

[Cite as *Roberts Elec. Constr. Co., Inc. v. Quinichett*, 2012-Ohio-1156.]
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Roberts Electrical Construction	:	
Company, Inc.	:	
	:	
Appellant-Appellee,	:	
	:	
v.	:	No. 11AP-765
	:	(C.P.C. No. 11CVF-02-2571)
Maurice L. Quinichett et al.,	:	
	:	
Appellees-Appellees,	:	(REGULAR CALENDAR)
	:	
and	:	
	:	
Michael B. Colbert, Director,	:	
Department of Job and Family Services,	:	
	:	
Appellee-Appellant.	:	

D E C I S I O N

Rendered on March 20, 2012

Means, Bichimer, Burkholder & Baker Co., LPA, Robert M. Morrow, and Mark A. Weiker, for appellant-appellee.

Michael DeWine, Attorney General, and Patria V. Hoskins, for appellee-appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Appellant, the director of the Ohio Department of Job and Family Services ("ODJFS"), appeals the judgment of the Franklin County Court of Common Pleas, which

reversed the decision of the Unemployment Compensation Review Commission ("UCRC") finding that Maurice L. Quinichett was discharged without just cause and, therefore, that he was entitled to unemployment compensation. The UCRC decision had reversed a decision by ODJFS that Quinichett was discharged with just cause and, therefore, that he was not entitled to that compensation. Having concluded that Quinichett was discharged because he could not clear a required background check within a reasonable time, we affirm the judgment of the trial court that Quinichett was discharged with just cause.

I. BACKGROUND

{¶ 2} Appellee, Roberts Electrical Construction Company, Inc. ("Roberts"), hired Quinichett through a local union hall to perform electrical work at the Ohio State University Medical Center. The job was to last only 21 days, and Quinichett started work immediately, on April 28, 2010. On that day, Quinichett completed paperwork at Roberts' offices and was taken to the security offices at the Ohio State University ("OSU"), where he was fingerprinted. OSU policy required all on-site workers to pass a background check conducted by the Ohio Bureau of Criminal Investigation and Identification ("BCI").

{¶ 3} Roberts' representative testified that, at the time Quinichett was hired, he was informed that passage of a background check was a requirement of the job and that "he would be removed from the job if he got a hit on his background check." (Nov. 23, 2010 Tr. 7.) Quinichett said that, while he knew he "had to clear a background check," he did not know that "a hit" on the check would result in his termination. (Nov. 23, 2010 Tr. 12.)

{¶ 4} Quinichett worked for a few days while his background check was being processed. On May 3, 2010, however, OSU informed Roberts that there was a "possible hit" on Quinichett's background check, and it required further investigation by BCI. (Nov. 23, 2010 Tr. 6.) Without a clear background check, OSU policy prohibited Quinichett from being on the worksite. Because Roberts had no other work for Quinichett, Roberts terminated his employment. After further investigation, OSU

cleared Quinichett for work on June 8, 2010. At that point, however, the temporary job was complete.

{¶ 5} Quinichett applied to ODJFS for unemployment compensation for the period of time he would have worked at OSU. Quinichett initially received the compensation, but on review, ODJFS denied compensation and ordered Quinichett to repay \$1,191 in benefits. Specifically, ODJFS concluded that Roberts had discharged Quinichett "for violating a company rule." "After a review of the facts," ODJFS found that Quinichett was discharged with just cause under R.C. 4141.29(D)(2)(a) and, therefore, not entitled to compensation.

{¶ 6} On appeal before the UCRC, Quinichett contended the following: "I was not discharged for violating a company policy, but rather laid off due to being unable to obtain security clearance within the timeframe of my temporary employment status." After a hearing, a hearing officer reversed the decision of ODJFS, found that Quinichett was discharged without just cause, and cancelled the order for Quinichett to repay the benefits. In her decision, the hearing officer explained that, "[i]n order to support a finding of a discharge for just cause, the discharge must be the result of sufficient fault or misconduct on the part of claimant to reasonably justify the discharge." Here, "[a] 'possible hit' on [Quinichett's] background check was not a circumstance within [his] control, and does not constitute fault on the part of [Quinichett]." On these grounds, the hearing officer found that Quinichett was discharged without just cause and compensation was payable. UCRC denied further review.

{¶ 7} Roberts appealed to the trial court, which reversed the UCRC decision. Relying on a recent decision of the Supreme Court of Ohio, the court concluded that Quinichett's "failure to receive a clear background check provided a just cause basis for termination of employment."

II. ASSIGNMENT OF ERROR

{¶ 8} ODJFS filed a timely appeal and raises the following assignment of error:

THE COURT OF COMMON PLEAS ERRED IN FINDING
THAT THE DECISION OF THE COMMISSION WAS
AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE,

WHEN THE EVIDENCE SUPPORTED THE CONCLUSION THAT CLAIMANT WAS DISCHARGED FROM HIS EMPLOYMENT WITHOUT JUST CAUSE IN CONNECTION WITH WORK.

III. DISCUSSION

{¶ 9} Quinichett applied for unemployment compensation after Roberts terminated him. R.C. 4141.29(D) provides that no individual "may * * * be paid benefits" if the director of ODJFS finds that "[t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work." R.C. 4141.29(D)(2)(a). We must construe this provision liberally. *See* R.C. 4141.46.

A. Standard of Review

{¶ 10} R.C. 4141.282(H) provides that a trial court must reverse, vacate, modify or remand a decision of UCRC if the court finds that UCRC's decision "was unlawful, unreasonable, or against the manifest weight of the evidence." Our standard of review is the same. *Irvine v. State Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). Neither we nor the trial court may make factual findings or credibility determinations, and we must affirm the commission's decision if some competent, credible evidence in the record supports it. *Id.* We may not reverse UCRC's decision simply because we might have reached a different conclusion. *Id.* Rather, where UCRC might have reasonably decided a matter either way, we have no authority to reverse its decision. *Id.*

B. Just Cause

{¶ 11} ODRC contends that, because Quinichett was not at fault in failing to pass his background check, Roberts discharged him without just cause. Roberts contends, however, that clearance of a background check was a condition of Quinichett's employment, and his failure to clear the check constituted just cause to discharge him.

{¶ 12} Although the statute does not define "just cause," the Supreme Court of Ohio has stated that it is " '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 (10th Dist.1975). The determination of whether just cause exists in a particular case depends on its own unique facts. *Williams v. Ohio*

Dept. of Job & Family Servs., 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 22; *Irvine* at 17. In making that determination, we must consider the purposes of the Unemployment Compensation Act ("the Act"), which is " 'to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level.' " (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.*, 176 Ohio St. 221, 223 (1964). In essence, the Act provides " 'financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.' " *Irvine* at 17, quoting *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39 (1980).

{¶ 13} This question of fault is important because fault by an employee " 'separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination.' " *Williams* at ¶ 23, quoting *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697-98 (1995).

{¶ 14} Most important for our purposes here, fault by an employee is "not limited to willful or heedless disregard of a duty or a violation of an employer's instructions." *Williams* at ¶ 24, citing *Tzangas*. An employee's "[u]nsuitability for a position constitutes fault sufficient to support a just-cause discharge." *Williams* at ¶ 24. An employer may find an employee unsuitable for the required work and, therefore, to be at fault, when the following factors are present: (1) the employee does not perform the required work; (2) the employer informed the employee of its expectations at the time of hiring; (3) the expectations were reasonable; and (4) the requirements of the job did not change substantially from the date of the original hiring. *Id.*; *Tzangas* at paragraph four of the syllabus.

{¶ 15} Here, the record shows that Roberts informed Quinichett at the time of hiring that he would have to pass a background check, and ODJFS does not contend otherwise on appeal. ODJFS does contend, however, that Roberts did not allow a reasonable time for Quinichett to clear the check. We disagree.

{¶ 16} In *Williams*, the Supreme Court of Ohio applied the four-part test articulated in *Tzangas* for determining whether an employee was suitable for a position

that required her to pass an exam to obtain a professional certification. The employer in *Williams* gave the employee 15 months to pass the exam and extended that time period once for health reasons. When the employee was still unable to pass the exam, the employer discharged her. In determining that the discharge was with just cause, the court held the following: "When employment is expressly conditioned upon obtaining or maintaining a license or certification and an employee agrees to the condition and is afforded a reasonable opportunity to obtain or maintain the license or certification, an employee's failure to comply with that condition is just cause for termination for unemployment compensation purposes." *Williams* at syllabus. *See also Sanson v. Ohio Unemp. Comp. Bd. of Rev.*, 4th Dist. No. 95CA554 (May 16, 1996) (holding, prior to *Williams*, that an employee was discharged with just cause for purposes of R.C. 4141.29 where she was discharged because the security clearance required for her job was withdrawn).

{¶ 17} In arguing that Roberts did not afford Quinichett a reasonable opportunity to clear the background check, ODJFS notes that Quinichett cleared the check a few weeks later. At that point, however, the 21-day job was complete. Where a job takes only a few weeks to complete, an employer could not reasonably be expected to allow a few weeks for an employee to clear a background check. That is especially true here, where OSU policy prohibited employees from working on-site once a possible hit occurred. Because he could not clear the background check within the time afforded and, therefore, could not be on-site to do the electrical work for which he was hired, Quinichett was unsuitable for the job, his discharge was with just cause, and he is ineligible for unemployment compensation under R.C. 4141.29.

IV. CONCLUSION

{¶ 18} For the foregoing reasons, we overrule ODJFS' assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and KLATT, J., concur.
