

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

Michael P. Napolski, Sr.

Court of Appeals No. L-13-1088

Appellant

Trial Court No. CI0201205483

v.

Preferred Properties, Inc., et al.

DECISION AND JUDGMENT

Appellees

Decided: December 6, 2013

* * * * *

Francis J. Landry, for appellant.

Meghan Anderson Roth, for appellee Preferred Properties, Inc.

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

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Michael Napolski, Sr., appeals a judgment from the Lucas
County Court of Common Pleas in an administrative appeal denying him unemployment

benefits. Because the determination that appellant was terminated with just cause is supported by the evidence in the record, the judgment is affirmed.

{¶ 2} Appellee, Preferred Properties, Inc., is a non-profit corporation that owns and operates rental housing for persons with disabilities in Toledo, Ohio. Appellant was employed by appellee as a maintenance specialist from July 2001 until May 2011. His duties included using the company truck to execute work orders at various properties. On April 22, 2011, a former supervisor observed appellant running personal errands and misusing company property during appellant's shift. After being issued a warning on the following Monday, appellant was terminated from his employment for stealing company time and misusing resources in relation to the April 22 incident.

{¶ 3} Appellant applied for unemployment benefits shortly after being terminated and the Ohio Department of Job and Family Services ("ODJFS"), allowed the application, finding appellant was terminated without just cause. Appellee appealed. Upon redetermination, the director affirmed the action of ODJFS and appellee appealed, this time to the Ohio Unemployment Compensation Review Commission ("UCRC"). Telephone hearings conducted by the UCRC took place May 16 and June 7, 2012, to determine the existence of just cause. In the decision mailed August 23, 2012, the hearing officer reversed the ODJFS determination, finding that appellant was terminated with just cause and that unemployment benefits should be denied. Appellant subsequently appealed to the Lucas County Court of Common Pleas, and on April 15,

2013, the trial court affirmed the decision of the UCRC. Appellant then filed this timely appeal asserting one assignment of error:

The Unemployment Compensation Review Commission and the Trial Court committed reversible error in that the Unemployment Compensation Review Commission's determination was unlawful, unreasonable, and against the manifest weight of the evidence.

{¶ 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 was unlawful, unreasonable, or against the manifest weight of the evidence * * *" it may reverse the determination. *Id.*

{¶ 5} 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 v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985), quoting *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). 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 UCRC. *Id.* 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.

{¶ 6} 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.).

{¶ 7} In this case, the record reflects the determination that appellant was terminated from employment by appellee with just cause. The hearing officer found that appellant was aware of the employer's policies and work rules which stipulate that an employee can be discharged for misusing company property and for theft of company time. The hearing officer also determined that the supervisor, who was following appellant on the day in question, was a credible witness and that appellant was, in fact, misusing company time by going to a restaurant for breakfast, delivering lunch to his wife, and sitting in the company van in a park, all beyond the time allotted for lunch breaks. The hearing officer concluded appellant's prior violation of company policy leading to a two-week suspension in 2007 for similar infractions further justified a

finding of just cause. This evidence, taken as a whole, offered a sufficient and reasonable basis for the UCRC to deny appellant benefits.

{¶ 8} Appellant argues that appellee acted unreasonably by giving appellant a warning about his behavior, only to terminate him two weeks later for the same behavior. However, it is clear that appellant himself is at fault for his own actions based upon both the UCRC's finding of fact and a subsequent review of the record before us. Specifically, appellant violated company rules by using the van in an unauthorized manner on company time, even after he was reprimanded several years before for similar behavior. These facts, when taken together, validate a finding of just cause.

{¶ 9} Finally, appellant makes a fairness argument, stating that “[t]he court must consider the fairness of any policy pursuant to which the company discharged the employee.” *Hefflinger v. Whitacre Trucking, Inc.*, 66 Ohio Misc.2d 85, 88, 643 N.E.2d 192 (C.P.1994). The factors used by other courts in such an analysis are (1) whether the employee received the policy; (2) whether the policy could be understood by the average person; and (3) whether there is a rational basis for the policy. *Shaffer v. Am. Sickle Cell Anemia Assn.*, 8th Dist. Cuyahoga No. 50127, 1986 WL 6711, *2 (June 12, 1986).

{¶ 10} The Supreme Court of Ohio in *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 29, called into question this analysis stating that “we have never adopted such a [fairness] standard.” The court went on to state, regarding the facts before them: “even if we were to adopt a requirement that any company policy must be fair and fairly applied before a termination

for failure to follow that policy is deemed a just-cause determination,” there was enough “competent, credible evidence to support upholding the review commission’s decision that [the employee’s] termination was for just cause.” *Id.* at ¶ 31.

{¶ 11} Based on this language, any fairness analysis is unnecessary in determining whether an employee was terminated for just cause based upon violation of company policy if there is sufficient evidence, as there is in this case, that such termination was based upon just cause. Appellant’s sole assignment of error is found not well-taken.

{¶ 12} Accordingly, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the 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.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, 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>.