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COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

FOR COURT USE ONLY	
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BETTY OWENS,  
APPELLANT

CASE NO. A1605421

**ENTERED**  
AUG 14 2017

JUDGE JEROME METZ, JR.

-vs-

HORIZON HEALTH, ET AL.,  
APPELLEES.

ENTRY OVERRULING APPELLANT'S  
OBJECTION TO THE MAGISTRATE'S  
DECISION AND ADOPTING THE  
MAGISTRATE'S DECISION DENYING  
BENEFITS

This matter came before the court for hearing on appellant Betty Owens's objection to the magistrate's decision of May 31, 2017 denying her claim for unemployment benefits. The court has reviewed the briefs, the record, and has heard the arguments of counsel on the record of July 19, 2017. The court hereby overrules Owens's objection to the magistrate's decision and adopts the magistrate's decision as a final judgment of the court.

Owens brings this appeal under R.C. 4141.282. Under R.C. 4141.282(H), "[t]he 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."

The hearing officer found that Ms. Owens was discharged for just cause. The hearing officer found that

[t]he available, credible evidence presented in this matter establishes that claimant was a no call/no show for three consecutive days in violation of company policy. Claimant never contacted the employer or reported for work again. Under the available, credible evidence presented in this matter the Hearing

Officer finds that claimant's three consecutive instances of no call/no show and subsequent job abandonment constitutes cause sufficient to justify her discharge. Therefore, Professional Maintenance of Cincinnati, Inc. discharged claimant for just cause in connection with work.<sup>1</sup>

Under R.C. 4141.29(D)(2)(a) an individual is not entitled to unemployment benefits if the "individual quit work without just cause or has been discharged for just cause in connection with the individual's work." "The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case. Determination of purely factual questions is primarily within the province of the referee and the board. Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence."<sup>2</sup> Just cause is "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."<sup>3</sup>

The hearing officer made the following findings of fact:

Professional Maintenance of Cincinnati, Inc. employed claimant from April 21, 2016 to April 28, 2016. At the time of her separation, claimant held the position of General Cleaner.

According to company policy, an employee who is a no call/no show for three consecutive work days will be discharged. The no call/no show policy is included in the employee handbook and a copy of which was distributed to and signed by claimant at the time of hire.

Claimant worked from 5:30 p.m. to 9:30 p.m. On April 22, 2016, claimant told the employer that she could not drive at night and needed to have her eyes examined. Claimant was then a no call/no show on April 25, 26, 27, and 28, 2016. She did not report for

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<sup>1</sup> Decision of Unemployment Compensation Review Commission, 4.

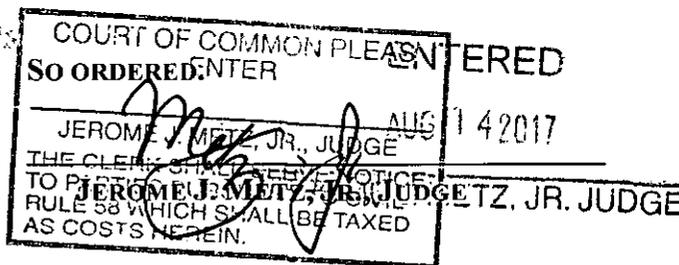
<sup>2</sup> *Irvine v. State of Ohio, Unemployment Compensation Board of Review*, 19 Ohio St.3d 15, 17 (1985).

<sup>3</sup> *Id.* at 17 (quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E.2d 751.).

work or contact the employer again. Claimant was subsequently discharged.<sup>4</sup>

The hearing officer heard the testimony given at the hearing and determined that Ms. Owens did not contact the employer on April 25, 26, 27, and 28, 2016. The hearing officer is the finder of fact in this case. "Where conflicting testimony exists, the commission, not the court, resolves the conflicts and determines the credibility of the witnesses."<sup>5</sup> In this case it was up to the hearing officer to hear the witness's testimony and make credibility determinations. The hearing officer determined that Ms. Owens failed to contact her employer when she should have and failed to show up for work and therefore abandoned her job. This was a factual determination made by the hearing officer. The court finds that this decision is not unlawful, unreasonable, or against the manifest weight of the evidence. There is sufficient evidence in the record to support the hearing officer's decision that Ms. Owens was discharged for just cause.

The appellant's objection to the Magistrate's Decision of May 31, 2017 is hereby overruled and the decision is hereby adopted. Appellant Betty Owens's claim for unemployment benefits was properly denied.



cc: counsel of record

<sup>4</sup> Decision of Unemployment Compensation Review Commission, 3.

<sup>5</sup> *Cottrell v. Ohio Dept. of Job and Family Servs.*, 2006-Ohio-793, ¶ 15 (10<sup>th</sup> Dist.).

IN THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO



BETTY L. OWENS,

: Case No. A 1605421

Appellant,

: Judge Jerome J. Metz

vs.

: Magistrate Michael L. Bachman

HORIZON HEALTH, et. al.

: **MAGISTRATE'S DECISION**

Appellees.

RENDERED THIS 31<sup>ST</sup> DAY OF MAY, 2017

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying Betty L. Owens' ("Appellant") claim for unemployment benefits. The Hearing Officer for the Review Commission found that the Appellant was discharged with just cause. This appeal was taken under submission upon the conclusion of the administrative record, the briefs, and oral arguments.

