[Cite as *Williamson v. Complete Healthcare for Women, Inc.*, 2010-Ohio-3693.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

HEIDI WILLIAMSON	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
COMPLETE HEALTHCARE FOR WOMEN, INC., ET AL.	:	Case No. 10CA0044
	:	
	:	
Defendants-Appellees	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 09CV01811
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 6, 2010

APPEARANCES:

For Plaintiff-Appellant	For Defendants-Appellees
BARBARA K. LETCHER 5025 Arlington Centre Boulevard Suite 400 Columbus, OH 43220	PATRIA V. HOSKINS 30 East Broad Street 26th Floor Columbus, OH 43215-3400

Farmer, J.

{¶1} Appellant, Heidi Williamson, worked for appellee, Complete Healthcare for Women, Inc., until December 24, 2008. On said date, appellant was discharged for violating appellee's confidentiality policy. Appellant had discussed a physician's personal life and the death of a patient's baby with a former employee, Raysa Bendisu.

{¶2} On December 24, 2008, appellant filed an application for unemployment compensation. A redetermination was filed on April 20, 2009 finding appellant had been discharged without just cause and allowing her application for benefits. Appellee appealed. A telephone conference hearing was held on July 14, 2009. The Review Commission determined appellant was discharged for just cause and denied benefits. The Review Commission denied appellant's request for review.

{¶3} On October 16, 2009, appellant filed an appeal with the Court of Common Pleas. By judgment entry filed April 8, 2010, the trial court affirmed the Review Commission's decision.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration.[1] Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT ERRED BY AFFIRMING THE DECISION OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION WHERE THAT DECISION IS UNREASONABLE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

[1]Although appellant's brief indicates a request for oral argument, appellant waived said request on July 13, 2010.

I

{¶6} Appellant claims the trial court's decision to affirm the Review Commission's determination was error, as the Review Commission gave more weight to unsubstantiated hearsay than to appellant's unrebutted testimony. We disagree.

{¶7} Our role in reviewing the trial court's decision is to determine whether the trial court appropriately applied the standard of unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services,* 73 Ohio St.3d 694, 1995-Ohio-206. While we are not permitted to make factual findings or determine the credibility of witnesses, we have the duty to determine whether the commission's decision is supported by the evidence in the record. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11; *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio. We are to review the commission's decision sub judice and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶8} Unemployment compensation can be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10,

12. The *Irvine* court at 17 further stated "each case must be considered upon its particular merits." In reviewing such a determination, we are not permitted to reinterpret the facts or put our "spin" to the facts.

{¶9} The Review Commission determined appellant was discharged for just cause. Appellant argues the Review Commission accepted hearsay testimony, and concedes that in the informal setting of the Unemployment Compensation Review Commission, otherwise inadmissible testimony is permitted:

{¶10} "To restate the above, evidence which might constitute inadmissible hearsay where stringent rules of evidence are followed must be taken into account in proceedings such as this where relaxed rules of evidence are applied. Consequently, it was the referee's function, as the trier of fact, to consider the evidence listed above, along with the credibility of the individuals giving testimony before the board (in this case, the claimant), in reaching his decision." *Simon v. Lake Geauga Printing Co.,* (1982), 69 Ohio St.2d 41, 44; see also R.C. 4141.28(J).

{¶11} Although appellant recognizes the Supreme Court of Ohio's position, she nonetheless argues that the only evidence offered to establish the alleged violation of appellee's confidentiality policy was hearsay and it was directly contradicted by her own sworn testimony. Appellant argues in considering the weight of the evidence, it was error to give greater weight to hearsay testimony vis-á-vis sworn testimony. It was appellant's own testimony that in her terms "categorically denied" that she breached the confidentiality agreement.

{¶12} In its judgment entry filed April 8, 2010, the trial court specifically acknowledged appellant's argument and reliance on court of appeals' decisions outside the Fifth District:

{¶13} "In accordance with *Simon* and the reasoning in *Royster*, it is the duty of the fact-finder to weigh the evidence and credibility of witnesses. It is not for this Court to disturb that determination. To state a rule that the Commission must not give credibility to hearsay over sworn testimony is to weigh the evidence. 'The trier of fact may believe a witness completely, in part, or not at all.' *Royster,* supra. The Commission need not give any more weight to sworn testimony than hearsay if it does not believe the witness is credible or as credible as other evidence or witnesses. Hearsay is admissible evidence in hearings before the Commission, and 'None of the reviewing courts can reverse a commission decision as being against the manifest weight of the evidence when there is some evidence in the record to support the commission's decision.' *Struthers v. Morell* (2005), 164 Ohio App.3d 709, 715."

{¶14} In its findings of fact, the Review Commission accepted the testimony of Cheryl Garver, appellee's practice administrator, to establish that appellant had breached the confidentiality agreement:

{¶15} "On December 17, 2008, a current employee informed Cheryl Garver that claimant had shared confidential information about a patient and the physician in charge of the practice with Raysa Bendisu, a former employee. Claimant was placed on administrative leave until the employer could investigate the allegations. Ms. Garver interviewed Ms. Bendisu who confirmed that she and claimant had discussed the the (sic) physician in charge of the medical practice and the death of a patient's baby.

Claimant breached the employer's confidentiality agreement and violated HIPAA. Claimant was subsequently discharged."

{¶16} Ms. Garver testified that she learned from another employee that appellant and Ms. Bendisu had discussed a physician and the physician's personal problems and the death of a patient's baby. T. at 9-10. Ms. Garver then testified that she verified this information with Ms. Bendisu, and Ms. Bendisu was no longer an employee of appellee's. T. at 10, 18-19. Ms. Garver initially received the information from another employee. T. at 19. The subject Confidentiality Agreement states in pertinent part:

{¶17} "Um yes. An employee of Complete Healthcare for Women is expected to maintain confidentiality of verbal, written and computer based information encountered during the course of his or her employment. Confidential information includes patient, family member, employee or business information as well as well as (sic) computer access codes and passwords. Whether on or off duty, an employee is obligated to refrain from exposing a patient's medical, personal, financial or emotional condition as well as confidential information relating to the company and it's employees or any other business related matter. An employee working with patient charts must limit chart access to appropriate employees and medical staff. Violation of confidentiality will result in immediate discharge. And employees is (sic) also subject to legal and personal liability for disclosing confidential information." T. at 12.

{¶18} When confronted about the disclosure, appellant admitted to talking to a Bonnie and a Barb about personal issues, but denied speaking to Ms. Bendisu. T. at 13. During her own examination, appellant denied talking to Ms. Bendisu about the physician and his personal problems or the death of a patient's baby. T. at 15.

Appellant denied knowing anything about the physician's personal problems or the baby's death. T. at 15, 17.

{¶19} Clearly the Review Commission's hearing officer chose to believe Ms. Garver's testimony over appellant's. The testimony of both Ms. Garver and appellant was taken under oath via a telephone conference hearing. T. at 4. In support of her arguments, appellant relies on *Taylor v. Board of Review* (1984), 20 Ohio App.3d 297, 299, and its progeny in the First, Second, Eighth, Ninth, Tenth, and Eleventh District Courts of Appeals:

{¶20} "The phone call to the employer was hearsay evidence. This court has previously said that where the sworn testimony of a witness is contradicted only by hearsay evidence, to give credibility to the hearsay statement and to deny credibility to the claimant testifying in person is unreasonable. *Bohannon v. Bd. of Review* (Mar. 5, 1981), Cuyahoga App. No. 42773, unreported. See, also, *Cunningham v. Jerry Spears Co.* (1963), 119 Ohio App. 169 [26 O.O.2d 401]. Thus, any weight to be given to the employer's hearsay is clearly outweighed by appellant's sworn testimony at the hearing before the referee."

{¶21} A careful review of the cases cited by appellant reveals that the facts addressed by the *Taylor* court and its progeny are significantly different than the facts sub judice. In *Taylor,* there was no sworn testimony about an investigation, but rather a report by an unsworn witness of a telephone call. In *Mason v. Administrator, Ohio Bureau of Employment Services* (April 7, 2000), Hamilton App. No. C-990573, the issue involved a summary of testimony from a prior grievance hearing, uncertified and not authenticated. In *The Western and Southern Life Insurance Co. v. Ohio Bureau of*

Employment Services (April 19, 1989), Hamilton App. No. C-880084, again the issue concerned a proffer of unauthenticated and unsworn but certified documents from a file from the Ohio Civil Rights Commission. In *Issac v. Administrator, Ohio Bureau of Employment Services,* (March 21, 1985), Cuyahoga App. No. 48850, the only testimony offered was the claimant's denial of the employer's reason for termination. In *Green v. Invacare Corp.* (May 26, 1993), Lorain App. No. 92CA175478, the testimony from the employer was what the investigation revealed as in the matter sub judice. However, even if the claimant's testimony was accepted as true, the real issue was not that someone had given him permission to take company property, but rather whether the person who had given the permission had the authority to do so and whether the claimant knew that. In *Vickers v. Ohio State Bureau of Employment Services* (April 22, 1999), Franklin App. No. 98AP-656, the issue was what was included in the claimant's "return to work" letter. The employer's witness testified she had no personal knowledge of what was in the return to work plan given orally to the claimant. In *Dean v. Board of Review, Ohio Bureau of Employment Services* (June 30, 1987), Lake App. No. 11-233, the only witness for the employer acknowledged he had no knowledge of the reason for the claimant's termination, although he believed the claimant was unqualified for the job. In *Liston's Painting, Inc. v. Parzych* (Apr. 22, 1999), Franklin App. No. 98AP1002, the affirmance concerned the trial court's deference to the hearing officer's belief of the claimant's testimony. In *Shirley v. Administrator, Ohio Bureau of Employment Services* (October 11, 1978), Hamilton App. No. C-77431, the issue concerned the acceptance of an employer's witness that someone had told him that the claimant said the company was going out of business. In *Patton v. Grandview Hospital* (March 27, 1985),

Montgomery App. No. 8944, the decision to find no just cause was not based on any hearsay testimony, but from all the other testimony in the record. In *Johnson v. Board of Review* (March 28, 1985), Cuyahoga App. No. 48918, the decision was based upon the referee's inadequate explanation to the claimant as to her rights.

{¶22} The general thread that runs through all the cited cases is that when hearsay is presented that appears not to be reliable, credible or corroborated by other evidence, it should be rejected in determining "just cause."

{¶23} Appellee argues on the issue of credibility, the referee who was the trier of fact is best to determine the believability of the witnesses as Ms. Garver freely admitted under oath this was a "she said-she said" situation. Ms. Garver chose to believe Ms. Bendisu over appellant's denial. *Simon,* supra.

{¶24} Given the facts in this case, we cannot find the decision to be against the weight of the evidence. In her own testimony, appellant admitted to talking with others about issues at work. In Ms. Garver's opinion, even this minimal contact would be a HIPAA violation. T. at 13.

{¶25} We conclude that the investigation by Ms. Garver about the incident, coupled with appellant's own admission of limited discussions with others, created the necessary corroborative testimony to give an indicia of credibility to the hearsay statement.

{¶26} The sole assignment of error is denied.

{¶27} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ John W. Wise_____

JUDGES

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IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

HEIDI WILLIAMSON	:	
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-vs-	:	JUDGMENT ENTRY
	:	
COMPLETE HEALTHCARE FOR WOMEN, INC., ET AL.	:	
	:	
	:	
Defendants-Appellees	:	CASE NO. 10CA0044

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed. Costs to appellant.

_s/ Sheila G. Farmer_____

_s/ William B. Hoffman_____

_s/ John W. Wise_____

JUDGES