

[Cite as *Entler v. Ohio Dept. of Transp.*, 2011-Ohio-240.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

JAMES J. ENTLER

:

Plaintiff-Appellant

:
C.A. CASE NO.
2010 CA 52

v.

: T.C. NO.
09CV1527

OHIO DEPARTMENT OF
TRANSPORTATION, et al.

:

(Civil appeal from
Common Pleas Court)

Defendants-Appellees

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OPINION

Rendered on the 21st day of January, 2011.

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FROELICH, J.

{¶ 1} James J. Entler appeals from a judgment of the Clark County Court of
Common Pleas, which affirmed the decision of the Unemployment Compensation Review

Commission (“Review Commission”) denying him unemployment benefits because he had been terminated by the Ohio Department of Transportation (“ODOT”) for just cause. For the following reasons, the judgment of the trial court will be affirmed.

I

{¶ 2} James Entler was employed with ODOT as a probationary Highway Technician I from November 13, 2007, until February 27, 2009. Entler’s duties included performing general highway maintenance (e.g., pothole patching and litter clean-up), which varied by season and included snow and ice removal. Entler testified that he was informed of the specific job standards when he was hired, and the standards were applied consistently across all Highway Technician I personnel.

{¶ 3} In January 2008, Entler was involved in an accident on U.S. Route 40 while driving an ODOT vehicle. According to State Trooper Shane Maddock, who testified at the telephone hearing before the Review Commission hearing officer, a 1983 Chevy Suburban driven by Max Jenkins rear-ended the ODOT vehicle driven by Entler. The ODOT vehicle was pushed approximately 270 feet into a field north of U.S. Route 40. Mr. Jenkins was cited for failing to maintain assured clear distance; Entler was not cited.

{¶ 4} Entler suffered injuries from the accident, was unable to work, and received worker’s compensation. Entler returned from leave in March 2008. At that time, Entler’s probationary period was extended.

{¶ 5} Entler’s probationary status was extended again in December 2008. Entler testified that ODOT had informed him that it wanted to “let him go” for not meeting the job requirements. Entler’s supervisors had told him, however, that they

were willing to extend his probation to give him a second chance.

{¶ 6} Nick Hess, one of Entler's supervisors, testified that, as Entler worked for ODOT, he (Hess) became more aware that Entler "was not quite meeting the standards to Highway Technician I." Hess could not "really tell you the final event" that led to Entler's termination, but he testified that Entler's performance of his snow and ice duties was "not as productive as I would have liked to have seen them" on more than one occasion. Hess indicated that, during snow and ice season, Entler was not adequately performing his duties on "every occasion." Hess explained:

{¶ 7} "When he would be called in to come in to work, he was spending a lot of time in the garage taking too long to get out. There was one case he ran out of fuel, which put his productivity down on the road. He spend [sic] a lot of time in here washing the windows of the truck or coming back in for fuel and, uh, you know, we were looking for our people to go out and take care, they're assigned a route when they come in to keep the roads safe for the motoring public and that would be plowing and treating. Like I said, it just depends on the weather."

{¶ 8} Hess stated that Entler had extensive verbal and written counseling. In January 2009, Entler was fined one-day's pay for "carelessness with tools, keys and equipment or vehicle resulting in loss damage or an unsafe act." Despite the frequent one-on-one meetings, Entler did not provide satisfactory work performance.

{¶ 9} Entler's final performance review included the following summary:

{¶ 10} "Although [Entler] was able to meet the three established performance goals, he has failed in every other way to establish himself as a valuable employee. His poor work ethic and lack of motivation have resulted in low efficiencies and

productivity. He has alienated other employees who are productive by failing to do his fair share of work. He requires constant supervision and work instruction, including repetitive instructions for the same job assignment. He lacks the required sense of urgency when performing snow and ice duties which has resulted in his assigned route being in very poor condition. He has been involved in two preventable accidents, one of which resulted in the complete destruction of an ODOT pick-up truck. [Entler]'s probationary period was extended in an effort to allow him more time to learn his job and give him additional time to prove himself as a valuable employee. However, he has failed to demonstrate any improvement in any area. [Entler] has failed to satisfactorily complete his probationary period and it is my recommendation that he be terminated from employment.”

{¶ 11} On February 11, 2009, Entler was notified that, effective February 27, his employment with ODOT would be terminated due to his failure to “satisfactorily perform your duties as a Highway Technician I in the Clark County Maintenance Department.”

{¶ 12} In March 2009, Entler filed an application for unemployment compensation with the Ohio Department of Job and Family Services (“ODJFS”). ODJFS initially denied Entler’s claim. On April 29, 2009, the Director reversed the initial determination by ODJFS and allowed Entler’s claim, reasoning that ODOT had not established that Entler was terminated for just cause.

{¶ 13} On April 30, 2009, the Director’s redetermination was vacated with a notation that “[a] new determination will follow.” ODJFS transferred Entler’s file to the Review Commission under R.C. 4141.281. A hearing officer scheduled a

telephone hearing for August 21, 2009.

{¶ 14} At the hearing, Entler testified on his own behalf and called Trooper Maddock as a witness. Nick Hess testified on behalf of ODOT. After considering the testimony and supporting documentation, the hearing officer found that Entler was terminated for just cause, reversed the ODJFS redetermination, and denied Entler unemployment compensation.

{¶ 15} Entler filed a Request for Review with the Review Commission. On November 10, 2009, after a review of the entire record, the Review Commission disallowed his Request for Review.

