[Cite as *Williams v. Ohio Dept. of Job & Family Servs.*, 2010-Ohio-2222.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93594

MARY H. WILLIAMS

PLAINTIFF-APPELLANT

vs.

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

DEFENDANTS-APPELLEES

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-681453

BEFORE: McMonagle, J., Kilbane, P.J., and Jones, J.

RELEASED: May 20, 2010

JOURNALIZED:

ATTORNEYS FOR APPELLANT

Gordon J. Beggs
Kenneth J. Kowalski
Supervising Attorneys
Ashleigh B. Elcesser
Legal Intern
Employment Law Clinic
Cleveland State University
2121 Euclid Avenue, LB 138
Cleveland, OH 44115

ATTORNEYS FOR APPELLEES

Director, Ohio Department of Job and Family Services

Richard Cordray
Ohio Attorney General
Laurel Blum Mazorow
Assistant Attorney General
State Office Building, 11th Floor
615 W. Superior Avenue
Cleveland, OH 44113-1899

Bridgeway, Inc.

Fred J. Pompeani
Lisa A. Reid
Porter, Wright, Morris & Arthur LLP
925 Euclid Avenue, Suite 1700
Cleveland, OH 44115

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of

this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Plaintiff-appellant Mary H. Williams appeals the trial court's judgment affirming the Review Commission's decision in this administrative appeal after finding that the Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence. We reverse and remand.

{¶ 2} In October 2006, Williams began working for defendant-appellee Bridgeway, Inc. as a residential social worker. In January 2007, Williams was promoted to a residential program manager. The promotion was conditioned upon Williams becoming a licensed independent social worker ("LISW") within 15 months of the promotion, or by May 2008. Williams signed a letter of appointment, which included the licensing requirement.

{¶ 3} Williams was scheduled to sit for the exam in April 2008, but because of a health issue she received an extension until June 2008 to take the exam. She did not pass the exam, however,[1] and was terminated from Bridgeway for failing to become a LISW within 15 months.

[1]She was not eligible to take the test again for 90 days.

{¶ 4} Williams filed for unemployment compensation. The Director disallowed her claim, finding that she had been discharged for just cause. Williams appealed, and on redetermination, the Director affirmed the initial determination. Williams appealed again and the case was transferred to the Review Commission.

{¶ 5} A hearing officer from the Commission affirmed the Director. The officer found that under the letter of appointment, Williams stipulated that she was required to pass a LISW exam within 15 months, and that passing the exam was a term and condition of employment. The officer further noted that Williams had taken the exam at the end of the 15-month term, failed it, and did not have sufficient time to retake it. Moreover, the officer noted, in response to Williams's claim that she was treated differently from two other residential program managers who did not have the LISW certification, that one had been in the position for 13 years and the other for 5 years. The officer justified the differing requirements stating that, "[i]t is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment."

{¶ 6} Williams filed a request for review before the Unemployment Compensation Review Commission, but the request was denied and she appealed to the common pleas court. The court found that the decision of the Commission was not unlawful, unreasonable or against the manifest weight,

and affirmed the Commission's decision. She now raises two assignments of error for our review.

{¶ 7} In her first assignment, Williams contends that the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. In the second assignment, she contends that the Review Commission's was against the manifest weight of the evidence because Bridgeway's licensing requirement was not fairly applied. We consider these two interrelated assignments of error together.

{¶ 8} R.C. 4141.282(H) sets forth the scope of review in unemployment compensation cases. Pursuant to this section, the trial court may only reverse the Review Commission's decision if it is "unlawful, unreasonable, or against the manifest weight of the evidence." Id.; see, also, *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696, 653 N.E.2d 1207. When we review the trial court's decision, we apply the same standard. Id. The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's scope of review. Id., citing *Irvine v. Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587, 590. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, 674 N.E.2d 1208, citing *Wilson v.*

Unemployment Comp. Bd. of Rev. (1984), 14 Ohio App.3d 309, 310, 471 N.E.2d 168.

{¶ 9} The purpose of the Unemployment Compensation Act is to provide financial assistance to persons without employment through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39, 399 N.E.2d 76. R.C. 4141.29 establishes the criteria for eligibility for unemployment compensation benefits. Pursuant to R.C. 4141.46, this provision must be liberally construed. Under R.C. 4141.29(D)(2)(a), no individual may be paid benefits if the individual has been discharged for just cause in connection with the individual's work.

{¶ 10} "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,* supra at 17. The determination of whether "just cause" exists depends upon the unique considerations of each particular case and each case must be considered on its particular merits. Id.

