

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Gayle L. Perkins,	:	
Appellant-Appellant,	:	No. 18AP-900
	:	(C.P.C. No. 17CV-8411)
v.	:	
	:	(REGULAR CALENDAR)
Ohio Department of Job	:	
and Family Services et al.,	:	
Appellees-Appellees.	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *Gayle L. Perkins*, pro se. **Argued:** *Gayle L. Perkins*.

On brief: *Dave Yost*, Attorney General, and *David E. Lefton*, for appellee Director, Ohio Department of Job and Family Services. **Argued:** *David E. Lefton*.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Appellant, Gayle L. Perkins, appeals from a decision and entry of the Franklin County Court of Common Pleas affirming the order of appellees, Ohio Department of Job and Family Services ("ODJFS"), Unemployment Compensation Review Commission ("commission"), and Director, ODJFS. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In 2017, Perkins was receiving unemployment compensation pursuant to a claim arising from employment with Pinnacle Technical Resources, Inc. While receiving unemployment compensation, Perkins pursued an employment opportunity with Adams and Wilkes Group, Inc., doing business as Aryes Staffing ("Aryes").

{¶ 3} Initially, Perkins expressed interest in the posted position of "Staffing Recruiter" with Aryes. There are minor factual disagreements in the record about the contents of the initial discussions, but the parties agree that Perkins ultimately accepted immediate employment with Aryes in the capacity of an administrator, where she was tasked with performing clerical work directly for Aryes' owner, Mark Adams.

{¶ 4} On June 14, 2017, Perkins reported for her first day of work at Aryes around 11:30 a.m. and began her employment duties shortly thereafter. Perkins performed her job duties until approximately 5:00 p.m. that same day. After leaving for the day, Perkins decided not to continue her employment with Aryes, and she submitted a written letter of resignation the following day, June 15, 2017.

{¶ 5} Also on June 15, 2017, Perkins submitted an application for additional unemployment compensation benefits. The director of ODJFS issued a July 20, 2017 redetermination that Perkins had quit her most recent employment without just cause and suspended her benefit rights until she worked six weeks of covered employment and earned at least \$1,482. Perkins perfected an appeal, and the matter was transferred to the commission.

{¶ 6} A hearing officer for the commission conducted a hearing during which Perkins argued she was justified in resigning from Aryes because Aryes failed to meet the terms of the employment agreement. In an August 10, 2017 decision, the hearing officer determined that Perkins had quit her employment without just cause, thereby precluding her from continuing to receive unemployment compensation. The commission subsequently adopted the hearing officer's decision in a decision mailed August 23, 2017. Perkins then appealed the commission's adoption of the hearing officer's decision to the trial court pursuant to R.C. 4141.282.

{¶ 7} The parties completed briefing and submitted it to the trial court. In an October 31, 2018 decision and entry, the trial court affirmed the order of the commission denying Perkins' claim for unemployment compensation benefits. In affirming the commission's order, the trial court noted that the transcript of the administrative hearing made clear that Perkins voluntarily accepted employment with Aryes for the administrative position despite initially inquiring about a different position. Perkins then stated at the hearing that she resigned the employment the following day after deciding it was not the

type of employment in which she wanted to be engaged. Because the record contained evidence that Perkins voluntarily left her employment, the trial court determined that the commission correctly determined that Perkins left her employment without just cause. The trial court additionally noted Perkins failed to show that she made reasonable efforts to remain employed during the relevant period. Perkins timely appeals.

II. Assignment of Error

{¶ 8} Perkins assigns the following error for our review:

The trial court erred and abused its discretion in dismissing appellant's action.

III. Analysis

{¶ 9} In her sole assignment of error, Perkins argues the trial court erred in affirming the order of the commission that denied her claim for unemployment compensation benefits.

{¶ 10} R.C. 4141.282 governs appeals from decisions of the commission to the court of common pleas. The statute provides:

The 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.

R.C. 4141.282(H).

{¶ 11} On appeal, a reviewing court "is not permitted to make factual findings or reach credibility determinations." *Houser v. Dir., Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶ 7, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696 (1995), citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18 (1985). Similarly, a reviewing court may not substitute its judgment on factual findings or credibility determinations for that of the commission. *Id.*, citing *McCarthy v. Connectronics Corp.*, 183 Ohio App.3d 248, 2009-Ohio-3392, ¶ 16 (6th Dist.), citing *Irvine* at 18. Instead, a reviewing court must determine whether the commission's decision is supported by the evidence in the record. *Houser* at ¶ 7, citing *Irvine* at 18. The

