

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rosalie Rubin,	:	
	:	
Appellant-Appellant,	:	
	:	No. 11AP-674
v.	:	(C.P.C. No. 11CV-2802)
	:	
Director, Ohio Department of Job & Family Services et al.,	:	(REGULAR CALENDAR)
	:	
Appellees-Appellees.	:	
	:	

D E C I S I O N

Rendered on March 27, 2012

Duncan Simonette, Inc., Brian K. Duncan and Bryan D. Thomas, for appellant.

Michael DeWine, Attorney General, and *Yvonne Tertel*, for appellee Director, Ohio Department of Job & Family Services.

Caryn Groedel and Associates, LLC, and *Caryn M. Groedel*, for appellee Caryn Groedel and Associates, LLC.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶ 1} Appellant-appellant, Rosalie Rubin, appeals from a judgment of the Franklin County Court of Common Pleas affirming a decision of the Unemployment Compensation Review Commission that reversed the redetermination of the Director,

Ohio Department of Job & Family Services, granting unemployment compensation benefits to appellant. Because the commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence, we affirm.

I. Facts and Procedural History

{¶ 2} On January 4, 2010, appellant began working for appellee-appellee, Caryn Groedel and Associates, LLC, a law firm she became acquainted with when it represented her in a legal matter. The firm was looking for secretarial help and offered a position to appellant. After working six days, part-time, for a total of 42 hours, appellant quit her position as secretary with the law firm on January 15, 2010 and applied for unemployment compensation benefits. The director of the Ohio Department of Job & Family Services determined appellant quit with just cause. Appellee appealed, and the director's redetermination affirmed the earlier benefits award.

{¶ 3} Appellee appealed, and the matter was transferred to the Unemployment Compensation Review Commission. A hearing officer held a telephonic hearing on October 21, 2010. Based on the evidence presented, the hearing officer found appellant was given a job description, signed an employment agreement that outlined the employer's expectations, and took the job knowing she did not have prior legal experience. Noting appellee provided training for the duties appellant was to perform, the hearing officer concluded "the skills required for claimant's position arose more from the ability to be organized than from a requirement that she possess legal acumen." (Hearing Officer Decision, 4.) In the end, the hearing officer concluded appellant "worked for the [employer] for such a short period of time that she failed to allow adequate time for the [employer] to address her concerns." (Hearing Officer Decision, 2.) As a result, the issues that claimant experienced and the employer's response were not sufficient to provide cause for her decision to quit. Accordingly, the hearing officer reversed the director's redetermination. Appellant sought review before the Unemployment Compensation Review Commission members, but her request was disallowed.

{¶ 4} Appellant appealed to the common pleas court, contending the commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. The common pleas court noted the commission "found credible" the evidence that (1) appellant "was asked to perform only the tasks in her job description, and that the

job did not require legal experience" and (2) appellant worked for the appellee for such a short time that she failed to allow appellee to address her concerns. (Decision & Entry, 5.) Acknowledging it was not to make factual findings or substitute its judgment for that of the commission, the common pleas court determined the commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence and affirmed the decision. Appellant appeals.

II. Assignments of Error

{¶ 5} On appeal, appellant assigns four errors:

1. THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S FEBRUARY 3, 2011 DECISION.

2. THE TRIAL COURT ERRED WHEN IT FAILED TO FIND THAT BASED ON THE EVIDENCE IN THE RECORD, THAT THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S FEBRUARY 3, 2011 DECISION THAT APPELLANT QUIT WORK WITHOUT JUST CAUSE WAS UNLAWFUL, UNREASONABLE, OR AGAINST THE MANIFEST WEIGHT OF EVIDENCE.

3. THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S FEBRUARY 3, 2011 DECISION IN DETERMINING THAT APPELLANT WAS AT FAULT FOR THE TERMINATION OF EMPLOYMENT.

4. THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE THE UNEMPLOYMENT REVIEW COMMISSION'S FEBRUARY 3, 2011 DECISION AS IT GOES AGAINST PUBLIC POLICY AND THE INTENTION OF THE OHIO LEGISLATURE.

III. Quit With or Without Just Cause

{¶ 6} Appellant's four assignments of error raise a single issue: whether the commission's determination that appellant quit without just cause is unreasonable, unlawful, or against the manifest weight of the evidence.

{¶ 7} R.C. 4141.29 sets forth the statutory authority for an award of unemployment benefits and provides that "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial

unemployment in the amounts and subject to the conditions stipulated in this chapter." In that context, R.C. 4141.29(D)(2)(a) establishes that a claimant who quits his or her work without just cause or has been discharged for just cause in connection with his or her work is not entitled to unemployment compensation benefits. The claimant has the burden to prove his or her entitlement to benefits. *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17 (1985).

{¶ 8} The term "just cause" has been defined "in the statutory sense, [as] that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine*, quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10, 12 (1975). The determination of just cause must be analyzed in conjunction with the purpose of the unemployment compensation: "to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level * * * in keeping with the humanitarian and enlightened concepts of this modern day." (Emphasis sic.) *Irvine* at 17, quoting *Leach v. Republic Steel Corp.*, 176 Ohio St. 221, 223 (1964). Ohio courts have long recognized that the Act exists to aid "an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39 (1980).

{¶ 9} Whether just cause exists to support an employee's quitting depends on the factual circumstances of each case. *Irvine; Peterson v. Director*, 4th Dist. No. 03CA2738, 2004-Ohio-2030. The determinations of purely factual questions are primarily within the province of the hearing officer and the commission. "Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence." *Irvine* at 17-18; *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694 (1995), paragraph one of the syllabus.