FILED  
2019 MAY 31 12:06  
CLERK OF COURTS  
HAMILTON COUNTY, OH  
COMM. PLEAS

**BACKGROUND**

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued a Redetermination that allowed unemployment benefits. Appellant's employer, Professional Maintenance of Cincinnati, Inc., hereinafter referred to as Employer, appealed the Redetermination. ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The hearing officer reversed the Redetermination. The hearing officer

found that the Appellant was discharged by the Employer with just cause. The Appellant requested further review of the claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision.

### **STANDARD OF REVIEW**

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision 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. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H); *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. A reviewing court must not make factual findings or determine a witness's credibility and must affirm the Review Commission's decision if there is some competent, credible evidence to support it. *Id.*

### **DISCUSSION**

The court has reviewed the record provided by the Review Commission and the briefs of ODJFS and the Appellant. The hearing officer found that the Appellant was discharged with just cause. Revised Code 4141.29(D)(2)(a) provides that no individual will be paid unemployment benefits if the individual quit work without just cause or is discharged with just cause in the connection with the individual's work. Just cause is defined by the courts as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unempl. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985) quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). Each case must be considered upon

its particular merits, because “whether just cause exists necessarily depends upon the unique factual considerations of the particular case.” *Irvine* at 17.

An employee is considered to have been discharged with just cause when “the employee, by his actions, demonstrated an unreasonable disregard for his employer’s best interests.” *Kiikka v. Ohio Bur. of Emp. Serv.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist.1985). The employee’s conduct need not rise to the level of misconduct, but there must be a showing of some fault on the employee’s part. *Sellers v. Bd. of Rev.*, 1 Ohio App.3d 161, 440 N.E.2d 550 (10th Dist.1981). Just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. The purpose of the Act is “to enable unfortunate employees, who become and remain involuntarily unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level. . .” *Williams* at ¶ 22 quoting *Irvine v. Unempl. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17.

The hearing officer made the following findings of fact in this case.

Professional Maintenance of Cincinnati, Inc. employed claimant from April 21, 2016 to April 28, 2016. At the time of her separation, claimant held the position of General Cleaner.

According to company policy, an employee who is a no call/no show for three consecutive work days will be discharged. The no call/no show policy is included in the employee handbook a copy of which was distributed to and signed by claimant at the time of hire.

Claimant worked from 5:30 p.m. to 9:30 p.m. On April 22, 2016, claimant told the employer that she could not drive at night and needed to have her eyes examined. Claimant was then a no call/no show on April 25, 26, 27 and 28, 2016. She did not report for work or contact the employer again. Claimant was subsequently discharged.

(Hearing Officer Decision, pg. 3).

The Appellant contends that the hearing officer's decision finding that the Appellant violated the no call/no show policy of the Employer is against the weight of the evidence. The Appellant testified that she called Mary Polzin ("Polzin"), the Employer's operations manager, on April 25, 2016. (Tr. p. 14). Polzin testified that the Appellant contacted her at the end of her shift on April 22, 2016 to inform Polzin about her bad vision, her transportation issues, and her plans to see an eye doctor to correct her vision. Polzin indicated that she did not hear from the Appellant again until the middle or end of May. (Tr. p. 6). Polzin testified that she expected to hear from the Appellant and intended to work around her schedule, but that did not happen. (Tr. p. 10).

It is not the Court's duty to be a finder of fact in this case or to determine a witness' credibility. The hearing officer found that the Appellant did not communicate with her employer on April 25, 26, 27, and 28<sup>th</sup>. Polzin testified that she didn't hear from the Appellant during these dates but received a message that she called towards the middle or end of May. (Tr. p. 7). The Appellant maintains that she called on April 22 and April 25, 2016. In any case, when faced with conflicting testimony, as occurred here, the Review Commission, not the court, resolves the conflicts and determines the credibility of the witnesses. *Cottrell v. ODJFS*, Franklin App. No. 05-AP-798, 2006-Ohio-793 at ¶ 15. Clearly, the hearing officer believed the Employer's witness. The court finds that the hearing officer's factual determination indicating that the Appellant did not contact her employer during the relevant time is supported by some competent evidence in the record, and therefore, not against the weight of the evidence.

ODJFS argues that an ordinary intelligent person would conclude that the circumstances justify terminating the employment relationship. It contends that an ordinary intelligent person would keep his employer updated sooner rather than weeks

later, especially since the Appellant had only worked for two days with the Employer. The hearing officer's reasoning leans toward this rationale. The hearing officer states that "consecutive instances of no call/no show and subsequent job abandonment constitutes cause sufficient to justify [Appellant's] discharge." Hearing officer Dec. p. 4. The Court finds that the hearing officer's reasoning is not unreasonable.

The Appellant contends that she was terminated due to her inability to work because of a bona fide illness. ODJFS contends that Appellant's "illness" had no actual effect on her ability to execute the duties of her employment. Rather, the Appellant's principal concern was an issue related to transportation. ODJFS contends that transportation to and from work is the responsibility of the employee. *Hurd v. Director*, 7<sup>th</sup> Dist. Mahoning No. 01 CA 180, 2002-Ohio-5874, ¶ 28 citing *Haynes v. Board of Review*, 8<sup>th</sup> Dist. No. 51633, 1987 WL 6113 (Feb. 5, 1987). The Court finds that the Appellant was not discharged because of a bona fide illness. There is no evidence in the record that shows that the Appellant could not do her work because of an illness at the time she was terminated. The Appellant was discharged with just cause.

### **DECISION**

The decision of the Review Commission denying the Appellant's unemployment compensation claim is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight. Therefore, the Appellant's claim for unemployment benefits was properly denied.



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

**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 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: 5/31/17

Deputy Clerk: 