{¶ 16} Entler appealed the Review Commission's decision to the Clark County Common Pleas Court. After a review of the Director's file, the Director's redetermination, the transcript of testimony, exhibits, the hearing officer's decision, and the parties' briefs, the trial court found that the Review Commission's decision was "not unlawful, unreasonable, or against the manifest weight of the evidence." The trial court affirmed the Review Commission and dismissed the appeal at Entler's cost.

{¶ 17} Entler appeals from the trial court's judgment, raising one assignment of error.

II

{¶ 18} Entler's assignment of error states:

{¶ 19} "THE TRIAL COURT ERRED IN UPHOLDING THE DECISION OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION DENYING APPELLANT UNEMPLOYMENT COMPENSATION BENEFITS."

{¶ 20} In his sole assignment of error, Entler maintains that the decision of the Review Commission was unreasonable and that the trial court's decision affirming that ruling should be reversed.

{¶ 21} The scope of our review in unemployment compensation appeals is quite limited. *Silkert v. Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 78, 2009-Ohio-4399, ¶26, citing *Giles v. F. & P. Am. Mfg., Inc.*, Miami App. No. 2004-CA-36, 2005-Ohio-4833, ¶13. An appellate court may reverse the Review Commission's "just cause" determination only if it is "unlawful, unreasonable or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, paragraph one of the syllabus. "All reviewing courts, including common pleas, courts of appeal, and the Supreme Court of Ohio, have the same review power and cannot make factual findings or determine witness credibility. *** However, these courts 'do have the duty to determine whether the board's decision is supported by evidence in the record.'" *Silkert* at ¶26, quoting *Tzangas*, 73 Ohio St.3d at 696.

{¶ 22} Under R.C. 4141.29, which establishes the requirements for eligibility for unemployment benefits, a claimant is not eligible for benefits if he is discharged for "just cause." R.C. 4141.29(D)(2)(a). "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 v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17.

{¶ 23} "Each unemployment compensation case must be considered upon its particular merits in determining whether there was just cause for discharge."

Johnson v. Edgewood City School Dist. Bd. of Edn., Butler App. No. CA2008-11-278, 2010-Ohio-3135, ¶14, citing *City of Warrensville Heights v. Jennings* (1991), 58 Ohio St.3d 206, 207. The discharged employee bears the burden of persuasion to prove that he is entitled to unemployment compensation. *Silkert* at ¶36.

{¶ 24} The Unemployment Compensation 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. *** The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination.” *Tzangas*, 73 Ohio St.3d at 697-698. Nevertheless, we keep in mind that the unemployment compensation statutes must be liberally construed in favor of awarding benefits to the applicant. *Clark Cty. Bd. of Mental Retardation & Dev. Disabilities v. Griffin*, Clark App. No. 2006-CA-32, 2007-Ohio-1674, ¶10, citing R.C. 4141.46; *Ashwell v. Ohio Dept. of Jobs & Family Serv.*, Montgomery App. No. 20552, 2005-Ohio-1928, ¶43.

{¶ 25} Entler claims that the denial of unemployment benefits was against the manifest weight of the evidence, because there was no “final event” that precipitated his termination. He states: “If [an employee] has a job one day and does not the next, something negative needed to have happened since his last discipline to justify termination.” Entler thus claims that ODOT’s explanation for his termination – i.e.,

that he failed to adequately perform his duties – was insufficient to constitute just cause.

{¶ 26} An employer need not establish that a particular “final event” justified an employee’s termination. An employee’s unsuitability for his position constitutes fault sufficient to support a just cause termination. *Tzangas*, supra, paragraph three of the syllabus. “An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.” *Id.* at paragraph four of the syllabus.

{¶ 27} In this case, there was evidence that Entler was informed of his job requirements, that they were evenly applied among all Highway Technician I personnel, and that the duties did not substantially change over the course of Entler’s employment. Hess testified that Entler repeatedly failed to adequately perform his snow and ice removal duties. Hess indicated that Entler was repeatedly under-productive in performing these duties due to such things as taking too long to leave the garage, running out of fuel on the road, and returning to the garage when he should be on his route. ODOT documentation supported that testimony. Hess further testified that Entler was repeatedly counseled by his supervisors, and Entler himself stated that, in December 2008, his supervisors wanted to “let him go” but they, instead, extended his probation to “give him a second chance.”

{¶ 28} The hearing officer found that Entler failed to perform his snow and ice

removal duties in accordance with ODOT’s standards, that Entler was counseled in writing concerning his poor work performance, and that his probation was extended to allow him time to improve his performance during snow and ice season. The officer concluded that Entler “could not meet the basic requirements of the job, and failed to consistently perform according to the employer’s reasonable standards for snow and ice removal. *** The claimant could not perform his job according to the employer’s standards even after receiving this additional assistance and time. The employer discharged employee with just cause.”

{¶ 29} The record supports the conclusion that Entler was unsuitable for his position and that his work performance constituted fault sufficient to support a just cause termination. The Review Commission’s finding of just cause was not unlawful, unreasonable, or against the manifest weight of the evidence.

{¶ 30} The assignment of error is overruled.

III

{¶ 31} The trial court’s judgment will be affirmed.

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GRADY, P.J. and FAIN, J., concur.

Copies mailed to:

- Darrell L. Heckman
- Patria V. Hoskins
- Hon. Douglas M. Rastatter