{¶ 10} Accordingly, a reviewing court does not make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the courts have no authority to upset the commission's decision. *Irvine* at 18; *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982) (noting that "[a] reviewing court can not usurp the function of

the triers of fact by substituting its judgment for theirs"); *Aliff v. Director*, 10th Dist. No. 01AP-18 (Sept. 25, 2001). Rather, the court's duty or authority is to determine whether the evidence of record supports the commission's decision. *Irvine* at 18. Here, the commission's decision rested purely on its factual determination which, in turn, turned on how the hearing officer resolved the credibility issues that arose from the differing accounts of appellant's employment with appellee.

{¶ 11} According to appellant, she had an accounting background and limited computer software experience at the time appellee offered her the position at the law firm. Concerned about the requirements of the job, appellant told Groedel that she "would try out" the job. (Tr. 8.) Appellant testified that, once on the job, she constantly had to ask for help from people who were quite busy. Appellant acknowledged she had little problem with the clerical and phone work, but stated she had great difficulties with legal documents.

{¶ 12} Appellant testified that, after beginning employment with appellee, she "felt that the job required extensive legal secretary, secretarial experience and * * * I feared that I would make serious mistakes for Ms. Groedel that would cause problems for her, not only for her but for her clients as well." (Tr. 9.) Appellant assumed she would receive training in order to perform adequately the legal aspects of the job, but, to the contrary, appellee did not provide the training, even when appellant offered to come in on a Saturday to work with someone from the firm. According to appellant, she knew "by day three * * * that this was not" for her because she "didn't have the experience with Microsoft word that was desperately needed for the job." (Tr. 9, 11.) She testified she developed headaches as a result of her work with appellee and was taking Advil every few hours. By the time she went home at the end of the day, she was "shaking" because she was not the legal secretary the job required. (Tr. 9.)

{¶ 13} Cross-examination of appellant revealed different facts. Aware she previously represented appellant, Caryn Groedel saw appellant at a social function and advised her appellee was looking for a part-time secretary. Appellant stated she really missed working and would love to have a part-time job, so Groedel suggested she come to the office, take a typing test, and apply for the job.

{¶ 14} On cross-examination, appellant acknowledged she knew she was applying for a secretarial job and agreed such jobs typically involved typing, faxing, answering phones, and filing. At no time did appellant explain to Groedel that she needed more training or that certain tasks were problematic, and appellee's staff never refused her information or an answer to a question if appellant asked for it. Rather, the first time Groedel knew of appellant's frustration was when appellant quit. Groedel asked appellant if she was sure of her decision, and appellant said she was. Groedel inquired if the firm could do anything, and appellant "said nothing." (Tr. 24.)

{¶ 15} Groedel's cross-examination revealed that appellant received, at the time she came to the office to apply for the position, a job description that detailed the job and expectations. She signed the offer stating she knew and understood the job requirements and expectations, and accepted the job position. She never advised Groedel she could not do the job or any part of it. Groedel likewise never complained or criticized her work performance.

{¶ 16} Debra Pickering, a member of appellee's staff, testified she worked with appellant, and Pickering confirmed that nothing changed in appellant's job description from the time she started to the date she quit; nor was appellant asked to perform tasks not set out in the description. Pickering stated she never refused to give appellant any information or to show her something on the computer. To the contrary, Pickering devoted about two hours to training appellant, including how to scan documents and to attach them so they could be sent with e-mail. Pickering testified she did not have to show appellant a great deal but rather demonstrated to her some of the different tricks Pickering had learned over the years. If appellant needed training on certain items, Pickering would help her as the issues arose. Pickering stated none of appellant's work required redoing, and appellant "was able to get the work out and at a very * * * efficient rate." (Tr. 34.)

{¶ 17} According to Pickering, appellant seemed confident and appeared to pick up the tasks at hand very well. Pickering stated appellant was good with filing and the telephone, and she could type what was required. Appellant did all her work correctly, and no one criticized her speed, her confidence, or her performance. Pickering had confidence in appellant's ability.

{¶ 18} In the final analysis, the hearing officer received conflicting testimony from the parties. Appellant asserted the job overwhelmed her and involved much legal expertise she lacked, she was unable to perform adequately the tasks assigned her, and the job caused her stress to the point of requiring Advil to alleviate stress headaches. Appellee, by contrast, presented evidence that it was satisfied with her work.

{¶ 19} The hearing officer resolved the differing testimony, concluded appellant knew the job requirements at the time she accepted the offer, and "the skills required for claimant's position arose more from the ability to be organized than from a requirement that she possess legal acumen." (Hearing Officer's Decision, 4.) The hearing officer further found the job requirements did not change during the time appellant worked for the law firm, no one at the law firm refused her assistance when she asked for it, and appellant did not advise the law firm of her difficulties with the job until she announced her resignation. The hearing officer thus determined "claimant worked for the employer for such a short period of time that she failed to allow adequate time for the employer to address her concerns." (Hearing Officer's Decision, 4.) With that premise, the hearing officer decided "the issues that claimant experienced and the employer's response were not sufficient to provide cause for her decision to quit." (Hearing Officer's Decision, 4.)

{¶ 20} The hearing officer's resolution of the disputed facts supports her conclusion that appellant quit without just cause. We, like the common pleas court, do not substitute our judgment for that of the commission and its hearing officer but rather, accepting those facts as true, conclude the commission's decision is not unlawful, unreasonable, or against the manifest weight of the evidence in deciding appellant quit without just cause.

{¶ 21} Accordingly, we overrule appellant's four assignments of error and affirm the judgment of the common pleas court.

Judgment affirmed.

BROWN, P.J., and CONNOR, J., concur.
