

IN THE COURT OF COMMON PLEAS
OF VAN WERT COUNTY, OHIO

COURT OF COMMON PLEAS
2017 JUN 19 A 9:54
CINDY MOLLENKOPF-CLERK
VAN WERT CO. OHIO

TINA M. HULBERT,

Claimant/Appellant,

CASE NO. CV-16-12-186

vs

DECISION

HCF OF VAN WERT, INC., et al,

Interested Party/Appellees,

This matter comes before the court upon the appeal of Tina Hulbert of the Final Administrative Review dated November 16, 2016.

STATEMENT OF CASE

Appellant was initially awarded unemployment compensation August 9, 2017. A redetermination by the Director of the Department of Job and Family Services was filed on September 12, 2016.

Appellee, HCF appealed and jurisdiction was transferred to the Unemployment Compensation Commission. The Review Commission held a telephone review hearing and on October 13, 2016 the Director's redetermination was modified determining the appellant was fired for just cause.

Appellant requested a final administrative review which was denied November 16, 2016. Appeal was then commenced.

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SUPPLEMENT RECORD

Appellant has filed to supplement the record. The Court is constrained to the evidence at the hearing.

Hall v. American Brake Shoe Co (1968), 13 Ohio St. 2d 11, 13, is dispositive on this matter. The Ohio Supreme Court determined "a court of common pleas is limited to finding that the decision of a board of review for the Bureau of Unemployment Compensation (Ohio) was unlawful, unreasonable, or against the manifest weight of the evidence, in which event, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification, otherwise it shall affirm such decision. In approaching its finding, *a court of common pleas is not authorized to receive evidence* (emphasis added) but the appeal shall be heard upon such record certified by the board and a bill of exceptions shall not be required. Circumscribed as they are by that § 4141.28(O), the proceedings before that court are but a review of the determination of the board of review in which the record certified by the board is the equivalent of a bill of exceptions setting forth that part of the evidence and such other matters occurring during the progress of the trial not contained in the transcript upon which the appellant asserts his claims of error, as described."

Therefore, the Court denies the appellant's request to supplement the record.

STANDARD OF REVIEW

The Ohio Eighth District Court of Appeals recently reiterated the standard of review in unemployment appeals by a Common Pleas Court. In Reid v. MetroHealth Sys., 2017-Ohio-1154, the Court found: "R.C. 4141.282 governs the standard of review for decisions by the Commission. Under R.C. 4141.282(H), the common pleas court shall reverse the Commission's decision only if it finds "that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." Appellate courts are [**11] to apply the same standard of review as the trial court. Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs., 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207 (1995). Although appellate courts are not permitted to make factual findings or to determine the credibility of witnesses (that is the Commission's function), *they must determine whether the Commission's*

decision is supported by the evidence in the record. Id. at 696, citing Irvine v. Unemp. Comp. Bd. of Review, 19 Ohio St.3d 15, 17-18, 19 Ohio B. 12, 482 N.E.2d 587 (1985). (emphasis added)

Therefore this Court may only reverse the commission if the Court determines the commission decision was unlawful, unreasonable, or against the manifest weight of the evidence by finding the commission decision was not supported by the evidence in the record.

RECORD OF FACTS

The Appellee HCF in this matter operates nursing homes including a facility in Van Wert, Ohio. Appellant was an employee at the Van Wert facility with responsibility for handling patients' personal fund accounts. Tr. 11. The investigation into the Appellant's conduct began when Appellee HCF's corporate received a refund slip handled by Appellant and not as typical from the corporate office. Tr. 7.

The review of the affected resident's account caused corporate accountants to observe numerous unusual transactions out of that account and other resident's accounts. Tr. 7, 8 and 10. HCF's accountants determined cash was missing from some resident's accounts. Tr. 9. Appellant does not dispute cash was missing.

The administrator of the Van Wert facility testified that the Appellant was solely responsible for the patient personal accounts. Tr. 11. The HCF audit determined \$84,820.70 was missing from 86 accounts. Tr. 10. When interviewed by HCF the Appellant could not offer an explanation for the account discrepancies. Tr. 10, 11 and 14.

Appellant did note other employees did handle patient money, but acknowledged she was responsible for the accounts. Tr. 14. The employer allegation of misconduct supporting dismissal for cause is that the Appellant was moving money between accounts to mask missing money. Tr. 9. HCF offered testimony that transfers took place between 8 accounts the Appellant was responsible to maintain.

The Court notes the hearing officer placed some importance on the Appellant's statement she wasn't the only one that took money. The Court reads this to mean the Appellant and other employees accepted money for the patient accounts. Tr. 16.

The Court also notes the Appellant appeared to be hearing some of the allegations for the first time at the hearing but the Court must also note the Appellant did not request a continuance to present further evidence.

ANALYSIS

The Appellant does not dispute that an employee can be discharged for just cause including dishonesty and failure to follow company policy, and therefore be denied unemployment compensation.

In this case the employer offered evidence of discrepancies in 86 accounts including 8 accounts with funds transferred between them. The Appellant was in charge of these accounts. The appellant offers only a blanket denial, that others had access to the cash and checks submitted for the account and the computer to adjust the accounts. The Appellant does not persuasively challenge the sufficiency of the testimony offered by HCF.

FINDING

The Court finds the decision of the Review Commission hearing officer is supported by the evidence in the record and the decision of the commission was not unlawful, unreasonable, nor against the manifest weight of the evidence.

The Decision is **Affirmed**.

So Ordered.

Dated: June 19, 2017

A handwritten signature in black ink, appearing to read "Martin W/B", is written over a horizontal line. A long horizontal stroke extends to the right from the end of the signature.

Martin Burchfield, Judge

Copy to:

All Parties Counsel

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