. Claimant also submitted FMLA documentation from her doctor indicating that claimant would be continuously incapacitated for the period of April 11, 2016 to April 11, 2017.

The same FMLA form indicated that claimant would require an intermittent or reduced schedule. Specifically, for the period of April 11, 2016 to April 11, 2017, the form indicated that claimant would need an estimated 1 to 2 days off per week.

Claimant was scheduled to work on June 28, 2016 and June 29, 2016. She did not report for her scheduled shifts and did not notify the employer that she would be absent.

On June 30, 2016, the employer discharged claimant for violation of the company's no-call/no-show policy."<sup>8</sup>

The issue before the Commission was whether or not Appellant was discharged for just cause in connection with work.<sup>9</sup> The Hearing Officer noted that, while Appellant explained that her doctor on June 16, 2016 took her off work for two weeks to thirty days to give a new medication time to take effect, her "medical documentation only indicated that claimant should be excused from work through June 27, 2016."<sup>10</sup> Given that Appellant had provided doctor's notes for previous absences, the Hearing Officer reasoned "the employer's expectation that [Appellant] would report to work on June 28 and 29 2016 or provide notification that she would be absent was not unreasonable."<sup>11</sup> When Appellant failed to report to work on June 28 and 29, 2016 – in contravention of company policy – Cherryhill had grounds to fire Appellant. Thus, the Hearing Officer determined that Appellant was terminated for just cause and ineligible for benefits.

The Court has studied the September 14, 2016 Hearing transcript, Appellant's Brief and Reply, and both Appellees' Responses. After careful review, the Court finds that the Hearing Officer's findings and

---

<sup>8</sup> September 14, 2016 Decision.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

conclusions and the Commission's October 14, 2016 Denial of unemployment benefits are both supported by the record, at least to the extent that this Court cannot find them unlawful, unreasonable or against the manifest weight of the evidence. Simply put, there is sufficient competent and credible evidence supporting the Hearing Officer's findings and the Commission's Denial.

**IV. Conclusion**

Based upon the foregoing, the Court finds that the Denial of unemployment benefits was supported by some competent, credible evidence in the record and thus hereby **AFFIRMS** the Denial of Appellant's claim for unemployment compensation benefits.

SO ORDERED:

---

JUDGE STEVEN K. DANKOF

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

ADAM R WEBBER  
(937) 222-3000  
Attorney for Plaintiff, Brittany N. Clark

J MILES GIBSON  
(614) 221-5216  
Attorney for Defendant, Cherryhill Management Inc.

ROBIN A JARVIS  
(513) 852-3497  
Attorney for Defendant, Cynthia C. Dungerey Director of the Ohio Department of JFS

Copies of this document were sent to all parties listed below by ordinary mail:

UNEMPLOYMENT COMPENSATION REVIEW COMMISSION  
P.O. BOX 182299  
COLUMBUS, OH 43218  
Defendant

Elizabeth Hall, Bailiff (937) 225-4409 Elizabeth.Hall@montcourt.oh.gov



General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Decision  
**Case Number:** 2016 CV 05808  
**Case Title:** BRITTANY N. CLARK vs CHERRYHILL MANAGEMENT INC.

So Ordered

A handwritten signature in black ink, appearing to be "Stewart L. Dankof".