

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

ZEBRIE V. SANDERS,	:	
	:	Case No. 17CVF-002498
Appellant,	:	
vs.	:	
	:	JUDGE SCHNEIDER
TOTAL QUALITY LOGISTICS, LLC, et al.,	:	
	:	
Appellees.	:	
	:	

**DECISION AND JUDGMENT ENTRY AFFIRMING THE DECISIONS OF
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION ISSUED ON
February 17, 2017 AND MARCH 8, 2017
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 the March 8, 2017 and February 17, 2017 Decisions of the Unemployment Compensation Review Commission (“Commission”) finding that Appellant Zebrie Sanders was discharged for just cause. The Commission reversed a determination of Appellee Ohio Department of Job and Family Services, Office of Unemployment Compensation (“ODFJS”) and a Redetermination by the Director of ODJFS that allowed Appellant Sander’s claim for unemployment compensation benefits.

Appellant filed his brief with the Court on April 10, 2017. Appellee Director of ODFJS responded with a brief on May 1, 2017. Appellant did not file a reply brief. For the reasons that follow, this Court **AFFIRMS** the Commission’s Decisions of February 17, 2017 and March 8, 2017.

I. STATEMENT OF THE CASE AND FACTS

Appellee Zebrie Sanders was employed by Appellant Total Quality Logistics, LLC's as a logistics account representative from November 9, 2015 through November 4, 2016. Hrg. Trans. P. 4-5. His salary was \$35,000.00 per year and his hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. *Id.* p. 5, 11. In September of 2016, Appellant was offered evening hours in the call center, and earned \$13.50 per hour. He worked 6:00 pm to 9:00 p.m. in the call center. *Id.* p. 6, 12.

In October of 2016, Total Quality Logistics discovered that Appellant reported working in the call center on his time sheet, but there was no corresponding call log activity on at least nine separate days. Hrg. Tr. p. 6-7. When questioned, Mr. Sanders stated that he was working on work from his day position as a logistic account representative. *Id.* However, Total Quality Logistics was unable to locate any customer activity on his account from its computer logs. Instead, Total Quality's records showed no work activity after 4:30 p.m. by Appellant.

Laura Kramer, the representative of Total Quality Logistics at the hearing before the Commission, testified that Appellant knew he was to only handle call center calls during his work at the call center in the evenings. *Id.* p. 8-9. Specifically, she testified that she questioned Mr. Sanders about why he submitted documentation indicating that he was working hours in a second job for the company that he had, in fact, not worked, when he was already being paid for the work he was doing for his day job. Ms. Kramer testified that Appellant's response simply was that he thought it was okay to do that, even though he had received an e-mail in September of 2016 indicating that he was to only handle call center calls during his work at the call center. *Id.* p. 7. With regard to Mr. Sander's claim that he was working on work from his day position when Total Quality Logistics computer showed no activity by Appellant after 4:30 pm and that

he was not logged in, Ms. Kramer testified that “he had no answer there.” *Id.* p. 9. On November 4, 2016, Appellant was discharge for misreporting his work hours. *Id.* p. 5.

Appellant claims in his Notice of Appeal and brief that he was told by Appellant Total Quality Logistics, LLC’s after hours trainer Matt Baker that he could stop answering calls during afterhours time and work on first shift work to build his own book of business. App. Br. p. 2. Appellant states that “although TQL said I wasn’t fielding calls they were still making money from my work I was doing during the hours I claimed.” Notice of Appeal. Appellant indicates he has an issue with this because the unemployment compensation he received was “money I worked for and the only means for my family of getting by while [he] was looking for a new job opportunity.” *Id.* There is no evidence to support Appellant’s contentions in the record on appeal.

Appellant’s application for unemployment compensation benefits was approved by ODFJS. Total Quality Logistics, LLC requested a Redetermination, and on January 3, 2017, the Director of ODFJS issued a Redetermination that Mr. Sanders had been discharged without just cause. *See R. Exh. A.* On January 24, 2017, Total Quality Logistics appealed the Redetermination, and jurisdiction was transferred to the Commission.

A telephone hearing was held on February 6, 2017. *See R. Exh. B, Hearing Transcript.* Appellant Sanders did not appear at the hearing. As noted above, a representative of Total Quality Logistics, Laura Kramer, appeared on behalf of Appellee. The testimony of Ms. Kramer at the hearing was that Appellant falsified his time by submitting work sheets that claimed that he worked 51 hours in the call center in October of 2016 and he was paid for working 51 hours in October of 2016 at \$13.50 an hour, and there is no record anywhere within the company that he did any work whatsoever. Hrg. Tr. p. 14.

On February 17, 2017, a Decision was issued by the Commission reversing the Redetermination and finding that Mr. Sanders was discharged for just cause. R. p. 169. The Hearing Officer found, based on the facts, that Appellant “knew or should have known that recording his time accurately for his two separate jobs was important and failing to account for his time worked would result in discharge.” R. p. 170. The Hearing Officer noted that Appellant did not appear at the hearing to dispute the employer’s testimony and explain what he was doing during those work hours where he claimed he was working from 6 p.m. to 9:00 p.m., but the employer’s records showed no work activity of any kind after 4:30 pm. *Id.*

On February 17, 2017, Appellant requested review by the Commission. R. p. 191. On March 8, 2017, a Decision was issued disallowing the request for review. R. p. 195.

