

STATE OF OHIO)
)ss: IN THE COURT OF APPEALS
COUNTY OF SUMMIT) NINTH JUDICIAL DISTRICT

CLIFFORD E. UPTON

Appellee

v.

RAPID MAILING SERVICES, et al.

Appellants

C. A. No. 21714

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 02-12-7339

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, the Director of the Ohio Department of Job and Family Services (the “Director”), appeals from the judgment of the Summit County Court

of Common Pleas that reversed the decision of the Unemployment Compensation Review Commission (the “Review Commission”), which disallowed Appellee’s, Clifford Upton, unemployment compensation claim. We reverse.

I.

{¶2} Mr. Upton was employed with Rapid Mailing Services (“Rapid”) since October 5, 2001, and had performed various jobs in maintenance and production, and also as a driver. On April 26, 2002, Mr. Upton met with the vice president of operations at Rapid, Bob Buwala, regarding his performance on the job. On April 29, 2002, Mr. Upton reported to Mr. Buwala that he had chosen to quit, and asked for his paycheck because he was going to work somewhere else.

{¶3} Thereafter, Mr. Upton filed an application for benefit rights, and the application was allowed. In an initial determination dated May 29, 2002, the Director disallowed Mr. Upton’s claim. The Director concluded that Mr. Upton was discharged from employment because of violation of a company rule, and that “[t]here was sufficient fault on [Mr. Upton’s] part that an ordinary person would find the discharge justifiable.” Mr. Upton appealed the Director’s determination, pursuant to which the Director issued a redetermination affirming the initial determination. Mr. Upton appealed the redetermination, and the Director transferred the appeal to the Review Commission. After a hearing held on October 25, 2002, the Review Commission issued a decision modifying the Director’s redetermination, and finding that Mr. Upton had quit work without just

cause. Mr. Upton requested a review of this decision, which the Review Commission disallowed.

{¶4} Mr. Upton appealed from the Review Commission's decision to the Summit County Court of Common Pleas pursuant to R.C. 4141.282. In a judgment dated August 11, 2003, the court reversed the decision of the Review Commission, and found that the Review Commission's decision was "unreasonable and against the manifest weight of the evidence." This appeal followed.

{¶5} The Director timely appealed, asserting one assignment of error for review.

II.

Assignment of Error

"THE COMMON PLEAS COURT ERRED IN REVERSING THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S DECISION THAT APPELLEE QUIT WORK WITHOUT JUST CAUSE WHERE THAT DECISION WAS NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶6} In his sole assignment of error, the Director asserts that the common pleas court erred when it reversed the Review Commission's decision that Mr. Upton quit work without just cause, asserting that the Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence. We agree.

{¶7} We initially discuss the appropriate standard of review. An interested party may appeal the Review Commission’s decision on rehearing to the common pleas court of the county where the party is a resident or was last employed, pursuant to R.C. 4141.282(A)-(B). The court is to hear the appeal upon the record as certified and provided by the Review Commission. R.C. 4141.282(H). The court is only to reverse, vacate, modify, or remand the decision to the Review Commission if the court finds that the decision “was unlawful, unreasonable, or against the manifest weight of the evidence[.]” R.C. 4141.282(H). Otherwise, the court is required to affirm the Review Commission’s decision. *Id.*

{¶8} R.C. Chapter 4141 does not distinguish between the scope of review of a common pleas court and that of an appellate court with respect to Review Commission decisions. See R.C. 4141.282(H)-(I). Additionally, the Supreme Court of Ohio has confirmed that “there is no distinction between the scope of review of common pleas and appellate courts regarding ‘just cause’ determinations under the unemployment compensation law.” See *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, citing *Tzangas v. Administrator, Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696-97.

{¶9} Thus, in a review of a decision by the Review Commission regarding eligibility for unemployment compensation benefits, an appellate court is bound by the same limited scope of review as that required of the common pleas courts. *Irvine v. State of Ohio, Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d

15, 18. Therefore, an appellate court may only reverse an unemployment compensation eligibility decision by the Review Commission if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas*, 73 Ohio St.3d at 696. Also, this Court is required to focus on the decision of the Review Commission, rather than that of the common pleas court, in such cases. *Barilla v. Ohio Dept. of Job & Family Servs.*, 9th Dist. No. 02CA008012, 2002-Ohio-5425, at ¶6, citing *Tenny v. Oberlin College* (Dec. 27, 2000), 9th Dist. No. 00CA007661.

{¶10} In its review of a decision regarding unemployment compensation, a common pleas or appellate court may also reverse the decision if it finds it to be against the manifest weight of the evidence. R.C. 4141.282(H). This Court applies the same standard in determining whether both criminal and civil judgments are against the manifest weight of the evidence.¹ *Lagasse v. Yaeger* (Sept. 2, 1998), 9th Dist. No. 97CA006774. Therefore, in reviewing a civil judgment, an appellate court

“weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.” *State v. Thompson* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

¹ We find it helpful to discuss the manifest weight standard in the context of trial court judgments, which is the situation in which this standard of review is most commonly used.

This discretionary power is reserved for the exceptional case, where the judgment is “so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice[.]” *Shepherd v. Freeze*, 9th Dist. No. 20879, 2002-Ohio-4252, at ¶8, quoting *Royer v. Bd. of Edn.* (1977), 51 Ohio App.2d 17, 20. Additionally, it is important to keep in mind the limitation on an appellate court’s assessment of a Review Commission decision, which precludes the court from making factual findings or weighing the credibility of witnesses. *Tzangas*, 73 Ohio St.3d at 696, citing *Irvine*, 19 Ohio St.3d at 18.

{¶11} Moreover, “[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].” *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19; see, also, *Long v. Hurles* (1996), 113 Ohio App.3d 228, 233 (stating that the appellate court is to begin with the presumption that the trial court’s findings of fact are correct). “[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the trial court’s verdict and judgment.” *Karches*, 38 Ohio St.3d at 19.

{¶12} When reviewing a decision of the Review Commission, common pleas and appellate courts are precluded from making factual findings; the resolution of factual questions is chiefly within the Review Commission’s scope of review. *Tzangas*, 73 Ohio St.3d at 696; *Irvine*, 19 Ohio St.3d at 17. Rather, the courts’ role is to determine whether the decision of the Review Commission is

supported by evidence in the certified record. *Durgan*, 110 Ohio App.3d at 551, citing *Tzangas*, 73 Ohio St.3d at 696; *Irvine*, 19 Ohio St.3d at 18, citing *Kilgore v. Bd. of Rev.* (1965), 2 Ohio App.2d 69, 71. If the court finds that such support is found, then the court cannot substitute its judgment for that of the Review Commission. *Durgan*, 110 Ohio App.3d at 551, citing *Wilson v. Unemp. Comp. Bd. of Rev.* (1984), 14 Ohio App.3d 309, 310. Furthermore, the Supreme Court has noted that applying the same standard of review at both the common pleas and appellate court levels does not result in a de novo review standard. *Tzangas*, 73 Ohio St.3d at 697. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission’s] decision.” *Irvine*, 19 Ohio St.3d at 18, citing *Craig v. Bur. of Unemp. Comp.* (1948), 83 Ohio App. 247, 260.

{¶13} Under R.C. 4141.29, a party is entitled to unemployment compensation benefits if he or she quits with just cause or is discharged without just cause. See R.C. 4141.29(A) and (D)(2)(a); *Bacalu v. Lorantffy Care Ctr.* (Feb. 11, 1998), 9th Dist No. 18427. A claimant bears the burden to prove that he or she is entitled to unemployment compensation benefits under R.C. 4141.29, “including the existence of just cause for quitting work.” *Irvine*, 19 Ohio St.3d at 17, citing *Shannon v. Bur. of Unemp. Comp.* (1951), 155 Ohio St. 53, 59. The determination of what constitutes “just cause” within the context of unemployment compensation “necessarily depends upon the unique factual considerations of the particular case” and involves a concurrent analysis of the legislative purpose of the

Unemployment Compensation Act, R.C. 4141.01-4141.47 and 4141.99. *Irvine*, 19 Ohio St.3d at 17. It has long been recognized that the purpose of the Act is “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 his own.*” (Emphasis added.) *Id.*, quoting *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39.

{¶14} Traditionally, “just cause,” in the statutory sense, means “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine*, 19 Ohio St.3d at 17, quoting *Peyton v. Sun T.V. & Appliances* (1975), 44 Ohio App.2d 10, 12. See, also, *Durgan*, 110 Ohio App.3d at 549, quoting *Tzangas*, 73 Ohio St.3d at 697. Additionally, “just cause” for quitting one’s job amounts to what “‘an ordinarily intelligent person’ would find to be a ‘justifiable reason for quitting, where that cause is related in a substantial way with a person’s ability to perform in his employment[.]’” *Bacalu*, *supra*, quoting *Henize v. Giles* (1990), 69 Ohio App.3d 104, 111. The term “quit” connotes a “voluntary act by an employee not controlled by the employer.” (Emphasis sic.) *Henize*, 69 Ohio App.3d at 111, citing *Caudill v. Ashland Oil Co.* (1983), 9 Ohio Misc.2d 16, 17. We observe that the inquiry into just cause is a factual one, which reviewing courts are precluded from doing in these administrative appeals. *Durgan*, 110 Ohio App.3d at 551, citing *Irvine*, 19 Ohio St.3d at 17.

{¶15} Also, it has been held, that, generally, an employee who quits employment in order to accept other employment is deemed to have quit without just cause, and is therefore not eligible for unemployment benefits pursuant to R.C. 4141.29(D)(2)(a). *Vinson v. AARP Found.* (1999), 134 Ohio App.3d 176, 178-79, citing *Radcliffe v. Artromick Internatl., Inc.* (1987), 31 Ohio St.3d 40, 41. See, also, *Cooper v. Ohio Bur. of Emp. Servs.* (Feb. 14, 1979), 9th Dist. No. 9063 (agreeing with cases from other Ohio district courts of appeal which state that quitting to take another job is a voluntary act not connected with the work); *Hirsch v. Bd. of Rev.* (Nov. 12, 1987), 8th Dist. No. 52908.

{¶16} In the instant case, the Director requests this Court to review the common pleas court's decision. In light of the standard of review delineated above, however, we are required to address the Director's sole assignment of error through a review of the Review' Commission's decision. See *Barilla* at ¶6, citing *Tenny*, supra. Therefore, we now proceed to determine whether the decision of the Review Commission in the instant case is supported by evidence in the certified record, and whether the decision is unlawful, unreasonable, or against the manifest weight of the evidence. See *Durgan*, 110 Ohio App.3d at 551, citing *Tzangas*, 73 Ohio St.3d at 696; R.C. 4141.282(H).

{¶17} During the hearing held before a hearing officer of the Review Commission on October 25, 2002, Mr. Buwala testified during direct examination about Mr. Upton's job performance problems. Particularly, Mr. Buwala testified that Rapid had counseled Mr. Upton on January 22, 2002, because "there was

constant tardiness or missing work” on Mr. Upton’s part. Additionally, Mr. Buwala testified that on February 16, 2002, another discussion took place with Mr. Upton, this time concerning the fact that he had taken three days off from work, and took two of those days without informing Rapid. He also testified that approximately one month later, he discussed with Mr. Upton a \$200.00 cellular phone bill which Mr. Upton had incurred on Rapid’s business phone, while on the job. Also, Mr. Buwala testified about another episode when Mr. Upton requested several days off because of his wife’s supposed hospital for cancer treatment. Mr. Buwala testified that when Rapid Mailing tried to locate his wife to send her flowers, they discovered that his wife had not been admitted at any hospital. Mr. Buwala testified that when questioned about this, Mr. Upton gave them “a bunch of stories” regarding why he requested this time off.

{¶18} With respect to the pertinent conversation that he and Mr. Upton had on April 26, 2002, Mr. Buwala testified that they “sat down and discussed the overall performance, productivity problems[,]” and that they “need[ed] to come to terms with this.” He testified that Mr. Upton had voiced to him that he did not enjoy one of his current job responsibilities. Mr. Buwala testified that in response to this concern, he had stated, “tell me where we need to go with this. I need you to take the weekend, come on in and you tell me. I’m willing to work with you. If it’s the problem you don’t like it here, then tell me that too.” Mr. Buwala then testified that he suggested that they continue the conversation the following Monday because Mr. Upton appeared “very upset[,]” and Mr. Buwala “wanted

[him] to have some time to cool down.” He testified that the following Monday, Mr. Upton came into his office and stated, “I’m going to work someplace else, just give me my last check today.”

{¶19} Mr. Upton also testified at the hearing before the Review Commission. He testified that on that Monday, he walked into work, and the secretary at Rapid told him not to “punch in[,]” and that “[Mr. Buwala] want[ed] to see [him].” Mr. Upton then testified that Mr. Buwala stated that “this isn’t working out.” He testified that he then stated to Mr. Buwala, “[w]ell, if it’s not going to work, cut me my check then.”

{¶20} Based upon a thorough examination of the record and the foregoing analysis, we find that the Review Commission’s finding that Mr. Upton quit work without just cause, is supported by the evidence in the certified record. See *Durgan*, 110 Ohio App.3d at 551. Furthermore, we cannot say that the Review Commission created such a manifest miscarriage of justice that the decision must be reversed. See *Thompkins*, 78 Ohio St.3d at 387. Accordingly, this Court finds that the Review Commission’s decision that Mr. Upton quit without just cause is not against the manifest weight of the evidence, and is also not unlawful or unreasonable. See R.C. 4141.282(H).

{¶21} Because this Court has found that the decision of the Review Commission is supported by the evidence and is not unlawful, unreasonable, or against the manifest weight of the evidence, we must affirm the Review

Commission's decision, that Mr. Upton quit work without just cause. See R.C. 4141.282(H). Accordingly, the Director's sole assignment of error is well taken.

III.

{¶22} The Director's sole assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is reversed.

Judgment reversed.

WILLIAM G. BATCHELDER
FOR THE COURT

SLABY, J.
BAIRD, P.J.
CONCUR

APPEARANCES:

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