

[Cite as *Karen Skunta & Co., Inc. v. Unemp. Comp. Rev. Comm.*, 2016-Ohio-5847.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 104105**

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**KAREN SKUNTA & COMPANY, INC.**

PLAINTIFF-APPELLANT

vs.

**UNEMPLOYMENT COMPENSATION REVIEW  
COMMISSION**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-841109

**BEFORE:** McCormack, P.J., Blackmon, J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** September 15, 2016

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TIM McCORMACK, P.J.:

{¶1} Plaintiff-appellant Karen Skunta & Company, Inc. (“Employer”) appeals from a judgment of the Cuyahoga County Court of Common Pleas that affirmed the decision of the Unemployment Compensation Review Commission (“the Commission”) granting unemployment benefits to Kimberly Laurie (“Claimant”). The issue in this administrative appeal is whether Claimant was terminated with “just cause” for unemployment benefits purposes. Applying the deferential standard of review required by the statute, we conclude the Commission’s decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

### **Procedural History**

{¶2} Claimant was terminated from Employer, a web design company, on May 15, 2014. She applied for unemployment benefits. On June 27, 2014, the Director of the Ohio Department of Job and Family Services (“the Director”) issued a Determination, finding Claimant was discharged without just cause and allowing her application for unemployment benefits. Employer appealed from the Director’s Determination. On August 6, 2014, the Director issued a Redetermination, again deciding in Claimant’s favor, finding her to be discharged without just cause.

{¶3} Employer appealed from the Director’s Redetermination to the Commission. A hearing was held before a hearing officer of the Commission on October 20, 2014, and December 9, 2014. Both Employer and Claimant appeared with

legal counsel and provided extensive testimony. After the hearing, the hearing officer issued a decision on December 15, 2014, affirming the Director's Redetermination and granting Claimant unemployment benefits. Employer filed a request for a review of that decision. On February 4, 2015, the Commission disallowed Employer's request for further review.

{¶4} Employer then appealed to the Cuyahoga County Court of Common Pleas. The trial court affirmed the Commission's decision. Employer now appeals to this court, raising one assignment of error. It contests the Commission's finding that Claimant was discharged without just cause, claiming that the Commissioner's decision was unlawful, unreasonable, and against the manifest weight of the evidence.

### **Standard of Review**

{¶5} R.C. 4141.29 sets forth the eligibility requirements for unemployment compensation. Pursuant to R.C. 4141.29(D)(2)(a), a claimant is prohibited from receiving unemployment compensation if discharged with just cause. "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." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995), quoting *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). Whether just cause exists is unique to the facts of each case. "[F]ault is essential to the unique chemistry of a just cause termination." *Tzangas* at 698.

{¶6} Regarding the court's review of the Commission's decision on unemployment benefits matters, R.C. 4141.282(H) sets forth a deferential standard of review. It states:

(H) REVIEW BY THE COURT OF COMMON PLEAS

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was 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, the court shall affirm the decision of the commission.

*See also Geretz v. Ohio Dept. of Job & Family Servs.*, 114 Ohio St.3d 89, 2007-Ohio-2941, 868 N.E.2d 669, ¶ 10 (reiterated the holding that when reviewing an appeal from the Unemployment Compensation Review Commission, the court may reverse the commission's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence).

{¶7} Furthermore, the scope of review regarding "just cause" determination is the same for both the common pleas court and an appellate court. *Durgan v. Ohio Bur. of Emp. Servs.*, 110 Ohio App.3d 545, 551, 674 N.E.2d 1208 (9th Dist.1996), citing *Tzangas* at 696-697. In other words, rather than reviewing the common pleas court's decision for an abuse of discretion, this court reviews the commission's decision, applying the same statutory standard of review. *Ricks v. Dir., Ohio Dept. of Job & Family Servs.*, 8th Dist. Cuyahoga No. 99451, 2013-Ohio-3253, ¶ 11. Under that standard of review, we may reverse the commission's determination only if it is

“unlawful, unreasonable, or against the manifest weight of the evidence.” R.C. 4141.282(H).

