

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

DS Express Carriers, Inc.

Court of Appeals No. E-12-034

Appellant

Trial Court No. 2011-CV-0790

v.

Chester L. Dixie, et al.

DECISION AND JUDGMENT

Appellee

Decided: November 1, 2013

* * * * *

Mark S. Shearer, for appellant.

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

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas which affirmed the decision of the Ohio Unemployment Compensation Review Commission granting unemployment compensation benefits to Chester L. Dixie.

Appellant, DS Express Carriers, Inc. (“DSX”), challenges that judgment through the following assignment of error:

The trial court erred in sustaining the Hearing Officer and the Review Commission determinations granting benefits to the appellee as the appellant discharged the appellee with just cause.

{¶ 2} DSX is a long-haul trucking company based in Huron, Ohio. On September 30, 2010, Dixie began working for DSX as a company truck driver. DSX terminated Dixie’s employment on December 29, 2010, for multiple late deliveries, inappropriate time off and improper truck parking. Dixie filed an application for unemployment compensation benefits which was granted by appellee, Ohio Department of Job and Family Services (“ODJFS”). Following appellant’s request for a redetermination, the director of the ODJFS affirmed the award of benefits and the finding that Dixie was discharged without just cause. Appellant then appealed that determination to the Ohio Unemployment Compensation Review Commission (“UCRC”). That appeal proceeded to a telephonic hearing before a UCRC hearing officer, at which Dixie and Daniela Stankic, the president of DSX, testified. In his decision of July 8, 2011, the hearing officer determined that Dixie had been discharged without just cause and affirmed the director’s redetermination.

{¶ 3} Appellant then filed an appeal with the Erie County Court of Common Pleas. In a decision of May 23, 2012, the lower court affirmed the decision of the UCRC. The court concluded that the hearing officer’s decision was supported by competent, credible

evidence, and was not unlawful, unreasonable, or against the manifest weight of the evidence. That judgment is now before this court for review.

{¶ 4} A party dissatisfied with the final determination of the UCRC may appeal to a 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 of the commission was unlawful, unreasonable, or against the manifest weight of the evidence” it shall reverse the determination. *Id.* Whether just cause for termination of employment exists depends on the unique facts of the case. The determination of purely factual questions is primarily within the province of the hearing officer and the review commission. *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). On review of purely factual questions, the common pleas court is limited to determining whether the hearing officer’s determination is supported by evidence in the record. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). 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.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 5} The appellate court’s standard of review for just-cause determinations by the UCRC is identical to that of the common pleas court. *Tzangas* at 696. The appeals court may reverse only if the commission’s conclusion was unlawful, unreasonable, or against the manifest weight of the evidence. *Id.* We must focus on the commission’s decision rather than the common pleas court’s and keep in mind that the Unemployment

Compensation Act is to be liberally construed in favor of beneficiaries. R.C. 4141.46; *McNeil Chevrolet, Inc. v. Unemp. Comp. Rev. Bd.*, 187 Ohio App.3d 584, 2010-Ohio-2376, 932 N.E.2d 986, ¶ 17 (6th Dist.).

{¶ 6} An employee is ineligible for unemployment compensation benefits if he was terminated for just cause. 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 employees’ discharge.” *Carter v. Univ. of Toledo*, 6th Dist. Lucas No. L-07-1260, 2008-Ohio-1958, ¶ 10. Whether the employee technically violated some company rule is not the critical issue for determining whether there was just cause in the context of unemployment compensation. *Kiikka v. Admr., Bur. of Emp. Servs.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist.1985). Rather, the hearing officer must review each of the reasons given by the employer for the termination and determine if the employer was reasonable in finding fault on behalf of the employee. *Tzangas, supra*, at 698.

{¶ 7} DSX cited three reasons for its termination of Dixie’s employment: multiple late deliveries; inappropriate time off; and improper truck parking.

{¶ 8} Regarding the allegation of late deliveries, Daniela Stankic testified that Dixie was three hours late for a delivery to Atlanta, Georgia, on December 3, 2010, was four and one-half hours late for a delivery to Easton, Pennsylvania, on December 15, 2010, and was over three hours late for a delivery to West Chester, Ohio, on December 27, 2010. She stated that because drivers are usually dispatched a couple of

days before the deliveries are due, bad weather and traffic issues should not prevent them from making their deliveries in a timely manner and that there is no valid excuse for a driver making a late delivery. She further testified that after each of the late deliveries, Dixie was given a copy of an administrative write-up documenting his violation of a company rule. Those write-ups, however, indicate that while they were signed by company officials, they were not signed by Dixie, despite a line provided for his signature.

{¶ 9} Dixie testified that the Atlanta delivery was late because he had to stop in Kentucky for brake repairs, that the Pennsylvania delivery was late because he had been given bad directions, and that the West Chester delivery was late because a portion of I-75 was closed due to an accident caused by bad weather conditions. In addition, Dixie testified that he was not provided copies of these write-ups until after his employment was terminated. The hearing officer found that Dixie's explanations for the late deliveries were credible and that the late deliveries did not amount to sufficient fault on Dixie's part to justify a finding that DSX had just cause to terminate his employment.

The "inappropriate time off" allegation addressed an incident that occurred on December 28, 2010. Dixie testified that on that day, he had picked up a load that was to be taken to Florida. Because there was a problem with his brake lines and the truck needed maintenance, he was told to bring the truck back to the yard. The dispatcher then asked him when he wanted to go back out. He responded that he would like to go back out the next morning, December 29. He was not told that he was required to take the load

to Florida. He then completed his logs and turned in his truck. Believing that he would not be needed until the next day, Dixie went out to dinner with his family and consumed two beers. At approximately 5:45 that evening, the operations manager called and asked him to take a load to Maryland. Because he had consumed alcohol, Dixie stated that he was not available to take the load. DSX asserted that Dixie's refusal to take the loads to both Florida and Maryland violated the company policy requiring advanced notice for time off. The hearing officer found that Dixie had reasonably concluded that he would not be dispatched until December 29 and that his consumption of alcohol on a day when he did not believe he would be dispatched did not represent fault or misconduct.

{¶ 10} Finally, as to the allegation of improper truck parking, Stankic testified that Dixie had taken his truck home in violation of company policy on at least two or three occasions. In contrast, Dixie testified that shortly after he began working for DSX he took his truck home, as had been permitted by other trucking companies for whom he had worked. Stankic then told him that he was not permitted to take his truck home and he did not do so again. The hearing officer found Dixie's explanation credible.

{¶ 11} Upon review of the record, the hearing officer concluded that the evidence did not support a finding that Dixie was guilty of sufficient fault or misconduct to be discharged for just cause.

{¶ 12} DSX contends that the UCRC's determination, and the trial court's affirmance of it, was against the manifest weight of the evidence and that Dixie's excuses were not credible. Issues regarding the credibility of witnesses, however, are to be

resolved by the UCRC and its officers. *McCarthy v. Connectronics Corp.*, 183 Ohio App.3d 248, 2009-Ohio-3392, 916 N.E.2d 871, ¶ 10 (6th Dist.). “[T]he fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision.” *Id.*, quoting *Tzangas* at 697. The UCRC must not be reversed on the weight of the evidence if reasonable minds could weigh the evidence and come to contrary conclusions. *Angelkovski v. Buckeye Potato Chips Co., Inc.*, 11 Ohio App.3d 159, 161, 463 N.E.2d 1280 (10th Dist.1983), *overruled on other grounds*, *Galluzzo v. Ohio Bur. of Emp. Servs.*, 2d Dist. Champaign No. 95-CA-6, 1995 WL 704193 (Nov. 29, 1995).

{¶ 13} Because we find competent, credible evidence in the record to support the hearing officer’s determination, the lower court did not err in affirming the decision of the UCRC that Dixie was not terminated from his employment for just cause. The sole assignment of error is not well-taken.

{¶ 14} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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:
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