

[Cite as *Repacorp, Inc. v. Sloan*, 2016-Ohio-608.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY**

REPACORP, INC.	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 2015-CA-18
	:	
v.	:	Trial Court Case No. 14-575
	:	
ROBERT S. SLOAN, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendants-Appellant	:	
	:	

.....
OPINION

Rendered on the 19th day of February, 2016.

.....

MICHAEL P. McNAMEE, Atty. Reg. No. 0043861, and GREGORY B. O'CONNOR, Atty. Reg. No. 0077901, McNamee & McNamee, PLL, 2625 Commons Boulevard, Beavercreek, Ohio 45431
Attorney for Plaintiff-Appellee, Repacorp, Inc.

LUCAS W. WILDER, Atty. Reg. No. 0074057, 120 West Second Street, Suite 400, Dayton, Ohio 45402
Attorney for Defendant-Appellant, Robert S. Sloan

.....

HALL, J.

{¶ 1} Robert Sloan appeals from the trial court's judgment entry reversing an

administrative determination and finding him ineligible to receive unemployment compensation because he had been fired from his job for just cause in connection with his work.

{¶ 2} In his sole assignment of error, Sloan contends the trial court erred in reversing the administrative decision, which had found him eligible for unemployment compensation. Sloan argues that the administrative decision was reasonable, was supported by competent, credible evidence, and was not against the weight of the evidence.

{¶ 3} The record reflects that Sloan worked as a production manager for appellee Repacorp for approximately seven years. His job required running a printing press and operating other heavy machinery. In February 2014, Repacorp employee Tom Carrigan told plant manager Gary Parrott that Sloan had asked Carrigan for a Vicodin pill. Repacorp president Tony Heidl had Sloan drug tested the following day. Sloan tested positive for Vicodin, a prescription pain medication. Sloan admitted to Heidl that he had taken Vicodin without a prescription to cope with chronic back pain. Heidl placed Sloan in an employee-assistance program while deciding what to do. For liability reasons, Heidl was concerned about Sloan operating heavy machinery while taking the medication.

{¶ 4} Approximately two weeks later, Heidl spoke with Sloan on the telephone. During their conversation, Heidl inquired whether Sloan was taking any other medications. In response, Sloan disclosed that he also was taking morphine, which had been prescribed for him by a doctor. According to Sloan, he was taking daily doses of two types of morphine due to his back pain. At that point, Heidl asked Sloan whether he could get off of “the drugs.” Sloan responded that he would talk to his doctor and call Heidl back.

About an hour later, Sloan called back and reported that he had been unable to contact his doctor. Sloan advised Heinl, however, that he could not quit taking medication. In the proceedings below, the parties disputed whether Sloan then quit his job because he wanted to continue taking medication for his pain or whether Repacorp fired him because he would not stop taking medication. They also disputed whether Heinl's primary concern was the morphine or both the morphine and the Vicodin. In any event, Sloan did not work for Repacorp after that phone conversation. According to Heinl, the parties went their "own separate ways" after Sloan said he could not stop taking medication and Heinl made clear that Sloan could not work there while taking mind-altering medication.

{¶ 5} Sloan subsequently applied for unemployment compensation. His claim initially was allowed based on a finding that he quit his job with just cause. Repacorp appealed that determination, and the matter proceeded to a hearing before a hearing officer of the Unemployment Compensation Review Commission (UCRC). Based on the evidence presented, the hearing officer found that "the claimant was discharged by the employer because the claimant refused to stop taking morphine that had been prescribed to him." Although the hearing officer acknowledged that Sloan had committed other infractions that may have justified his termination, the hearing officer found that "the employer did not discharge the claimant for those reasons." The hearing officer then reasoned:

* * * Based on the evidence, the claimant had been prescribed morphine for pain and would not stop taking it. Prior to the claimant being discharged by Repacorp, Inc. the employer never questioned whether the claimant had a prescription for morphine and apparently had accepted as

fact that the claimant did have a prescription for morphine.

The employer may have had a legitimate business reason to keep the claimant off of the production floor due to safety issues associated with the claimant being on prescribed morphine while working in the employer's plant. However, there needed to have been sufficient fault on the part of the claimant for the claimant to have been discharged by Repacorp, Inc. for just cause in connection with work under Section 4141.29(D)(2)(a) O.R.C.; and with respect to the evidence in this case, the claimant's continued use of the medication that was prescribed to him is not sufficient fault.

(April 26, 2012 UCRC Decision at 2).

{¶ 6} In accordance with the foregoing reasoning, the hearing officer held that Sloan had been discharged without just cause in connection with his work and upheld the allowance of his claim for unemployment benefits. After further administrative review was denied, Repacorp appealed to the Miami County Common Pleas Court pursuant to R.C. 4141.282. After reviewing the record, the trial court reversed the hearing officer's decision. The trial court concluded that "[e]ven when providing the UCRC's decision and findings of fact with every reasonable presumption, the Court finds the UCRC's decision unreasonable and against the manifest weight of the evidence." (Doc. #18 at 7). As a result, the trial court found Sloan not entitled to unemployment benefits. This appeal by Sloan followed.

{¶ 7} Before addressing the merits of Sloan's appeal, we note the applicable standard of review. Our focus here is on the UCRC's decision, not the trial court's. *New Carlisle v. Pratt*, 2d Dist. Clark Nos. 2014-CA-112, 2014-CA-114, 2015-Ohio-1398, ¶ 25.

We may reverse the administrative “just cause” determination “only if it is unlawful, unreasonable or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995), paragraph one of the syllabus. “All reviewing courts, including common pleas, courts of appeal, and the Supreme Court of Ohio, have the same review power and cannot make factual findings or determine witness credibility. * * * However, these courts ‘do have the duty to determine whether the board’s decision is supported by evidence in the record.’” *Silkert v. Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 78, 2009-Ohio-4399, 919 N.E.2d 783, ¶ 26 (2d Dist.), quoting *Tzangas* at 696.

{¶ 8} Ohio Revised Code 4141.29 establishes the eligibility requirements for unemployment benefits. A claimant is ineligible if “[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). The issue before us is whether Repacorp discharged Sloan for just cause in connection with his work. “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*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). “Just cause determinations in the unemployment compensation context * * * must be consistent with the legislative purpose underlying the Unemployment Compensation Act.” *Tzangas* at 697. “‘The [A]ct was intended to provide 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.’” (Citations omitted.) *Id.* “When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part

separates him from the Act's intent and the Act's protections. Thus, fault is essential to the unique chemistry of a just cause termination." *Id.* at 697-698. "[T]he question of fault cannot be rigidly defined, but, rather, can only be evaluated upon consideration of the particular facts of each case." *Id.* at 698. In conducting our review, we bear in mind that the unemployment-compensation statutes should be construed liberally in favor of the applicant. *Clark Cty. Bd. of Mental Retardation & Developmental Disabilities v. Griffin*, 2d Dist. Clark No. 2006-CA-32, 2007-Ohio-1674, ¶ 10.

{¶ 9} Under the facts found by the administrative hearing officer that are supported by the record, even if we might have decided the case differently in the first instance, we are unable to conclude that the administrative decision is unlawful, unreasonable or against the manifest weight of the evidence. The record contains evidence that Sloan "was discharged by the employer because [he] refused to stop taking morphine that had been prescribed to him." (UCRC Decision at 1). Sloan testified that his phone conversation with Heintl focused on his taking morphine, not the Vicodin he had taken. (Hearing Tr. at 10). He also testified the he was told Repacorp's "issue" with him concerned the morphine he was taking. (*Id.* at 8). Sloan later elaborated on his conversation with Heintl in response to questioning from the hearing officer:

Hearing Officer: Okay. I'm going to go back to Mr. Sloan. Mr. Sloan, did you talk to Mr. Heintl over the telephone on February 27, 2014?

Mr. Sloan: Our conversation that me and Mr. Heintl had was on Friday the 28th when he terminated me.

Q: Okay, but did he ask you if you could get off the drugs?

A: He told me all the professionals that I've talked to have told me that you

cannot stop, just stop taking this medication. You have to be weaned off it and if you're weaned off it, you're still on medication and I can't have you on the floor so I asked him what, let's say I do stop taking the medication, well then you'll have to be reevaluated to see if you're able to do the job under the kind of pain you're going to be in and then I said the medication is neither here or there, it's prescribed medication to treat degenerative disc disease.

Q: Did Mr. Heintl say anything about the Vicodin that you had taken?

A: No, the discussion wasn't around the Vicodin. The discussion was around the morphine and I specifically asked him, I told him I will not quit my job and he said uh to the effect I said so what are the grounds going to be that you terminate me for because I know you're going to fight my unemployment. He said oh we're not going to fight your unemployment, that's up to the state, they'll make the decision whether or not you get your unemployment or not. I said so what are the grounds you're terminating me for, he said Repacorp does not have a position here for someone like yourself taking morphine.

(Hearing Tr. at 41-42).

{¶ 10} The hearing officer was entitled to credit Sloan's testimony and to find that Repacorp terminated Sloan due to his unwillingness to quit taking prescribed morphine. The hearing officer also reasonably concluded that Sloan was not "at fault," for unemployment-compensation purposes, for continuing to take prescribed morphine to deal with chronic pain. Thus, although Repacorp may have been entitled to discharge

Sloan due to its safety concerns, the hearing officer could reasonably have concluded Sloan could not be blamed for having a medical condition that necessitated taking prescription morphine. Therefore, the record supports the hearing officer's determination that Sloan was eligible for unemployment compensation. That determination was not unlawful, unreasonable, or against the weight of the evidence.

{¶ 11} In opposition to our conclusion, Repacorp suggests that Sloan voluntarily chose morphine over his job and, therefore, was ineligible for unemployment compensation. (Appellee's brief at 9-10). In support, Repacorp reasons that Sloan was required to consult his doctor, as he told Heintl he would do during their phone conversation. Instead, Sloan simply called Heintl back, without having reached the doctor, and stated that he could not stop taking morphine. Repacorp argues that an alternative pain-management plan may have been available, and that Sloan may have been able to stop taking morphine, if he had checked with his doctor. We find this argument unpersuasive. In our view, it is reasonable for the fact finder to infer that a doctor would not prescribe multiple daily doses of morphine if they were not medically necessary. The existence of a prescription for morphine, which Repacorp does not dispute, could constitute adequate proof that Sloan needed the medication to cope with chronic pain. We are unconvinced that Sloan was required to double-check the need for his prescription, or to seek some unspecified alternative, to avoid a finding that he voluntarily chose morphine over his job. We believe it was reasonable for the hearing officer to conclude Sloan was not "at fault," for unemployment-compensation purposes, for standing on his right to take pain medication that a doctor had prescribed for him.

{¶ 12} Repacorp next argues that Sloan's termination "did not come in a vacuum"

and that “[t]he record is replete with evidence of conduct that created just cause for termination[.]” (Appellee’s brief at 10). In particular, Repacorp notes that its employee handbook required Sloan to disclose that he was taking prescription medication such as morphine. Repacorp asserts that Sloan’s non-disclosure of that fact until his final phone conversation with Heintl himself constituted just cause for his dismissal. Repacorp also cites Sloan’s acts of soliciting Vicodin from another employee, taking non-prescribed Vicodin, and failing to disclose having taken the Vicodin until after a positive drug test. Repacorp additionally argues that its administrative “appeal letter,” which was cited by the hearing officer, fails to establish that Sloan was terminated solely for refusing to quit taking morphine. (*Id.* at 10-13). Finally, in the remainder of its appellate brief, Repacorp essentially reiterates its arguments that Sloan never demonstrated he needed morphine and could not stop taking it, and that Sloan had committed other infractions that provided just cause for his termination. (*Id.* at 13-17).

{¶ 13} Again, we find the company’s arguments unpersuasive. We do not dispute that Sloan committed other infractions that may have justified his dismissal. In particular, he had solicited Vicodin from a co-worker, taken unprescribed Vicodin without telling Repacorp, and taken prescribed morphine without telling the company—all in violation of company policy. The hearing officer acknowledged that Repacorp “may have been able to discharge the claimant for just cause in connection with work” for these reasons. (UCRC Decision at 2). As set forth above, however, the hearing officer also found that “the employer did not discharge the claimant for those reasons.” (*Id.*). That determination is supported by Sloan’s testimony, quoted above, which the hearing officer was entitled to credit. The administrative “appeal letter” challenged by Repacorp, although not

dispositive, also lends support to the hearing officer's conclusion. In that letter appealing from the original grant of benefits, Repacorp cited Sloan's other infractions but acknowledged that it had "offered [Sloan] to keep his job if he could stay off the prescription medication." (Doc. #10 at Addendum 3). This acknowledgement by the company is consistent with Sloan's testimony that his refusal to stop taking prescription morphine was the only reason for his termination.¹ It was not unreasonable for the hearing officer to conclude this did not make him "at fault" for unemployment-compensation purposes.

{¶ 14} Finally, although the focus of our review is on the UCRC's decision, we briefly will address the concerns expressed by the trial court below. In reversing the hearing officer's decision, the trial court noted that Sloan's use of mind-altering drugs without Repacorp's knowledge violated company policies about which he was aware. The trial court also questioned what Sloan expected Repacorp to do when he refused to stop taking morphine. Noting the potential danger and liability issues that Sloan's drug use posed, the trial court found that the company did the reasonable thing and fired him in accordance with common sense and company policy. (Doc. #18 at 6-7). We do not necessarily disagree with any of this. For unemployment-compensation purposes,

¹ We recognize that Repacorp's reference in the letter to Sloan staying off of "the prescription medication" conceivably could apply to the morphine, for which he had a prescription, or to the Vicodin, for which someone else presumably had a prescription. In context, however, it is not unreasonable to infer that Repacorp was referring to Sloan's prescribed, multiple daily doses of morphine, which would seem to be more potentially dangerous and troubling from the company's perspective than his one-time or even occasional use of someone else's Vicodin. Inferring that Repacorp was referring to Sloan's prescribed morphine also is consistent with Sloan's explicit testimony that his morphine usage, not the Vicodin, was the company's expressed concern and the cause of his discharge.

however, the question is not whether Repacorp was required to keep Sloan as an employee. The question for unemployment-compensation purposes is whether Sloan was at fault for losing his job due to his refusal to stop taking prescribed morphine for chronic pain relief. Based on the reasoning set forth above, it was not unlawful, unreasonable, or against the manifest weight of the evidence for the hearing officer to conclude he was entitled to unemployment compensation and to allow his claim.

{¶ 15} Sloan's sole assignment of error is sustained. The trial court's judgment is reversed, and Sloan's claim for unemployment compensation is allowed in accordance with the decision of the UCRC hearing officer.

.....

DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

Michael P. McNamee
Gregory B. O'Connor
Lucas W. Wilder
Robin Jarvis
Hon. Jeannine N. Pratt