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. Instead, the Hearing Officer and the 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).

R.C. 4141.29(D)(2)(a) provides that an applicant is not eligible for unemployment compensation benefits if “[t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work.” The term “just cause,” in this context, is 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. & Appliances*, 44 Ohio App.2d 10, 12 (10thDist.1975). Consequently, 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.

Accordingly, 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

A review of the record on appeal shows that Appellant did not attend the February 6, 2017 hearing and the only evidence before the Hearing Officer and Commission was the

testimony of Appellee Total Quality Logistics, LLC's witness, Laura Kramer, and the exhibits she testified to. Ms. Kramer's testimony that Appellant Sanders submitted work sheets claiming that he had worked in the call center from 6:00 p.m. until 9:00 pm when he did not do any call center work was not disputed by Appellant at the hearing, in his Notice of Appeal or in his first brief. In fact, Appellant admits in his Notice of Appeal and various filings that he did not do call center work while working in the call center. Instead, Appellant contends that he was told during his training that it was okay for him to do his logistics account work instead, although there is no evidence in the record to support this contention. Similarly, Appellant did not contest at the hearing, in his Notice of Appeal, or in his first brief the evidence submitted by Total Quality Logistics, LLC that on at least 9 nine days he was paid for work that the company's records indicate he did not do.

Based on the evidence at the February 6, 2017 hearing, the Hearing Officer found that Appellant "did not appear at the hearing to dispute the employer's testimony and explain what he was doing during those work hours" where he failed to accurately account for his time. R. p. 170. The record shows the Hearing Officer evaluated the factual evidence and made determinations about the credibility of the sole witness as well as the weight of the evidence. In doing so, the Hearing Officer found that she "must" find that Mr. Sanders was discharged with just cause in connection with work as that was the only conclusion supported by the evidence. *Id.* This Court cannot re-weigh the evidence, re-judge the credibility of the witness, and make different factual determinations.

In his second brief filed on April 10, 2017, Appellant argues that his Verizon cell phone bill from October of 2016 shows that "he had activity on his personal phone from both the customers and truck drivers in transit during the hours he claimed and that TQL was gaining

revenue and profit from.” Br. p. 1. The alleged scan bills including the second brief in support of these allegations are not readable. Additionally, these documents were not offered as evidence at the hearing before the Commission and there was no testimony on this issue given by Mr. Sanders. Nor does Mr. Sanders assert or establish that the alleged Verizon bills constitutes newly discovered evidence that could not have been discovered with reasonable diligence prior to the February 6, 2017 hearing. Under such circumstances, the Court has no discretion to consider this additional evidence and must grant the Director of ODFJS’s request to strike these exhibits. *See Northfield Park Assoc. v. Ohio State Racing Commission*, 2006-Ohio-3446, ¶57 (10thDist.) (“[c]ertainly, pursuant to R.C. 119.12, the trial court has no discretion to admit additional evidence if it is not satisfied that the evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.”); *N.R., Inc. v. Liquor Control Commission*, 113 Ohio App.3d 198, 207 (10thDist.1996) (“In accordance with the plain language of R.C. 119.12, the court of common pleas may grant a request for the admission of additional evidence only when it is satisfied that such evidence is newly discovered and could not have been discovered with reasonable diligence prior to the hearing.”); *Breach v. Bd. of Nursing*, 2011-Ohio-3451, ¶16 (10thDist.).

As noted above, when reviewing a decision of the Commission, this 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*, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696. In this case, based upon the evidence, the Hearing Officer resolved the factual issues and disputes surrounding the discharge of Mr. Sanders, to which this Court must defer. *Angelkovski, supra* at 162. The Hearing Officer properly exercised discretion by giving weight to the uncontested testimony of Laura Kramer and uncontested evidence submitted by

Total Quality Logistics, LLC at the hearing. Simply put, there was no evidence offered by Mr. Sanders at the hearing, and there is no evidence in the record, to support any other finding than Mr. Sanders was discharged for just cause. Upon full review of the certified record and evidence offered, the Court finds the Commission's the March 8, 2017 and February 17, 2017 Decisions are supported by the facts and are lawful. It is not for this Court to substitute its judgment on the facts for the Commission. Therefore, this court affirms the Commission's Decisions.

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 March 8, 2017 and February 17, 2017 Decisions of the Unemployment Compensation Review Commission. Moreover, this Court concludes that the Commission's Decisions are in accordance with law. The March 8, 2017 and February 17, 2017 Decisions of the Unemployment Compensation Review Commission are 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: 10-11-2017

Case Title: ZEBRIE V SANDERS -VS- TOTAL QUALITY LOGISTICS ET AL

Case Number: 17CV002498

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 17CV002498

Case Style: ZEBRIE V SANDERS -VS- TOTAL QUALITY
LOGISTICS ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes