

[Cite as *Archacki v. Dir., Ohio Dept. of Job & Family Servs.*, 2015-Ohio-1849.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102258

ADRIENNE J. ARCHACKI

PLAINTIFF-APPELLANT

vs.

**DIRECTOR, OHIO DEPARTMENT OF
JOB & FAMILY SERVICES, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-814967

BEFORE: Laster Mays, J., E.A. Gallagher, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: May 14, 2015

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ANITA LASTER MAYS, J.:

{¶1} Appellant Adrienne Archacki (“Archacki”) appeals from the trial court’s order that affirmed a decision by the Unemployment Compensation Review Commission (“the Commission”) to uphold the Ohio Department of Job & Family Services’ (“the Agency”) denial of Archacki’s application for unemployment benefits.

{¶2} Archacki presents one assignment of error. She argues that the Commission’s determination that she quit her job without just cause was unlawful, unreasonable, and against the manifest weight of the evidence; therefore, the trial court wrongly affirmed that determination.

{¶3} Upon a review of the record, this court disagrees. Consequently, Archacki’s assignment of error is overruled. The trial court’s order is affirmed.

{¶4} Shibley Management, Inc. (“Shibley”), a management firm for restaurants and realties, hired Archacki on July 30, 2012. Shibley’s President, Dixie Singer (“Singer”), testified at the Commission hearing that Archacki took the position of controller. In this position, Archacki was responsible for “all financial and administrative” work for Shibley, including payroll, taxes, financial statements, and accounts payable.

{¶5} In early 2013, Archacki began experiencing some medical issues. She informed Singer that she might need to “take time off” because “she was ill.” Singer informed Archacki that she was expected to “keep up with the work,” so she should “tell

[Singer] what she need[ed]" and Singer "would be happy to get [Archacki] support." Archacki did not indicate that she required any help. Thereafter, Archacki used twice as much "sick" and "personal" leave as she ordinarily was permitted.

{¶6} In April 2013, Singer attempted to use her company credit card, but it was declined. She discovered that the balance on the card had not been paid. By the end of that month, Singer further discovered that "[w]e were on the verge of losing our liquor license, we were being charged tens of thousands of dollars in late fees, [and] employee payroll checks for the first time in my 26 years [with the company] were bouncing," as were "all different [checks] in our restaurants."

{¶7} These problems came to light between Friday, April 23, 2013, at noon, after Archacki "left because she * * * wasn't feeling well" and Monday morning, April 26, 2013. During that weekend, Singer had requested Kristen McKee ("McKee"), Shibley's former controller, to inspect the company's financial state. McKee testified at the Commission hearing that she "pulled the payrolls and found that there were payroll checks that had not, they were returned for nonpayment * * * . We also had calls from * * * check cashing places." McKee made any payments that "needed to be made immediately."

{¶8} When Archacki arrived at work on the morning of April 29, 2013, Singer informed her that, "because she was unable to complete the work that she needed to do," she could either resign from her employment or be terminated. Singer offered "a month's severance" pay, but Archacki simply signed a letter of resignation.

{¶9} After Archacki's departure from Shibley, McKee returned to her former position. McKee testified that she found in Archacki's desk "multiple certified letters from the Ohio Department of Taxation that were unopened." These letters apparently pertained to unpaid commercial activity taxes.

{¶10} Archacki applied for unemployment benefits, and the Agency initially allowed her application. Shibley appealed, but the Agency affirmed the allowance. Shibley then appealed to the Commission. The matter proceeded to a hearing before a Hearing Officer. After considering the evidence presented, the Officer reversed the allowance and determined that Archacki had left her employment without just cause. The Commission denied Archacki's request for further review.

{¶11} Archacki appealed the determination to the common pleas court. Upon reviewing the administrative record, the trial court affirmed. Archacki now appeals to this court, and presents the following assignment of error.

I. The trial court erred in its decision that affirmed the Appellee Agency's determination that Appellant Adrienne J. Archacki quit her employment without just cause.

{¶12} In her assignment of error, Archacki argues that, because Shibley never disciplined her for poor work performance and she missed work only due to illness, and because Shibley did not offer her a real choice but to leave her employment, the Officer's determination that she left her employment without just cause is unsupported in the record. She asserts on this basis that the trial court's decision to affirm the determination is improper. This court does not find Archacki's argument persuasive.

{¶13} A reviewing court may reverse the commission’s decision only if it is “unlawful, unreasonable, or against the manifest weight of the evidence.” R.C. 4141.282(H); *see also Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). That is, all reviewing courts, from common pleas courts to the Supreme Court of Ohio, are charged with making the foregoing determination. *Alexander v. Lowe’s Home Ctrs., Inc.*, 8th Dist. Cuyahoga No. 95027, 2011-Ohio-113, ¶ 22, citing *Williamson v. Complete Healthcare for Women, Inc.*, 5th Dist. Licking No. 10CA0044, 2010-Ohio-3693.

{¶14} Thus, appellate courts have the duty to determine whether the Commission’s decision is supported by the evidence in the record. *Irvine v. Unemployment Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985). Nevertheless, the appellate court cannot either make factual findings or determine the credibility of witnesses. Every reasonable presumption should be made in favor of the Commission’s decision and findings of fact. *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988).

{¶15} R.C. 4141.29 establishes the eligibility requirements for unemployment benefits. A claimant is ineligible if she leaves her employment without “just cause.” R.C. 4141.29(D)(2)(a). The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision, including the existence of just cause for quitting work. *Shannon v. Bur. of Unemp. Comp.*, 155 Ohio St.53, 97 N.E.2d 425 (1951).

{¶16} The term “just cause” is not clearly defined, but, traditionally, “just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12, 335 N.E.2d 751 (10th Dist.1975). The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, “the act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment *through no fault * * * of [her] own.*” *Irvine*, citing *Salzi v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980). (Emphasis added.) “Just cause” for quitting employment, therefore, by implication of the statute and by stare decisis, requires a lack of fault on the part of the employee. *Ohio Turnpike Comm. v. Saunders*, 8th Dist. Cuyahoga No. 61059, 1992 Ohio App. LEXIS 5708 (Nov. 12, 1992).

{¶17} Because a claimant who walks off the job as the result of a confrontation with her supervisor over her work performance does not act in an ordinarily intelligent manner with respect to retaining her employment, she quits work without just cause; she is thus disqualified from receiving unemployment compensation benefits under R.C. 4141.29(D)(2)(a). *Tyler v. Ohio Bur. of Emp. Servs.*, 48 Ohio App.3d 246, 549 N.E.2d 535 (4th Dist.1988). The record in this case demonstrates that Archacki’s work performance suffered badly from her absenteeism, that she did not seek help even though her employer offered it, and that her actions caused harm to her company. The record

further demonstrates that Archacki's supervisor confronted her over her inability to perform the required work, and, when offered the choice to either resign from her job or be terminated, Archacki chose to resign. *Upton v. Rapid Mailing Servs.*, 9th Dist. Summit No. 21714, 2004-Ohio-966; *Roach v. Admr., O.B.E.S.*, 8th Dist. Cuyahoga No. 76661, 2000 Ohio App. LEXIS 3283 (July 20, 2000). Under these circumstances, the Commission's determination that Archacki left her employment without just cause is lawful, reasonable, and in accord with the manifest weight of the evidence.

{¶18} The record in this case supports the Commission's decision; therefore, the trial court committed no error in affirming that decision. Archacki's assignment of error is overruled.

{¶19} The trial court's order is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR