

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

TONYA GESSLER)	CASE NO. CV-2017-02-0790
)	
Plaintiff)	JUDGE MARY MARGARET
-vs-)	ROWLANDS
)	
AKRON CITY HOSPITAL SUMMA)	
HEALTH SYSTEMS, et al.)	<u>ORDER</u>
)	
Defendants)	

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This matter is before the Court on Appellant’s administrative appeal from the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to R.C. 4141.282. The Review Commission found that Appellant was discharged from her employment with Appellee, Summa Health System (“Employer”) with just cause, and therefore ineligible for unemployment compensation.

Appellant worked as a registered nurse with Employer since August 1991 without any discipline history until March 21, 2016. For the last ten years, Appellant worked in a level one emergency room trauma center at Akron City Hospital. On March 21, 2016, Appellant was issued a written warning for unsafe practice for transferring a patient without a cardiac

monitor in contravention of the doctor's order requiring a continuous cardiac monitor, a "Group 2" offense. A "Group 2" offense may result in bypassing one or more steps in the disciplinary process due to the seriousness of the infraction. Appellant was warned that additional occurrences could result in progressive discipline, including termination. Appellant voluntarily applied for and was transferred with the same title and position to a less busy emergency department of a different campus within the same hospital system on May 29, 2016 as a ninety (90) day probationary employee. Progressive discipline procedures do not apply to probationary employees.

On June 7, 2016, Appellant was observed in the lobby for an extended period of time with her boyfriend while on duty, disregarding a patient who was nearby waiting to be escorted to an examination room. During her visit with her boyfriend, Appellant could not be located by her coworkers. Appellant was formally reprimanded and informed that her behavior did not meet Employer's policy on service excellence and informed that any further discipline could result in termination.

On July 31, 2016, Appellant administered blood pressure and pulse altering medications to a patient and failed to monitor vital signs before and after administration per standard nursing practice, which could have resulted in patient harm, including death. The vital signs Appellant did chart differed from the print out of the central monitor at the times listed and Appellant did not set the monitor to cycle with the frequency required for a cardiac patient. Appellant admitted she did not chart the vital signs correctly for the patient. Appellant claimed she did not have her glasses on, must have looked at the wrong monitor, was unfamiliar with the new computer system, did not have the monitor set correctly, and admitted that her actions were a risk to the patient. This act violated several rules of conduct, including, unacceptable work performance, non-compliance with service excellence policy,

inappropriate behavior, and unsafe practice, the latter two being Group 2 offenses.

Employer's discipline policy builds on discipline received within two (2) years for Group 2 offenses, and therefore included the March 21, 2016 incident at Appellant's prior campus.

Employer then discovered Appellant negatively spoke about an employee on July 27, 2016 who she believed informed her supervisor about Appellant's time spent with her boyfriend while on duty. Appellant was terminated from employment on August 15, 2016.

Appellant's brief asserts she was wrongfully denied unemployment compensation because the hearing officer erred in finding her Employer did not follow its progressive discipline policy and that Employer's rule concerning service excellence standards was found to be overly broad by the National Labor Relations Board (NLRB). Appellee, Director of Ohio Job and Family Services (ODJFS) submitted a brief asserting Appellant was discharged for just cause, therefore is ineligible for unemployment compensation benefits. Appellee Employer, joined in ODJFS's brief.

"[A] reviewing court may reverse the [Commission's] determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207. The reviewing court is not permitted to make factual findings or determine witness credibility. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 Ohio B. 12, 482 N.E.2d 587. "If some competent, credible evidence supports the commission's decision, the reviewing court, whether a common pleas court or a court of appeals, must affirm." *Brooks v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-414, 2009 Ohio 817, ¶15. "On close cases, where the commission might reasonably decide either way, reviewing courts must leave undisturbed the commission's decision." *Id.*, citing *Irvine* at 18.

Pursuant to R.C. 4141.29(D)(2)(a), an individual is not eligible for unemployment compensation benefits if he or she has been "discharged for just cause in connection with the individual's work." The term "just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine* at 17, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). Further, "[f]ault on an employee's part is an essential component of a just-cause determination." *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011 Ohio 2897, ¶ 24, 951 N.E.2d 1031. "[T]he critical issue is not whether the employee has technically violated some company rule, but whether the employee by his actions [or inactions] demonstrated an unreasonable disregard for his employer's interests." *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004 Ohio 1061, ¶ 39, quoting *Piazza v. Ohio Bur. of Emp. Servs.*, 72 Ohio App.3d 353, 357, 594 N.E.2d 695 (8th Dist.1991).

The record reveals Appellant admitted to the commission of two Group 2 offenses within a few months of each other. For Group 2 offenses, Employer can bypass one or more steps in the disciplinary process due to the seriousness of the infractions, to wit: Appellant's failure to follow doctor's orders for continuous cardiac monitoring on March 21, 2016, and Appellant's administration of blood pressure and pulse altering medications to a patient without monitoring vital signs before and after administration per standard nursing practice on July 31, 2016, placing both patients at risk of harm demonstrating an unreasonable disregard for Employer's interests. Appellant received a total of three (3) disciplinary incidents from May 29, 2016 through her termination date of August 15, 2016 while she was a probationary employee at her new campus. In accordance with Employer's policies, the Review Commission's decision that Appellant's conduct constituted just cause for her termination is supported by the record.

WHEREFORE, for the reasons stated herein, the Court finds the Review Commission's decision that Appellant was discharged from employment with just cause and ineligible for unemployment compensation benefits is supported by some competent, credible evidence, and its decision was not unreasonable, arbitrary, or against the manifest weight of the evidence. The Review Commissions' decision is AFFIRMED.

IT IS SO ORDERED.



JUDGE MARY MARGARET ROWLANDS

CC: TONYA GESSLER, *PRO SE* – **The Summit County Clerk of Court shall serve Appellant by regular U.S. Mail.**

ATTORNEY JAMES D. KUREK
ATTORNEY SUSAN M. SHEFFIELD