

[Cite as *Cute Little Cake Shop v. State of Ohio Unemp.*, 2015-Ohio-527.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101691

CUTE LITTLE CAKE SHOP

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO UNEMPLOYMENT, ETC., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-817588

BEFORE: E.T. Gallagher, J., Jones, P.J., and Keough, J.

RELEASED AND JOURNALIZED: February 12, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Employer-appellant, The Cute Little Cake Shop (“the Cake Shop”), appeals from the judgement of the trial court affirming the decision of the Unemployment Compensation Review Commission (“the Commission”), allowing claimant-appellee Desiree Caldwell’s (“Caldwell”) claim for unemployment benefits on the basis that the Cake Shop discharged her without just cause. Finding no merit to the appeal, we affirm.

{¶2} Caldwell began working for the Cake Shop as a decorator on December 27, 2011, and worked there until she was terminated on the morning of June 11, 2013. Caldwell filed a claim for unemployment benefits with appellee, Ohio Department of Job and Family Services (“ODJFS”). ODJFS disallowed the claim.

{¶3} Caldwell appealed. ODJFS issued a redetermination affirming the decision to deny benefits. Caldwell appealed again, and ODJFS transferred jurisdiction of the claim to the Commission for an evidentiary hearing.

{¶4} After holding an evidentiary hearing in September 2013, the Commission reversed ODJFS’s decision and found that Caldwell was fired without just cause. The claim for unemployment benefits was allowed. The Cake Shop appealed the decision to the Cuyahoga Court of Common Pleas, which affirmed the decision of the Commission allowing benefits.

{¶5} The Cake Shop now appeals, arguing in its sole assignment of error that the trial court erred in affirming the Commission’s decision because the decision is unlawful, unreasonable, and against the manifest weight of the evidence.

{¶6} R.C. 4141.282(H) governs the standard of review for appellate courts when reviewing decisions made by the Commission. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). The statute provides that the

common pleas court shall reverse the Commission's decision only if it finds "that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282(H).

{¶7} Appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, but they do have the duty to determine whether the Commission's decision is supported by the evidence in the record. *Tzangas* at 696, citing *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). "[A] reviewing court may not reverse the commission's decision simply because 'reasonable minds might reach different conclusions.'" *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20, quoting *Irvine* at 18.

{¶8} In cases that address whether an employee was terminated with or without just cause, "[t]he determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act." *Irvine* at 18. 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 or agreement of his own." *Id.*, quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76 (1980); *Case W. Res. Univ. v. Statt*, 8th Dist. Cuyahoga No. 97159, 2012-Ohio-1055, ¶ 8.

{¶9} "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." *Irvine* at 17. Whether just cause exists is unique to the facts of each case. *Id.* The Ohio Supreme Court stressed in *Irvine* that the issue of whether an employee is discharged for just cause is a factual issue, and, as such, is primarily within the province of the Commission. *Id.*

Determination of purely factual questions is primarily within the province of the referee and the board. * * * Moreover, “[o]ur statutes on appeals from such decisions [of the board] are so designed and worded as to leave undisturbed the board’s decisions on close questions. Where the board might reasonably decide either way, the courts have no authority to upset the board’s decision.” (Citations omitted.)

Irvine at 18.

{¶10} In this case, the Cake Shop argues that Caldwell was terminated with just cause because she had a history of employment issues and was not entitled to a warning that her conduct may result in termination. The Cake Shop alleges Caldwell committed 26 violations of the shop’s policies and received at least five verbal warnings regarding her misconduct prior to the incident on June 10 and 11, 2013, which culminated in her termination.

{¶11} The following evidence was adduced at the hearing. The hearing officer heard testimony from (1) Caldwell, (2) the co-owner of the Cake Shop, Janet Yurcik (“Yurcik”), and (3) Caldwell’s boyfriend, Steven McConville (“McConville”). On June 10, 2013, at 2:56 p.m., Caldwell sent the following text to her supervisor, the co-owner of the Cake Shop, Marcia Rehak (“Rehak”): “i feel like shit so if you can do without me i am going to stay in bed.” (Sic.) Caldwell was not scheduled to work on June 10, and was home at the time she sent the message. She was scheduled to work the following morning at 10:00 a.m. Caldwell received no response from Rehak.

{¶12} Later that afternoon, Caldwell met McConville at a local restaurant, London Pickle Works (“the Pickle”), for dinner. She did not eat because she felt ill but admitted to having two alcoholic beverages. While at the Pickle, Caldwell retrieved a basket and three easels that belonged to the Cake Shop from an employee of the Pickle who had borrowed them. Caldwell testified Rehak asked her to retrieve these items. Yurcik denied this at the hearing, however, Rehak herself did not testify at the hearing.

{¶13} At 7:23 p.m., Caldwell texted Rehak again, this time stating that since she had not heard from Rehak she was going to bed. Having learned from the employee of the Pickle that Caldwell had been there that evening, Rehak replied: “Funny ... you went to the pickle after u texted me ... we will be fine tomorrow stay home.” (Sic.)

{¶14} The following morning at 9:49 a.m., Caldwell responded to Rehak’s text, stating that she did not appreciate the accusation. Rehak responded with: “about??” Caldwell responded by stating that “for future reference dont talk to me like that.” (Sic.) Rehak texted Caldwell “thankyou” (sic) and then moments later, “You are fired.”

{¶15} Caldwell testified that she had never received any written warnings or reprimands regarding her employment at the Cake Shop. Yurcik admitted that no written warnings or reprimands had ever been given.

{¶16} After hearing the testimony and reviewing the evidence presented by the parties, the hearing officer found that Caldwell had been terminated without just cause, stating that Rehak had a rash reaction to the events of June 10 and 11, 2013. The hearing officer pointed out that on the evening of June 10, 2013, Rehak ended the text conversation with Caldwell by telling Caldwell to stay home from work the following day.

{¶17} Furthermore, the hearing officer found the evidence showed Caldwell had not been given any written warnings prior to this incident, and she was unaware at the time of these text messages that her continued employment with the Cake Shop was in jeopardy. The hearing officer determined that it was not unreasonable for Caldwell to stop at the Pickle for dinner despite being ill. Finally, the hearing officer found that the Cake Shop compiled the list of 26 employment infractions *after* Caldwell was fired.

{¶18} Having reviewed the Commission's decision and the transcript of the hearing, it is clear the hearing officer weighed the credibility of the witness testimony when reaching his decision. We also find the Commission's decision is supported by evidence in the record. We agree with the trial court's determination that the Commission's decision was neither unlawful nor unreasonable, nor was it against the manifest weight of the evidence.

{¶19} Accordingly, we find that the trial court did not err in affirming the Commission's decision. The record contains competent, credible evidence to support a conclusion that Caldwell was terminated without just cause. Caldwell is entitled to unemployment compensation benefits.

{¶20} Judgment 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 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.

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR