

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DWIGHT E. TILTON,
Plaintiff - Appellant

-VS-

OHIO DEPARTMENT OF JOB & FAMILY
SERVICES, ET AL.,

Defendants - Appellees

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. John W. Wise, J.

Hon. Craig R. Baldwin, J.

Case No. 14-COA-033

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland County
Court of Common Pleas, Case No.
13-CIV-140

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

April 27, 2015

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee Director
Ohio Department of Job and Family
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For Appellee Ohio CVS Stores

OHIO CVS STORES, LLC

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Baldwin, J.

{¶1} Plaintiff-appellant Dwight Tilton appeals from the September 16, 2014 Judgment Entry of the Ashland County Court of Common Pleas affirming the decision of the Unemployment Compensation Review Commission that plaintiff-appellant was discharged for just cause.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Dwight Tilton was employed as a shift supervisor with appellee CVS. He began working with appellee CVS in 1998. On October 31, 2012, appellant was assigned to work from 11:00 a.m. to 7:00 p.m. According to Linda Bard, the store manager, appellant left work on the day in question at 5:40 p.m. Bard testified that appellant had commented to another employee, Tim Groscost, that he “was not going to bust his butt for anyone” and that she went over to plaintiff-appellant and said “if there’s any day you could bust your butt please make it today because we’re already behind.” Transcript at 5. Bard testified that appellant then indicated that he quit. She did not respond to him and did not ask him for his keys.

{¶3} The next day, appellant showed up at CVS to work at his scheduled time. When Bard questioned appellant about why he was there because he had quit, he indicated that he was there to work. Appellant asked if they could go to the office to discuss the matter, but Bard declined to do so.

{¶4} According to Bard, it was corporate policy to have two people in the store at all times. She indicated that on October 31, 2012, two people who were scheduled to

work did not show up and another one was on vacation. One of the scheduled employee's husbands had died that day. Bard testified that when appellant reported to work on October 31, 2012, Tim Groscost relayed instructions to him from Bard that she wanted him to stock the inventory that the employee on personal leave was responsible for.

{¶5} Appellant testified that at the time of the incident, he had been working eight straight days because of Hurricane Sandy and told Tim Groscost that he was tired and could only do so much. According to appellant, Bard came over to him and "said I can bust my butt at other stores but why can't I do it uh there..." Transcript at 15. When asked how he responded, appellant testified that he was not going to get into an argument with her and said "enough's enough" and then clocked out. Transcript at 16. Appellant denied ever stating that he quit. He testified that he came in for work the next day but was told to leave because he had quit.

{¶6} Appellant filed a claim for unemployment benefits with appellee Ohio Department of Job and Family Services (ODJFS). On December 3, 2012, ODJFS issued an initial Determination of Unemployment Compensation Benefits that denied appellant's claim on the basis that appellant was discharged with just cause under R.C. 4141.29(D)(2)(a). Appellant then appealed. On January 7, 2013, ODJFS issued a Director's Redetermination that affirmed that initial determination. Appellant then appealed and his file was transferred to the Unemployment Compensation Review Commission.

{¶7} An evidentiary hearing before a Hearing Officer was held on March 18, 2013. The Hearing Officer, in a Decision issued on March 19, 2013, affirmed the

Director's Redetermination. The Hearing Officer found that appellant had been discharged for just cause for walking off the job during the middle of his shift and that his actions "were in willful disregard of his employer's interest." Appellant then filed a Request for Review with the Unemployment Compensation Review Commission.

{¶8} After his Request for Review was disallowed, appellant filed a Notice of Appeal in the Ashland County Court of Common Pleas. The parties filed briefs. Pursuant to a Judgment Entry filed on September 16, 2014, the trial court affirmed the decision of the Unemployment Compensation Review Commission that appellant was discharged for just cause.

{¶9} Appellant now raises the following assignment of error on appeal:

{¶10} THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT EITHER QUIT HIS JOB OR WAS TERMINATED FOR JUST CAUSE WHERE HE LEFT HIS WORK EARLY AFTER FOURTEEN YEARS OF EMPLOYMENT.

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{¶11} Appellant, in his sole assignment of error, argues that the trial court erred in affirming the decision of the Unemployment Compensation Review Commission.

{¶12} The appellate court has a limited standard of review in an unemployment compensation case. An appellate court may reverse a board's decision only if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. *Bonanno v. Ohio Dept. of Job & Family Servs.*, 5th Dist. Tuscarawas No. 2012 AP 02 0011, 2012–Ohio–5167, ¶ 14 citing *Tzangas, Plakas, & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 695, 1995–Ohio–206, 653 N.E.2d 1207, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17–18, 482

N.E.2d 587 (1985). An appellate court may not make factual findings or determine the credibility of the witnesses; rather, it is required to make a determination as to whether the board's decision is supported by the evidence on the record. *Id.* The hearing officer as fact finder is in the best position to judge the credibility of the witnesses. *Bonanno*, at ¶ 14 citing *Shaffer–Goggin v. Unemployment Compensation Review Commission*, 5th Dist. Richland No. 03–CA–2, 2003–Ohio–6907, ¶ 26. We are required to focus on the decision of the commission, rather than that of the trial court. *Hartless v. Ohio Dept. of Job & Family Servs.*, 4th Dist. Pickaway No. 10CA27, 2011–Ohio–1374, ¶ 14 quoting *Klemencic v. Robinson Memorial Hosp.*, 9th Dist. Summit No. 25293, 2010–Ohio–5108, ¶ 7.

{¶13} A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission. *Bonanno*, at ¶ 15. Where the commission might reasonably decide either way, the courts have no authority to upset the Unemployment Compensation Review Commission's decision. *Id.* citing *Irvine, supra* at 17–18. “ ‘Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].’ ” *Bonanno*, at ¶ 15 citing *Ro–Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008–Ohio–301, 891 N.E.2d 348, ¶ 7 (9th Dist.), quoting *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988).

{¶14} In order to qualify for unemployment compensation benefits, a claimant must satisfy the criteria set forth in R.C. 4141.29(D)(2)(a). The section provides:

{¶15} “(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

{¶16} (2) For the duration of the individual's unemployment if the director finds that: ... (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work, * * *.”

{¶17} An employee discharged from employment for just cause is ineligible to receive unemployment benefits. The Ohio Supreme Court has defined “just cause” as that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Irvine, supra* at 17; *Tzangas, supra* at 697. The determination of whether just cause exists for an employee's dismissal under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal. *Tzangas, supra* at paragraph two of the syllabus. Not every fault or mistake, however, is grounds for termination. *Stark Area Regional Transit Auth. v. Ohio Dept. of Job & Family Servs.*, 187 Ohio App.3d 413, 2010–Ohio–2142, 932 N.E.2d 396, ¶ 21 (5th Dist.). “The determination of whether just cause exists depends upon the unique factual considerations of [each] particular case.” *Irvine, supra* at 17. In determining whether just cause exists, the Unemployment Compensation Review Commission must consider whether granting benefits would serve the underlying purpose of employment compensation: providing financial assistance to individuals who become unemployed through no fault of their own. *Hartless, supra* at ¶ 15 citing *Tzangas, supra* at 697, 653 N.E.2d 1207.

{¶18} As an initial matter, we note that the Hearing Officer found that appellant was discharged for just cause in connection with his work and did not find that appellant had quit. At the hearing before the Hearing Officer, testimony was adduced that appellant left his job before his shift was completed after having a verbal altercation with

Linda Bard, the manager. Appellant did not have permission to do so and indicated that he left because he was tired and had had enough. We concur that appellant's actions "were in willful disregard of his employer's interest." As is stated above, appellee CVS already was short staffed on the day in question.

{¶19} Based on the foregoing, we find that the trial court did not err in affirming the decision of the Unemployment Compensation Review Commission. The decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

{¶20} Appellant's sole assignment of error is, therefore, overruled.

{¶21} Accordingly, the judgment of the Ashland County Court of Common Pleas is affirmed.

By: Baldwin, J.

Gwin, P.J. and

Wise, J. concur.