focus of the analysis, therefore, is on the commission's decision rather than the decision of the common pleas court. *Id.*, citing *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 12. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶ 12} A claimant bears the burden of proving his or her entitlement to unemployment compensation benefits. *Houser* at ¶ 8, citing *Irvine* at 17. Here, the commission denied Perkins' claim for unemployment benefits on the grounds that she quit her employment without just cause. Pursuant to R.C. 4141.29(D)(2)(a), a claimant is ineligible to receive unemployment benefits if "[t]he individual quit work without just cause." R.C. 4141.29(D)(2)(a); *Houser* at ¶ 8. "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." *Houser* at ¶ 8, quoting *Irvine* at 17. Whether just cause exists depends on the factual circumstances of each case. *Id.*, citing *Warrensville Heights v. Jennings*, 58 Ohio St.3d 206, 207 (1991). "Therefore, a just cause determination is primarily an issue to be resolved by the trier of fact." *Id.*, citing *Stark Area Regional Transit Auth. v. Dir., Ohio Dept. of Job & Family Servs.*, 187 Ohio App.3d 413, 2010-Ohio-2142, ¶ 20 (5th Dist.), citing *Irvine* at 17.

{¶ 13} Further, "[a] just cause determination must be consistent with the purpose of the Unemployment Compensation Act, which is to provide financial assistance to individuals who become and remain involuntarily unemployed due to adverse business and industrial conditions." *Brooks v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-414, 2009-Ohio-817, ¶ 12, citing *Tzangas* at 697. "The act protects those employees who have no control over the situation that leads to their separation from employment." *Id.*, citing *Tzangas* at 697.

{¶ 14} A significant factor in determining whether an employee had just cause to resign is the employee's fault in creating the situation that led to his or her resignation. *Watkins v. Dir., Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 06AP-479, 2006-Ohio-6651, ¶ 21, citing *Stapleton v. Ohio Dept. of Job & Family Servs.*, 163 Ohio App.3d 14, 2005-Ohio-4473 (7th Dist.). "Thus, 'an employee is required to cooperate with the employer to

resolve work-related problems. * * * If the employee does not cooperate or give the employer sufficient time to accommodate the employee's needs or concerns, that employee will usually not be found to have just cause if he or she quits.' " *Id.*, quoting *Stapleton* at ¶ 32, citing *Irvine* at 18. "As a result, 'employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment.' " *Watkins* at ¶ 22, quoting *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006-Ohio-2313, ¶ 26 (8th Dist.) " 'Essentially, an employee must notify the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore will not be entitled to unemployment benefits.' " *Id.*, quoting *Shephard* at ¶ 26.

{¶ 15} Here, Perkins argues she was justified in resigning her position with Aryes because she alleges Aryes failed to meet the terms of the employment agreement. However, as the commission specifically found, although Perkins initially contacted Aryes about a staffing recruiter position, she was informed Aryes was not yet ready to fill that position. Instead, Aryes told Perkins about an internal clerical position that would involve typing and preparing documentation. Perkins agreed to accept that position and began working that same day. Upon leaving the office for the day, Perkins decided the clerical position was not the type of employment in which she wished to be engaged, and she submitted a written letter of resignation the next day. There is nothing in the record from which Perkins can credibly claim to have been misled or confused by the offer of employment from Aryes. Instead, Perkins simply changed her mind. Under these facts, Perkins did not make reasonable efforts to stay employed. *Watkins* at ¶ 22. *See also Reier v. Dir., Ohio Dept. of Job & Family Servs.*, 3d Dist. No. 17-03-08, 2003-Ohio-3723, ¶ 10 (noting the claimant "must make a reasonable attempt to stay on the job if feasible to do so").

{¶ 16} Perkins additionally argues her claim for unemployment benefits should be allowed based on representations allegedly made to her by an ODJFS employee. Specifically, Perkins alleges an ODJFS employee named Diane informed her that resigning her position from Aryes would not impact her claim for unemployment benefits since she was previously receiving unemployment benefits based on her position with Pinnacle. As

the trial court noted, the record contains no affirmative evidence of any such assurance made on the part of an ODJFS employee to Perkins. Moreover, Perkins' argument in this regard is essentially one of estoppel. However, "estoppel does not apply against a state or its agencies in the exercise of a governmental function." *Cosby v. Franklin Cty. Dept. of Job & Family Servs.*, 10th Dist. NO. 07AP-41, 2007-Ohio-6641, ¶ 30 (noting "[t]he operation of a job and family services department is a governmental function," so plaintiff's estoppel argument is without merit), citing *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, ¶ 25.

{¶ 17} Having reviewed the record, we find competent, credible evidence exists to support the commission's determination that Perkins voluntarily resigned her employment without just cause. Accordingly, the commission's decision denying Perkins' claim for unemployment benefits is not unlawful, unreasonable, or against the manifest weight of the evidence. We overrule Perkins' sole assignment of error.

IV. Disposition

{¶ 18} Based on the foregoing reasons, the commission's decision denying Perkins' claim for unemployment benefits was not unlawful, unreasonable, or against the manifest weight of the evidence, and the trial court did not err in affirming the denial. Having overruled Perkins' sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and BRUNNER, JJ., concur.
