[Cite as *Tiffany v. Dir., Ohio Dept. of Job & Family Serv.*, 2004-Ohio-4310.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

MARSHA B. TIFFANY,	:	
Plaintiff-Appellant,	:	CASE NO. CA2003-10-102
	:	O P I N I O N
-vs-		8/16/2004
	:	
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 2002-CV-60323

Marsha Tiffany, 6315 Parkview, Mason, OH 45040, pro se

Jim Petro, Attorney General of Ohio, Patrick MacQueeney, Ohio Attorney General's Office, 1600 Carew Tower, 441 Vine Street, Cincinnati, OH 45202, for defendant-appellee, Director of Ohio Department of Job and Family Services

POWELL, J.

{¶1} Appellant, Marsha B. Tiffany, appeals from a decision of the Warren County Common Pleas Court, affirming a decision of appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), denying her unemployment compensation benefits, fol-

lowing her discharge from her position with appellee, Frequency Marketing, Inc. ("FMI").

{¶2} FMI is in the "loyalty marketing" business; it sells consulting programs that help companies improve their marketing capabilities. On November 5, 2001, FMI hired appellant as a UNIX system administrator. On January 15, 2002, FMI announced to its employees that it had been acquired by Alliance Data Systems ("ADS"). On February 7, 2002, one of appellant's supervisors was discharged. Upset by the news, appellant went home early that day. She called in sick the next day. From February 11, 2002 to February 13, 2002, appellant failed to report for work. She informed FMI that she was not coming to work because of her concerns about the legal status of her employment following FMI's acquisition by ADS. Her concerns included whether signing ADS's confidentiality and noncompetition agreements would place her in breach of similar agreements she had previously signed with FMI; whether the term "associate," as used in ADS's employee handbook, meant that she was an employee of ADS and not FMI; and whether the use of rubbing alcohol and prescription drugs would violate ADS's Drug-Free Workplace Policy. Appellant informed FMI that she would not sign ADS's confidentiality or non-competition agreements nor any other form they wanted her to sign, until it answered her questions and concerns to her satisfaction. She further informed FMI that she would be willing to accept a severance "package" from FMI, in exchange for her resignation. FMI responded by telling appellant to place her questions and

concerns in writing, and they would be forwarded to ADS's legal department for a response. Appellant never did so.

{¶3} On February 14, 2002, FMI discharged appellant for failing to report to work for three consecutive days (February 11-13, 2002), without authorization. On March 2, 2002, appellant applied for unemployment compensation benefits with the Director of the ODJFS, claiming that the reason for her separation from FMI was lack of work. The Director issued a Determination of Benefits, allowing appellant's application for unemployment compensation. FMI sought reconsideration of the Director's Determination of Benefits. On May 2, 2002, the Director issued a Redetermination of Benefits, affirming its initial decision granting appellant unemployment compensation benefits. The Director found that while appellant had not been discharged because of a lack of work, but rather, because of her absence or tardiness from work, the evidence failed to establish "enough fault" on appellant's part "that an ordinary person would find [her] discharge justifiable." FMI appealed the Director's Redetermination of Benefits, arguing that appellant had been discharged for just cause. On June 12, 2002, the Director transferred jurisdiction over FMI's appeal to the Unemployment Compensation Review Commission.

{¶4} On September 4, 2002, and September 26, 2002, the Review Commission's hearing officer held an evidentiary hearing on FMI's appeal from the Director's Redetermination of Benefits. On October 10, 2002, the hearing officer issued a decision, re-

versing the Director's decision to allow appellant unemployment compensation benefits. The hearing officer determined that appellant was not entitled to such benefits because she was discharged from FMI with just cause. On December 5, 2002, the Review Commission disallowed appellant's request for further review of its decision. Appellant appealed the commission's decision to the Warren County Common Pleas Court. On September 12, 2003, the trial court affirmed the commission's decision.

{¶5} Appellant now appeals to this court, alleging that the Unemployment Compensation Review Board's decision to disallow her claim for unemployment compensation benefits "was unlawful, unreasonable or against the manifest weight of evidence presented."[1] Essentially, she argues that the trial court erred in affirming the Review Commission's determination that FMI had just cause to discharge her. We disagree with this argument.

{¶6} A person is ineligible to receive unemployment compensation in this state if the 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). "'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.'" Irvine v. Unemp. Comp. Bd. of Review (1985), 19 Ohio St.3d 15, 17, quoting Peyton v. Sun T.V. (1975), 44 Ohio App.2d 10, 12. "Just cause determinations in the unemployment compensation context *** must be consistent with the

legislative purpose underlying the Unemployment Compensation Act." Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv., 73 Ohio St.3d 694, 697, 1995-Ohio-206. "The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he [she] is no longer the victim of fortune's whims, but is instead directly responsible for his [her] own predicament. Fault on the employee's part separates him [her] from the Act's intent and the Act's protection." Id. at 697-698. A common pleas court or an appellate court may reverse the Unemployment Compensation Review Commission's just cause determination only if it is unlawful, unreasonable or against the manifest weight of the evidence. See id., at paragraph one of the syllabus and at 696-697.

{¶7} In this case, there was ample evidence presented to support the commission's determination that FMI discharged appellant for just cause. Appellant, without FMI's consent, failed to report to work for three straight days, because she was allegedly concerned about her legal status following FMI's acquisition by ADS. However, she had been aware of the acquisition since January 15, 2002, and worked in the same capacity until February 7, 2002. She has failed to offer any evidence or plausible explanation as to why she could not have continued to work for FMI while FMI prepared answers and explanations for her questions and concerns.

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1. Tiffany failed to set forth an assignment of error in her merit brief. After appellees pointed this out in their brief, she responded by making

{¶8} Appellant argues that she was "in the midst of employment status discussions" with FMI when she was discharged. She claims that during the three days in which she was absent from work, she was working at home, "fulfilling all requests" made by FMI "to the best of her abilities." She maintains that FMI initially "accepted" "[h]er off-site status," but after discussing the matter with her over the telephone for three days, the company discharged her, "and tried to state that she had not been working for the three days of discussions." However, when appellant was asked by the Review Commission's hearing officer why she did not report for work despite her questions and concerns, appellant responded, "I worked, I didn't feel. [Sic.] I was trying to do everything over the phone. I was informed that that would be fine." But when the hearing officer again asked appellant if she did any work at home on the three days she was absent, she answered, "I was working with them, I was calling in and trying to have these issues [e.g., about her legal status following the acquisition] be clarified. And everyone seemed to understand what my questions were, but no one would give me any answers."

{¶9} As the common pleas court found, the evidence in the record fails to show that appellant worked at home during the three days in which she refused to report for work. Appellant's duties at FMI as a UNIX system administrator were to provide "technical support in the installation and maintenance of various

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the statement quoted above in her reply brief.

development, training, test and production environments *** used in conjunction with the products and services sold" by FMI. Her duties included "install[ing] and configur[ing] UNIX hardware and peripherals, [and] daily monitoring and maintenance of systems resources in coordination of hardware and software installations." It is apparent that appellant could not perform such duties from her home. As to appellant's contentions that FMI failed to address her questions and concerns about issues such as the confidentiality and non-competition agreements she was being asked to sign, the evidence shows that FMI directed appellant to place her questions and concerns in writing, but appellant was either unable or unwilling to do so.

{¶10} In light of these circumstances, we agree with the Review Commission's finding that appellant did not act reasonably in refusing to report for work until her concerns were addressed, and that an "ordinarily intelligent person" would find that FMI was justified in discharging her under the facts of this case. Irvine, 19 Ohio St.3d at 17. Consequently, the trial court did not err in affirming the Unemployment Compensation Review Commission's determination that appellant was discharged by FMI with just cause, and therefore was not entitled to receive unemployment compensation benefits.

{¶11} Appellant's assignment of error is overruled.

Judgment affirmed.

YOUNG, P.J., and VALEN, J., concur.