

[Cite as *Howard v. Electronic Classroom of Tomorrow*, 2011-Ohio-6059.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Felice Howard,	:	
Appellant-Appellant,	:	
v.	:	No. 11AP-159 (C.P.C. No. 10CVF-09-14174)
Electronic Classroom of Tomorrow et al.,	:	(ACCELERATED CALENDAR)
Appellees-Appellees.	:	

D E C I S I O N

Rendered on November 22, 2011

Felice Howard, pro se.

Michael DeWine, Attorney General, and David E. Lefton, for appellee, Director, Ohio Department of Job & Family Services.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Appellant-appellant, Felice Howard, appeals from a judgment of the Franklin County Court of Common Pleas affirming a judgment of the Ohio Unemployment Compensation Review Commission ("the commission") that denied appellant's claim for

unemployment benefits. For the following reasons, we reverse that judgment and remand the matter to the trial court with instructions.

{¶2} In the summer of 2007, appellant began work as a counselor for the Electronic Classroom of Tomorrow ("ECOT"), an online school that teaches children from kindergarten to the 12th grade. In April 2008, ECOT sent out a "Staffing and Planning" form to its employees that asked them about their employment intentions for the next school year. In May, appellant completed the form by checking the portion of the form that stated:

I plan to RESIGN from ECOT at the end of this school year. Please do not consider me for employment next year. A letter of resignation is required at least 30 days in advance. Resignations effective at the close of business on 6/18/08 will have August 29, 2008, as the last payday and the end of benefits.

(Emphasis sic.)

{¶3} ECOT sent appellant a letter on June 20, 2008 confirming her resignation effective that day and informing her of her last paycheck and when her medical benefits would end. Almost immediately, appellant complained to ECOT that she had not resigned and that even if she did, the effective date of her resignation would be August 29, 2008, the end of the school year, not June 20, 2008.

{¶4} Subsequently, appellant filed a claim for unemployment benefits. The Ohio Department of Family and Job Services, Office of Unemployment Compensation, initially allowed appellant's claim for unemployment benefits. The agency concluded that ECOT discharged appellant from work without just cause. The director affirmed the agency's initial determination and ECOT appealed that determination to the commission.

{¶5} The commission scheduled a hearing for ECOT's appeal. The notice of hearing set forth the issue as "[w]as the claimant discharged by the employer for just cause in connection with work?" At the hearing, a human resource employee from ECOT testified that appellant resigned on June 20, 2008 pursuant to the staffing and planning form that she completed. The employee also testified that appellant expressed unhappiness in her job with ECOT to another employee. (Jan. 13, 2009 Hearing, Tr. 8.) Appellant testified that she intended to resign from her position with ECOT at the end of the 2007-2008 school year because she disagreed with the school's approach and philosophy. (Jan. 13, 2009 Hearing, Tr. 20-21.) Appellant also attempted to present testimony from three of her fellow ECOT employees. She averred that the witnesses would testify regarding when ECOT's school year ended for counselors. The hearing officer did not allow the witnesses but allowed affidavits from those witnesses to be proffered into the record.

{¶6} The hearing officer concluded that appellant had a disagreement with ECOT about how it operated its school and that she did not discuss these matters with the school before resigning her employment. As a result, the hearing officer concluded that appellant quit without just cause, and, therefore, appellant was not entitled to unemployment benefits. The commission disallowed appellant's request for a review of the hearing officer's decision.

{¶7} Appellant appealed the commission's decision to the Franklin County Court of Common Pleas. The common pleas court reversed the commission's decision and remanded the matter to allow appellant to present additional evidence to support her claim for unemployment benefits.

{¶8} On remand, the commission scheduled another hearing. The notice of hearing set forth the relevant issue as "[d]id the claimant quit employment without just cause?" The hearing officer more generally stated that the purpose of the hearing was to "talk about the reason that she separated from the employer, whether that be a quit or a discharge." (Aug. 28, 2009 Hearing, Tr. 6.) At that hearing, appellant testified that, after she filled out the staffing and planning form, she was diagnosed with back problems and her daughter had to be hospitalized. (Sept. 18, 2009 Hearing, Tr. 10, 14.) As a result, appellant and her husband decided that she needed to keep her job. However, ECOT did not permit her to rescind her resignation. Appellant again sought to call two of the three witnesses that the hearing officer prohibited in the first hearing. Appellant proffered that those witnesses would testify about the ethical concerns appellant and others had with ECOT that led her to quit. The hearing officer refused to allow the witnesses to testify, noting that there already was enough evidence to explain her concerns about ECOT.

{¶9} Based upon the evidence presented, the hearing officer concluded that appellant quit without just cause. The hearing officer did not believe appellant truly had concerns about how ECOT operated its school and, even if she did, appellant failed to timely raise the concerns with her employer. The hearing officer also concluded that appellant resigned her position and that ECOT was not obligated to allow her to rescind her termination.

{¶10} Appellant appealed the commission's decision to the common pleas court. This time, the common pleas court affirmed the decision, concluding that the decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

{¶11} Appellant appeals that decision and assigns the following error:

The trial court erred in affirming the Decision of the Unemployment Compensation Review Commission.

Standard of Review

{¶12} A trial court and an appellate court employ the same, well-established standard of review in unemployment compensation appeals: "[A] reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697; R.C. 4141.282(H). When a reviewing court (whether a trial or appellate court) applies this standard, it may not make factual findings or determine witness credibility. *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18. Factual questions remain solely within the commission's province. *Tzangas* at 696. Thus, a reviewing court may not reverse the commission's decision simply because "reasonable minds might reach different conclusions." *Irvine* at 18. The focus of an appellate court when reviewing an unemployment compensation appeal is upon the commission's, not the trial court's, decision. *Moore v. Comparison Market, Inc.*, 9th Dist. No. 23255, 2006-Ohio-6382, ¶8.

Appellant's Assignment of Error

{¶13} Appellant first contends that the commission deprived her of due process because the hearing officer prevented her from calling witnesses that would have testified about the reasons for her separation from employment with ECOT. We agree.

{¶14} " '[F]ederal law mandates that state unemployment programs provide an [o]ppportunity for a fair hearing, before an impartial tribunal * * *. This statute has been interpreted to impose requirements which are the same as constitutional procedural due

process requirements. Hence, any judicial analysis of the state's hearing procedures in this case must be conducted with a fundamental recognition that under the Fourteenth Amendment the cornerstone of due process, in the procedural sense, is the opportunity for a fair hearing.' " (Citations omitted.) *Atkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-182, 2008-Ohio-4109, ¶15 (quoting *Henize v. Giles* (1986), 22 Ohio St.3d 213, 215).

{¶15} The principles of due process in administrative hearings apply to all hearings conducted under the authority of the commission. R.C. 4141.281(C)(2). The key factor in deciding whether a hearing satisfies procedural due process is whether the claimant had the opportunity to present the facts which demonstrate that she was entitled to unemployment benefits. *Atkins* at ¶17; *Gregg v. SBC Ameritech*, 10th Dist. No. 03AP-429, 2004-Ohio-1061. This is because "[t]he object of the hearing is to ascertain the facts that may or may not entitle the claimant to unemployment benefits." *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07 MA 124, 2008-Ohio-1061, ¶11; *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 43.

{¶16} While R.C. 4141.281(C)(2) requires that commission hearings satisfy due process principles, it also provides that "[i]n conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs." Thus, "[t]he hearing officer has broad discretion in accepting and rejecting evidence and in conducting the hearing in general." *Bulatko* at ¶11. "The hearing officer's discretion is tempered only to the extent that he must afford each party an opportunity to present evidence that provides insight into the very subject of

the dispute." *Id.* (citing *Owens v. Ohio Bur. of Emp. Servs.* (1999), 135 Ohio App.3d 217, 220).

{¶17} Appellant wanted to call two witnesses to testify about concerns appellant and others had with the way ECOT operated its business and treated its students. These concerns, according to appellant, were the justification for her decision to quit her employment. The hearing officer did not allow the witnesses to testify on the grounds that their testimony would have been cumulative, noting that "I've got her testimony from the last hearing concerning those matters and I don't see a reason to call [the witness]." (Sept. 18, 2009 Hearing, Tr. 19.) However, during the first hearing the focus was not appellant's reasons for quitting her employment but whether or not ECOT properly discharged her. There was no reason for appellant to fully explain and justify her reasons for initially submitting her resignation during the first hearing. When the reasons for appellant's resignation became the central issue during the second hearing, appellant was entitled to present evidence in an attempt to prove that she quit with just cause. This is why appellant sought to call the two witnesses the hearing officer prohibited. The proffered testimony of these two witnesses would not have been cumulative to appellant's previous testimony. Appellant was entitled to a full and fair opportunity to present evidence to support her claim that she resigned for just cause. *Bulatko*. The hearing officer abused its discretion by not allowing her to present this testimony and "to ascertain the facts that may or may not entitle" her to benefits. *Id.* at ¶11.

{¶18} For these reasons, we sustain appellant's assignment of error to the extent indicated and reverse the judgment of the Franklin County Court of Common Pleas. Accordingly, we remand the matter to the trial court with instructions to reverse the

judgment of the commission and remand the matter for another hearing consistent with law and this decision.

*Judgment reversed;
cause remanded with instructions.*

SADLER and TYACK, JJ., concur.
