

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONALD J. MARLATT

Appellant

-VS-

OHIO DEPARTMENT OF JOB
AND FAMILY SERVICES, ET AL.,

Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 22CA000022

OPINION

CHARACTER OF PROCEEDINGS:

Appeal from the Guernsey County Court of
Common Pleas, Case No. 21CV000294

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 28, 2023

APPEARANCES:

For Appellant

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For Appellee

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Hoffman, P.J.

{¶1} Plaintiff-appellant Donald Marlatt appeals the June 21, 2022 Opinion entered by the Guernsey County Court of Common Pleas, which affirmed the decision of the State of Ohio Unemployment Compensation Review Commission (“Commission”) disallowing his application for unemployment compensation benefits.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant was employed by the Village of Byesville (“the Village”) as a water treatment operator from September 16, 2018, to October 21, 2020, when he was terminated. On November 13, 2020, Appellant filed an application for unemployment compensation benefits for a benefit year beginning on October 25, 2020. On May 20, 2021, the Director of the Ohio Department of Job and Family Services (“ODJFS”) issued a Redetermination disallowing Appellant’s application, finding he had been discharged for just cause.

{¶3} On June 9, 2021, Appellant filed an appeal from the Redetermination. The Director transferred jurisdiction to the Commission. Hearing Officer Kristy Swope conducted a telephone hearing on August 4, 2021.

{¶4} Brennan Dudley, Administrator for the Village, testified Appellant was employed as a water treatment officer for the Village from September 16, 2018, until he was terminated on October 21, 2020. As a water treatment operator, Appellant was responsible for the day-to-day operations of the water treatment plant. Employees of the water treatment worked under the terms of a collective bargaining agreement. These policies were also set forth in the employee handbook. Appellant had copies or access to both documents.

{¶15} On October 13, 2020, the Village conducted a pre-disciplinary conference with Appellant regarding an incident which occurred on October 7, 2020. Appellant received a written warning for falsification of records. Dudley stated Appellant submitted his payroll with no lunch indication on September 22, 2020. When questioned, Appellant explained he left early that day because he did not get a lunch. However, a review of surveillance footage from that day revealed Appellant had a thirty-minute conversation with an unknown individual outside of the water treatment facility. Appellant did not list this conversation as his reason for not taking lunch and did not include the conversation in his log of events for the shift. Water treatment plant employees receive a thirty-minute lunch break. The plant is not opened to the general public and a sign noting this restriction is posted at the plant entrance. It was subsequently learned the unknown individual with whom Appellant had the conversation in question was the former fire chief, who is considered to be a member of the general public.

{¶16} Also addressed during the pre-disciplinary conference was a pattern of abuse with Appellant leaving early. Dudley indicated Appellant called off eleven times over a period of approximately four months. Dudley provided the Hearing Officer with the specific dates on which Appellant either called off or left early. Dudley acknowledged Appellant's time off was approved by his supervisor and the Village was not aware of the pattern of abuse when Appellant's supervisor initially approved the requested time-off. The Village discovered the pattern of abuse after receiving four or five leave requests which revealed Appellant was taking off the same day or the same time.

{¶17} Dudley testified Appellant was terminated as a result of 18 issues of discipline between January 31, 2019, and October 13, 2020. Relative to January 31,

2019, Dudley indicated Appellant received a verbal warning for placing tape over the security camera at the water treatment plant. Appellant believed his coworkers were tracking his exits and entrances into the building using the security camera. Appellant also received a verbal warning for coming to work without authorization for overtime on May 3, 2019. Appellant explained he did so in retaliation to his supervisor's conversation with him on April 30, 2019. On May 6, 2019, Appellant received another verbal warning after failing to cancel call forward from his work phone at the end of his shift. By failing to cancel call forward, Appellant received all calls for service or alarms, giving him first opportunity to a call-in for overtime. Dudley provided the Hearing Officer with a number of other examples of Appellant's disciplinary history.

{¶18} Kendal Weisend, Appellant's direct supervisor, testified he completed the write-ups and issued verbal warnings to Appellant. Weisend was not involved in the disciplinary actions involving Appellant. Weisend stated, as a water treatment operator, Appellant was required to complete certain lab duties. Each water treatment operator was required to perform lab duties three times/month to complete a survey. Failure to do so could result in the EPA issuing a violation or revoking the certification of the operator. Weisend indicated Appellant did not complete his lab duties in November, 2019, or January, 2020. Weisend stated Appellant was written up on May 18, 2020, for excessively changing chemicals. Weisend explained Appellant changed the chlorine nine times within 90 minutes, however, it typically takes 180 minutes to observe the effects of one change. By excessively changing the chemicals, Appellant was causing the water treatment plant to run erratically.

{¶9} After hearing all the evidence, the Hearing Officer took the matter under advisement. The Hearing Officer issued a Decision, affirming the Director's Redetermination Appellant was discharged for just cause in connection with work. The Hearing Officer's Decision was mailed on August 11, 2021. The Commission denied Appellant's request for review. The Commission's Decision was mailed on August 18, 2021.

{¶10} On September 15, 2021, Appellant filed an administrative appeal in the Guernsey County Court of Common Pleas. The trial court issued a briefing schedule. The parties filed their respective briefs according thereto. Upon consideration of the parties' briefs and the entire record, the trial court affirmed the Commission's Decision. The trial court found the Commission's Decision was supported by reliable, probative, and substantial evidence. The trial court memorialized its ruling via Opinion filed June 21, 2022.

{¶11} It is from this opinion Appellant appeals, raising the following assignment of error:

THE DECISION OF THE COMMISSION FINDING THAT THERE
WAS JUST CAUSE TO TERMINATE APPELLANT WAS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE.

I

{¶12} An appeal of a decision rendered by the Commission is governed by R.C. 4141.282(H), which provides, in pertinent part:

If the court finds that the decision is unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, such court shall affirm the decision of the commission.

{¶13} Pursuant to R.C. 4141.282(H), a reviewing court may reverse the Commission's decision "only if it is unlawful, unreasonable or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694 (1995), paragraph one of the syllabus. This standard applies in "all reviewing courts, from the first level of review in the common pleas court, through the final appeal in" the Supreme Court of Ohio. *Id.* at 696. Therefore, the focus of this Court's analysis is on the Commission's decision rather than the common pleas court's decision. *Houser v. Dir., Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶ 7, (Citation omitted). Further, pursuant to this standard, a reviewing court "is not permitted to make factual findings or reach credibility determinations." *Id.* at ¶ 7 (Citations omitted). "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

{¶14} In order to qualify for unemployment compensation benefits, a claimant must satisfy the criteria set forth in R.C. 4141.29(D)(2)(a), which provides:

(D) * * * [N]o individual may * * * be paid benefits * * *:

(2) For the duration of the individual's unemployment if the director finds that:

The individual quit his work without just cause or has been discharged for just cause in connection with the individual's work, * * *.

{¶15} The Commission denied Appellant's unemployment compensation benefits claim, finding the Village terminated his employment for “just cause.” The Ohio Supreme Court has defined “just cause” as 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*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985); *Tzangas*, supra at 697.

{¶16} Appellant argues no evidence in the record supported a finding of “just cause.” Appellant asserts the Village failed to establish Appellant engaged in a pattern of abuse. Appellant maintains while the “Commission made reference to numerous warnings that were given to Appellant,” such “did not constitute evidence of wrongdoing or fault on the part of” Appellant. Brief of Appellant at 9. Appellant adds “[t]here was no testimonial or documentary evidence presented to substantiate these warnings” and “[t]here was no documentation presented to substantiate the allegation of pattern [of] abuse or falsification.” *Id.* We disagree.

{¶17} Upon review, we find some competent, credible evidence in the record to support the Commission's determination Appellant was terminated for “just cause.” The Village Administrator, Brennan Dudley, testified Appellant had 18 incidents of documented disciplinary action between January 31, 2019, and October 13, 2020. Those warnings included a verbal warning on January 31, 2019, for placing tape over a security

camera; a verbal warning on May 3, 2019, for coming into work for overtime without authorization; one verbal warning and two written warning for failing to cancel call forwarding on his work phone between May 6, 2019, and January 30, 2020; a written warning on November 1, 2019, for failing to report to work; a verbal warning on November 5, 2019, for failing to follow safety protocols; a verbal warning on December 2, 2019, for failing to correctly perform labs; a verbal warning on January 21, 202, for a social media post; and a written warning on February 6, 2020, for failure to come to work with his work phone. On February 26, 2020, a pre-disciplinary conference was conducted as the result of documented disciplinary actions, and Appellant was suspended for five days. Appellant received a written warning on May 18, 2020, for excessively changing the chemical levels during his shift. Copies of the written warnings and verbal counselings were included in the file of the Director of ODJFS, which was transmitted to the Commission.

{¶18} On October 7, 2020, Appellant received a written warning for a pattern of abuse of his sick days as his usage of sick days revealed a pattern of abuse as addressed in the collective bargaining agreement. Appellant either left early or called in sick on eleven Wednesdays between March 11, 2020, and September 16, 2020. Appellant received a second written warning on October 7, 2020, for falsifying his pay records for September 22, 2020.

{¶19} Based upon the foregoing, we find the trial court 's decision affirming the Commission's Decision Appellant was discharged for "just cause" is neither unlawful not unreasonable, and is not against the manifest weight of the evidence.

{¶20} Appellant's sole assignment of error is overruled.

{¶21} The judgment of the Guernsey County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

