

[Cite as *Perez v. Cuyahoga Cty. Auditor*, 2005-Ohio-1187.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84804

CONCEPCION PEREZ,	:	ACCELERATED
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
CUYAHOGA COUNTY AUDITOR,	:	
ET AL.,	:	
	:	
Defendants-Appellees	:	

DATE OF ANNOUNCEMENT OF DECISION	:	MARCH 17, 2005
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CHARACTER OF PROCEEDING	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 513120

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellant:	Joseph P. McCafferty, Esq. McCAFFERTY & WILLIAMS Euclid-Ninth Tower 2000 East Ninth Street, Suite 700 Cleveland, Ohio 44115
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For defendant-appellee Cuyahoga County Auditor:	James A. Budzik, Esq. Nicholas J. DeBaltzo, Jr., Esq. JOHNSON & COCALUCA 1700 North Point Tower 1001 Lakeside Avenue Cleveland, Ohio 44114
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For defendant-appellee	Jim Petro, Esq.
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Director, Ohio Department
of Job and Family Services:

Attorney General
BY: Laurel Blum Mazorow, Esq.
Assistant Attorney General
Health and Human Services Section
Unemployment Compensation Unit
State Office Building
615 W. Superior Avenue, 11th Floor
Cleveland, Ohio 44113-1899

MICHAEL J. CORRIGAN, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas and the briefs of counsel. The Cuyahoga County Engineer discharged claimant Concepcion Perez for, among other things, sexually harassing a co-worker. The Unemployment Compensation Review Commission affirmed a ruling denying Perez's application for unemployment benefits. The common pleas court likewise affirmed. The issues on appeal complain that the court's decision is against the manifest weight of the evidence, particularly because the commission's decision relied on the results of Perez's polygraph test - a test which showed that he gave evasive answers and otherwise tried to skew the results of the test (the complainant's polygraph test showed physiological changes indicative of truthfulness).

{¶ 2} After reviewing the evidence, we cannot say the commission's decision is unlawful, unreasonable, or against the manifest weight of the evidence. See R.C. 4141.28(N)(1); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206. While the commission has in the past refused to

find a discharge for just cause based solely on the employee's refusal to take a polygraph test, see *In re Fledderman* (Apr. 7, 1986), Unemployment Comp. Bd. of Review. No. 641244-BR, we question the validity of that finding in light of the supreme court's decision in *Warrensville Heights v. Jennings* (1991), 58 Ohio St.3d 206 (holding that a police department terminates an officer for just cause based on a refusal to take a polygraph test, thus suggesting that polygraph test results are viable factors in discharge).

{¶ 3} In any event, while the results of the polygraph tests certainly weighed into the commission's decision, the commission specifically stated that it considered the coworker's testimony together with the polygraph results. Despite the lack of corroborating evidence and Perez's otherwise blameless employment record, the commission could find the co-worker's testimony believable, particularly in light of Perez's attempts to give evasive answers to the polygraph. While the co-worker did not voice concerns to the other members of the crew immediately after the incident, she did make a formal complaint the following day, and her version of events did not waiver. And it bears noting that Perez's attempts to discredit the co-worker's credibility were based solely on her performance as a worker, with no apparent nexus to the actual complaints made against him. Indeed, Perez admitted that he had run personal errands during work hours, thus greatly damaging his own credibility. Hence, even had there been no

polygraph test, the commission's finding could rest on its resolution of credibility questions in the co-worker's favor.

Judgment affirmed.

It is ordered that appellees recover of appellant their 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 Common Pleas Court 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.

MICHAEL J. CORRIGAN
JUDGE

PATRICIA ANN BLACKMON, A.J., and

ANN DYKE, J., CONCUR.

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).