

[Cite as *Walsh v. Cuyahoga Cty. Auditor*, 2005-Ohio-1172.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84584

KATHLEEN A. WALSH	:	
	:	ACCELERATED DOCKET
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
CUYAHOGA COUNTY AUDITOR,	:	
ET AL.	:	
	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT OF DECISION: March 17, 2005

CHARACTER OF PROCEEDING: Civil Appeal from Court of Common Pleas Case No. CV-471575

JUDGMENT: AFFIRMED

DATE OF JOURNALIZATION: _____

APPEARANCES:

For Plaintiff-Appellant: ASHVIN CHANDRA
15600 Madison Avenue
Lakewood, Ohio 44107

For Defendants-Appellees: WILLIAM D. MASON
Cuyahoga County Prosecutor
RENEE A. BACCHUS
Assistant County Prosecutor
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113

(Ohio Dept. of Job and Family
Services)

JIM PETRO
Ohio Attorney General
LAUREL BLUM MAZOROW
Assistant Attorney General
Health and Human Services
Unemployment Compensation Unit
State Office Building, 11th Floor
615 West Superior Avenue
Cleveland, Ohio 44113-1899

COLLEEN CONWAY COONEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Defendant-appellant Kathleen Walsh ("Walsh") appeals the trial court's affirmance of the Ohio Unemployment Compensation Review Commission's ("the Commission") decision denying her unemployment benefits. Finding no merit to this appeal, we affirm.

{¶ 3} Walsh was employed as a secretary for the Cuyahoga County Auditor, Department of Health, from October 2000 through November 2001. She was terminated after she failed to report for work from October 22 through November 1, 2001, the date of her predisciplinary hearing. The Commission determined that, as a result of Walsh's combined absences and failure to notify her employer concerning her absences, she was terminated with just cause and not entitled to unemployment compensation benefits. Walsh appealed to the Cuyahoga County Court of Common Pleas, which affirmed the Commission. Walsh appeals, raising two assignments of error.

{¶ 4} R.C. Chapter 4141 sets forth the statutory framework for entitlement to unemployment compensation. Pursuant to R.C. 4141.282(H), a common pleas court is required to uphold a decision of the Commission unless the decision is found to be unlawful, unreasonable, or against the manifest weight of the evidence. In reviewing the Commission's decision, this court must apply the same standard of review as the lower court. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 1995-Ohio-206, paragraph one of the syllabus. Thus, we must affirm the trial court unless we find that the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. *Id.* "While appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record." *Id.* at 696.

Due Process Hearing

{¶ 5} In her first assignment of error, Walsh contends that she was denied the right to due process because she never received the required pretermination hearing. However, the record reveals that a hearing was scheduled on November 1, 2001, for which she received notice. Walsh's failure to appear at the hearing does not negate the fact that the hearing was held.

{¶ 6} Moreover, Walsh's subjective belief that she was terminated on October 19 was not reasonable under the circumstances. The evidence is undisputed that her employer

contacted her twice following her failure to appear the week of October 22 and that it further mailed her notice of a predisciplinary hearing. At the meeting with her department director on October 19, Walsh claims that Terrence Allen said "the best thing for [her] advantage was for [her] to send in a resignation letter." She claims he asked her to leave and that he would expect a letter. However, Allen's testimony contradicts Walsh's claim that he told her not to return to work. She was upset before he said anything to her, and he told her to go home because she was so upset. He told her to take the weekend and think about whether she wanted the job and that they would discuss the matter on Monday, October 22. He told her co-workers that she was considering resigning. Therefore, there is sufficient evidence supporting the Commission's finding that Walsh was not terminated on October 19. Rather, her termination resulted from her abandonment of her job after the October 19 meeting with Allen.

{¶ 7} The first assignment of error is overruled.

Manifest Weight of the Evidence

{¶ 8} In her second assignment of error, Walsh contends that the Commission's decision is against the manifest weight of the evidence. She claims that the testimony of her co-worker supported her contention that Allen terminated her employment on October 19 without the benefit of a hearing. Again, as stated above, we must accept the Commission's findings when such findings are supported by sufficient evidence in the record.

{¶ 9} Allen testified that he told Walsh to take the weekend to consider whether she wanted the job. Allen had also spoken to Walsh in the preceding two months concerning deficiencies in her job performance. Walsh learned from co-workers that her employer believed she was going to resign. Walsh also received notice of a predisciplinary hearing. However, she never sent a resignation letter nor attended the hearing. Based on her failure to notify her employer of her intention to remain in her job, her failure to report to work from October 22 through November 1, and her failure to appear for the predisciplinary hearing, the employer found that Walsh had abandoned her job. Therefore, the Commission held that she was terminated with just cause. This court cannot say that this finding is against the manifest weight of the evidence.

Judgment affirmed.

It is ordered that appellees recover of appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES D. SWEENEY, J.* CONCURS

PATRICIA ANN BLACKMON, A.J. DISSENTS
(SEE SEPARATE DISSENTING OPINION)

JUDGE
COLLEEN CONWAY COONEY

*Sitting by assignment, Judge James D. Sweeney, Retired, of the Eighth District Court of Appeals.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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D I S S E N T I N G
O P I N I O N

DATE: March 17, 2005

PATRICIA ANN BLACKMON, A.J., DISSENTING:

{¶ 10} I dissent. The issue in this case is whether Walsh was terminated on October 19th or not. Walsh argues she believed she was terminated that day and was not afforded a pretermination hearing. She argues the events that occurred after that day are irrelevant because she believed she was terminated on October 19th.

Her co-worker, April Elsea, testified that immediately following the October 19th meeting with Terrence Allen and Walsh, Allen exited his office and said "Walsh would no longer be with them." He did not say he thought she would resign or expected her to resign. He said she would no longer be with them.

{¶ 11} Instead of debating who is telling the truth, justice would demand that Walsh be given a predetermination hearing. The United States Supreme Court has concluded that classified civil servants under Ohio law must be afforded some minimal form of pretermination hearing.¹ The record does not support that Walsh was afforded such a hearing prior to her effective termination. Although the record reflects that the Department of Health officially sent Walsh notice of a pretermination hearing, it is apparent to me that Walsh's "final review" was effectively a termination hearing without notice. I would reverse and remand this matter.

¹See *Cleveland Bd. of Edn. v. Loudermill* (1985), 470 U.S. 532, 547-548, 105 S.Ct. 1487.