{¶8} In reviewing the present unemployment compensation matter, we are precluded from making factual determinations or determining the credibility of the witnesses as that is the commission’s function as the trier of fact; we also defer to the commission on its weighing of conflicting evidence. *Sinclair v. Ohio Dept. of Job & Family Servs.*, 8th Dist. Cuyahoga No. 101747, 2015-Ohio-1645, ¶ 7, citing *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587, and *Tzangas*, 73 Ohio St.3d at 696, 653 N.E.2d 1207. We are, in addition, mindful that every reasonable presumption should be made in favor of the commission’s decision and findings of fact. *Id.*, citing *Banks v. Natural Essentials, Inc.*, 8th Dist. Cuyahoga No. 95780, 2011-Ohio-3063, ¶ 23, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988).

### **Analysis**

{¶9} Both Claimant and Karen Skunta, the principal of Karen Skunta & Company, Inc., testified extensively before the Commission’s hearing officer. “The hearing officer was the trier of fact who occupied the best position to judge the credibility of witnesses and the weight of the evidence.” *Astro Shapes, Inc. v. Sevi*, 7th Dist. Mahoning No. 09 MA 105, 2010-Ohio-750, ¶ 35. Here, the hearing officer made the following findings of fact in his decision:

Claimant was last employed by Karen Skunta and Company (Inc) from May 19, 2013, to May 15, 2014, as an Executive Assistant and Office Manager. Claimant was paid a salary. Karen Skunta and Company (Inc) is a design firm that creates branded environments.

In addition to claimant and Owner/President, Karen Skunta, the company employed four designers.

In September, 2013, claimant put on a forum "Citizens against Regionalism" at the Eastern branch of Cuyahoga Community College. When Ms. Skunta learned of claimant's efforts, she offered to have materials for the forum printed at the office and offered claimant the help of one of the designers.

On February 23, 2014, claimant filed petitions to run for Lake County Commissioners as a Republican. Claimant transferred campaign related files she created at home to her work computer. Claimant worked on the files on her lunch break and when she had down time.

Karen Skunta and Company (Inc) did not have a policy regarding the use of company computers for personal use. When work was slow the designers would send humorous videos and jokes to each other on their office computers.

In mid-March, 2014, Ms. Skunta found a file on claimant's computer and asked her if she was running for office. Claimant responded that she was. Ms. Skunta asked why she had not told her before. Claimant responded that she was waiting for the right time to sit down and talk about it with her.

Ms. Skunta told claimant that it was admirable that she was running for office and gave a \$100 contribution to her campaign in April 2014.

The Republican primary election was held on May 6, 2014. Claimant won [the primary nomination].

On Saturday May 10, 2014, Ms. Skunta was getting ready to go to a conference in Boston. While wrapping up a client request, Ms. Skunta went on claimant's computer to find a document. When looking for the document she found a number of personal files related to claimant's campaign. She opened some and noted the time they were last opened and cross referenced the times to her personal calendar. Ms. Skunta found all of the files she checked were opened during normal business hours, when [Ms. Skunta] was out of the office.

That evening Ms. Skunta sent a letter to claimant by email, which indicated that [claimant's] personal pursuits had infiltrated her workday and cut into her productivity as well as her complete attention to the job. She stated that there had been too many missed details and that she was tired of having to remind claimant what to do on a regular basis, of double checking her work and/or doing it herself. She indicated it was frustrating and discouraging that while she was paying her a handsome salary she was not getting anywhere close to return on her investment. The letter went on to state that against office guidelines and a discussion that they had when claimant shared the fact that she was running in the primary, [claimant] brought her political administrative documents onto her computers, used her printers and continued to absorb more company work hours to the point that the previous Monday she basically worked for about three hours. The letter concluded by stating that while she and the design team were in Boston, claimant was not to come into the office from Monday May 12, 2014 to Wednesday May 14, 2014, and that claimant should seriously consider whether she wanted to keep the job with her firm, pending their review on Thursday, May 15, 2014.

When Ms. Skunta met with claimant on May 15, 2014, she asked her for her response to the letter and what she intended to do. Claimant indicated her disagreements to the letter, indicating that she had no indication that the use of the computer would be a problem, that Ms. Skunta had offered a designer to help with the forum, that she never used her cell phone at work and always got her work done before working on the campaign. Ms. Skunta terminated claimant, telling her that she didn't think she could run for office and work full-time.

{¶10} In reaching the conclusion that Claimant was discharged without just cause for purposes of unemployment benefits, the hearing officer provided the following reasons:

Karen Skunta and Company (Inc) contends that claimant was discharged for using company time and company resources to work on a political campaign. The employer presented no documentation to support her claims that claimant was repeatedly reminded of the need to carry out her responsibilities and that specific directives were given to claimant about the use of company resources on her campaign. In fact, the available evidence is to the contrary, as the employer expressed support for claimant's campaign and had offered the use of office resources, and a designer to help in a forum the claimant had put on the previous fall. It also seems more than coincidental that there is no evidence of the employer expressing concern about claimant's activities until four days after claimant won the primary election. Without any evidence of prior reprimand or warning concerning the use of company resources and company time on her political campaign, there is insufficient fault on claimant's part to prove just cause for discharge.

{¶11} The question for our resolution is whether the Commission's finding that Claimant was terminated without just cause was unreasonable, unlawful, or against the manifest weight of the evidence.

{¶12} The initial Determination issued by the Director reflects that Employer's stated reason for Claimant's discharge was her failure to perform assigned job duties. In appealing from the Director's Determination, Employer added Claimant's use of the office computers for her campaign as a reason for her discharge. Later, at the hearing before the Commission, Karen Skunta cited Claimant's use of the work time and office materials in her personal pursuits.

{¶13} Karen Skunta acknowledged at the hearing that there was no office policy against keeping personal documents on the office computers, which was consistent with Claimant's testimony that all the designers in the company had personal files on their computers. Skunta also acknowledged she had previously offered and allowed Claimant

to use work computers and printers for her personal project during work hours, even offering other employees to assist her project, during work hours as well.

{¶14} At the hearing, Karen Skunta also acknowledged that when she first saw the campaign materials on Claimant's office computer, instead of prohibiting Claimant from any future use of the office equipment, she expressed her support of Claimant's participation in the democratic process and also made a donation to her campaign. Although Skunta testified she told Claimant on that occasion that she did not want Claimant's campaign "to influence \* \* \* anything being done on work time, any equipment \* \* \*," Skunta acknowledged there was no documentation of that verbal instruction.

{¶15} At the hearing, Employer submitted as an exhibit an email Karen Skunta sent to Claimant on February 9, 2014, to show that Skunta had reprimanded Claimant regarding her job performance. In the email, Skunta listed specific office matters that required Claimant's attention. She noted that Claimant was "not 100%" focused on her work before the September 2014 event but did subsequently perform as expected. She stated, "I expect you to be 100% focused and dedicated to our firm and to me, when you are working in my office." The communication, however, made no mention of Claimant's use of the office equipment. Skunta also acknowledged at the hearing that, prior to terminating Claimant, she never disciplined her for her job performance.

{¶16} The Commission found Employer presented no documentation to support its contention that Claimant was repeatedly reprimanded of the need to carry out her work

responsibilities and to cease using the company resources on her campaign. The Commission instead found credible evidence that the employer offered support for Claimant's campaign and had previously offered the use of the company resources for a personal project Claimant was working on. In assessing Claimant's fault, the Commissioner focused not on the propriety of Claimant's conduct but on whether she had received prior reprimands or warning regarding her conduct. Noting that the first documented reprimand or warning was mere days before Claimant was discharged, the Commission concluded that there was insufficient fault on Claimant's part to disqualify her from unemployment benefits.

{¶17} "The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case." *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587. As the trier of fact, the Commission is vested with the power to review the evidence and to assess the credibility of the witnesses. A reviewing court, whether the common pleas court or this court, may not substitute its judgment for that of the Commission simply because it interprets the evidence differently. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 161, 463 N.E.2d 1280 (10th Dist.1983).

That reasonable minds might reach different conclusions is not a basis for the reversal of the Commission's decision. *Tzangas*, 73 Ohio St.3d at 697, 653 N.E.2d 1207; *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20.

{¶18} In this case, at each of the four stages of the administrative proceeding, Claimant was found to be discharged without just cause and eligible for unemployment benefits. The trial court, appropriately, did not engage in a de novo review of this matter, and neither will this court. The Commission, weighing the evidence and assessing the credibility of the witnesses, made factual findings and gave its reasons for the conclusion that, in the absence of prior reprimand or warning, Claimant's conduct did not exhibit sufficient fault to provide just cause for discharge for purposes of unemployment benefits. Although Claimant used the office resources in pursuing personal projects, the record reflects Employer had sent mixed signals regarding such use.

The first documented reprimand about such use was on May 10, 2014, only days before Claimant's discharge. Mindful of our limited role and the highly deferential standard of review, we are unable to conclude that the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. The assignment of error is without merit.

{¶19} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing 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.

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TIM McCORMACK, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR