

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Joanne Britenriker

Court of Appeals No. F-10-024

Appellant

Trial Court No. 10CV000092

v.

James Rivello, et al.

DECISION AND JUDGMENT

Appellees

Decided: July 15, 2011

* * * * *

Thomas S. Moliterno, for appellant.

David P. Rupp, Jr. and Tennille Becker Newton, for appellee
James D. Rivello.

Mike DeWine, Attorney General of Ohio, and Eric A. Baum,
Managing Attorney, for appellee Director, Ohio Department of
Job and Family Services.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the decision of the Fulton County Court of Common
Pleas, affirming disallowance of unemployment compensation benefits on an

administrative determination that appellant had been discharged for just cause. For the reasons that follow, we affirm.

{¶ 2} Appellant, Joanne Britenriker, worked as a salary manager at an Archbold McDonald's restaurant owned by appellee James D. Rivello. Appellant was a salaried employee who, on Sunday, November 22, 2009, had worked for appellee for approximately two years.

{¶ 3} There is some dispute as to the events of November 22, but, according to appellant, she was scheduled to work until 5:00 p.m. Appellant testified that she had been working in the office on a deposit when, shortly after 4:00 p.m., a shift manager advised her that business was light and suggested appellant go home early. According to appellant, the shift manager volunteered to "clock me out" at 5:00 p.m. and say, if the owner came by, that appellant had gone to another store. Appellant testified she left at between 4:20 and 4:25 p.m.

{¶ 4} The shift manager confirmed that she suggested appellant leave early, but denied volunteering to clock appellant out or cover for her. According to the shift manager, appellant directed her to clock appellant out at 5:00 p.m. and if the owner, "comes through tell him I went to Wauseon or Napoleon or make something up."

{¶ 5} When the night shift manager arrived at 4:45 p.m., appellant was gone and the day shift manager wanted to clock appellant out at 5:00 p.m. The night shift manager reported the incident to appellee Rivello, who investigated and asked that appellant meet with him.

{¶ 6} At the meeting, appellant denied that anything had happened and accused the shift manager of fabricating the story. Appellee Rivello testified: "So what I did, I contacted [the day shift manager], while [appellant was] sitting there, I got [the shift manager] on the phone, put it on speaker phone * * * and she explained what it has [sic]. [appellant] never disputed anything at that particular time * * *." After this meeting, appellee Rivello terminated appellant's employment.

{¶ 7} When appellant applied for unemployment compensation benefits with appellee Director, Ohio Department of Job and Family Services, benefits were denied on the ground that appellant's employment had been terminated for just cause. Appellant's request for a redetermination resulted in an affirmance of the initial finding. On further appeal, appellee Director transferred the matter to the Unemployment Compensation Review Commission which, following a hearing, affirmed the original finding and the redetermination. Appellant then initiated an R.C. 4141.282 appeal to the trial court which, on consideration, affirmed the prior administrative determinations.

{¶ 8} From this judgment, appellant brings this appeal. Appellant sets forth the following two assignments of error:

{¶ 9} "First Assignment of Error:

{¶ 10} "The review commission finding that the claimant asked a subordinate to falsify a time record by logging her out at five o'clock is against the manifest weight of the evidence.

{¶ 11} "Second Assignment of Error:

{¶ 12} "The review commission erred in applying the law when it found that claimant was disqualified from receiving unemployment compensation because she had been discharged for just cause because it did not properly applied [sic] the law set out by the Sixth District Court of Appeals in *LaChapelle v. Director of Jobs and Family Service*, [sic] 2009-Ohio-3399, 184 Ohio App.3d 168 (Ohio App. 2009)[.]"

{¶ 13} Unemployment compensation in Ohio is intended to provide financial assistance to a person who has worked, is able and willing to work, but is temporarily without employment due to no fault or agreement of his or her own. *Tzangas, Plakas & Mannos v. Admr.* (1995), 73 Ohio St.3d 694, 697. An individual, who appellee Director determines has quit work without just cause, or is discharged from employment for just cause, is ineligible to receive benefits. R.C. 4141.29(D)(2)(a). "Just cause is conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge." *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10.

{¶ 14} "When seeking unemployment benefits, an applicant submits information to the [Ohio Department of Job and Family Services ("ODJFS")] in support of his or her claim. Findings of fact and conclusions of law as to whether a discharged employee is entitled to unemployment compensation are initially made by the designee of the Director, ODJFS, R.C. 4141.28(B), subject to an appeal to the Unemployment

Compensation Review Commission ("UCRC"), R.C. 4141.281(C)(1), for a hearing de novo. R.C. 4141.281(C)(3).

{¶ 15} "A party who is dissatisfied with the final determination of the UCRC may appeal that decision to the appropriate court of common pleas, which shall hear the appeal on the record certified by the commission. R.C. 4141.282(H). 'If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence * * *' it may reverse the determination. *Id.* On review of purely factual questions, the common pleas court is limited to determining whether the UCRC hearing officer's determination is supported by the evidence in the record. *Tzangas supra* at 696. Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be affirmed. *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus." *Carter* at ¶ 12.

{¶ 16} The material factual question in this matter is whether appellant directed the shift manager to "clock her out" at 5:00 p.m. and attempted to conceal this directive from appellee Rivello. The shift manager testified that this was the case and the report of the night shift manager tended to confirm the circumstances surrounding these allegations. This is competent, credible evidence by which the designee of appellee Director could have found such to be true. Accordingly, appellant's first assignment of error is not well-taken.

{¶ 17} In her second assignment of error, appellant insists that the UCRC misapplied the legal directives of this court as articulated in *LaChapelle v. Director of Jobs and Family Services*, 184 Ohio App.3d 168, 2009-Ohio-3399.

{¶ 18} *LaChapelle*, at ¶ 18, posits that whether an employee technically violated a company rule is not necessarily determinative as to whether there was just cause for discharge in an unemployment compensation claim. Rather, the critical issue is whether the employee, by his or her actions, "* * * demonstrates an unreasonable disregard for her employer's best interest * * *." *Id.*, citing *Kiikka v. Administrator, Ohio Bureau of Employment Services* (1985), 21 Ohio App.3d 168, paragraph two of the syllabus. When such disregard is demonstrated, there is just cause for discharge. *Id.*

{¶ 19} Appellant argues that, because she was a salaried employee, she caused no harm to her employer by leaving early. The work rule she violated relates only to the recording of time and is, she maintains, only a technicality of little significance. Thus, she insists, in properly applying *LaChapelle* such a de minimus violation should not be deemed just cause for dismissal for unemployment compensation purposes.

{¶ 20} While it would be difficult to conclude that a single time clock violation constituted just cause for discharge, appellee Rivello has a store policy against employees falsifying records. Appellant was aware of this policy and was also aware that the consequences of violating this policy included the possibility of discharge from employment. According to appellee Rivello, he discharged appellant, not for leaving early, but for instructing a subordinate to falsify time records and for dishonesty in

attempting to conceal this act. In our view, appellant's conduct constitutes that which would lead a person of ordinary intelligence to believe that her discharge was justified. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 21} On consideration whereof, the judgment of the Fulton County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.