{¶ 11} Some courts have recognized that "[t]here is a distinction between the violation of a company rule or policy, which may warrant discharge of an employee, and 'the further degree of misconduct or fault required on the part of the employee to justify a denial of unemployment benefits.'" *James v. Ohio State Unemployment Rev. Comm.*, Franklin App. No. 08AP-976, 2009-Ohio-5120, ¶12, quoting *Adams v. Harding Machine Co., Inc.* (1989), 56

Ohio App.3d 150, 155, 565 N.E.2d 858. In *Adams*, the Third Appellate District recognized the distinction made by the review board between the "'cause' necessary for discharge of the plaintiff under the (implied) employment contract in the case * * * and the 'just cause' necessary to determine eligibility for unemployment compensation benefits[.]" The court cited to the review board's decision, which found that, although the employer had the right to discharge the claimant, the action was excessive and the claimant was "discharged without just cause in connection with work within the meaning of * * * [R.C. 4141.29(D)(2)(a)]." Id. at 155-56.[2]

{¶ 12} This court has also recognized the distinction. For example, in *Case W. Res. Univ. v. Director, Ohio Dept. of Job & Family Servs.*, Cuyahoga App. No. 80593, 2002-Ohio-4021, this court, in addressing "just cause" under the unemployment compensation benefits statute, stated that "[t]he relevant Ohio statute provides that no individual may be paid benefits when that

[2]See, also, *Coey v. Burwell Nurseries* (1965), 2 Ohio App.2d 102, 105, 206 N.E.2d 577 (the court determined the employer had the right to discharge the claimant, but also determined the claimant did nothing to deprive himself of the benefits of unemployment compensation, and thus, there was no "just cause" within the meaning of the law to deny unemployment compensation benefits); *Knowles v. Roberts* (App.1952), 117 N.E.2d 173, 66 Ohio L.Abs. 345 ("[t]he discharge was justifiable under the contract. But this fact does not prevent the employee from receiving the benefits to which he is entitled under the [unemployment compensation] law and which must be liberally construed."); *Dean v. Miami Valley Hosp.* (Feb. 22, 1988), 2nd Dist. No. CA 10391 ("the 'just cause' sufficient to justify the discharge of an employee need not be as grave as the 'just cause' required to disqualify a discharged employee from receiving unemployment compensation under R.C. 4141.29.").

individual 'has been discharged for just cause *in connection with the individual's work*.'" (Emphasis sic.) Id. at ¶21, citing R.C. 4141.29(D)(2)(a). In *Case*, the employee was terminated for (1) the keeping of bullets at his work station, which the university deemed as possession of a weapon, "endangering life or property," and "disruptive behavior and poor judgment," (2) failing to disclose prior criminal convictions on his original employment application and, (3) for committing criminal offenses after being hired by the university.

{¶ 13} This court noted, however, that none of the grounds for the employee's termination cited by the university supported a finding that the employee was terminated "in connection with" his work. Id. at ¶24. This court, therefore, upheld the review commission's decision that the university had terminated the employee without just cause and that he was therefore eligible for unemployment compensation.

{¶ 14} The issue in this case is not whether Bridgeway wrongfully terminated Williams. Rather, the issue is whether Williams has the right to unemployment compensation benefits, or put another way, whether she did something, in connection with her work, that should deprive her of unemployment compensation benefits. We find she did not.

{¶ 15} The evidence at the administrative level demonstrated that Williams had been performing the duties expected of her as a residential

program manager during the time period that she held the position. The only function that she was not able to do, because of her lack of licensure, was sign off on her clinical treatment plans. Another program manager therefore had to sign off on her plans. But that same program manager had also been signing off on another program manager's clinical plans for over 13 years because the latter did not have her LISW license. The evidence further showed that another program manager had served in that capacity for five or six years without a LISW license and did not obtain her license for 20 months after being promoted to residential program director.

{¶ 16} We recognize this court's decision in *Robertson v. Director, Ohio Dept. of Job & Family Servs.*, Cuyahoga App. No. 86898, 2006-Ohio-3349. There, this court affirmed the review commission's decision that the claimant was discharged for just cause because, by failing to provide court documents relative to her past criminal history, she failed to obtain the security officer license required by her employer. Bridgeway and the Department of Job and Family Services contend that *Robertson* controls this case. There is a distinction between *Robertson* and this case, however. Namely, there was no evidence in *Robertson*, as there is here, that the claimant was treated differently from other employees.

{¶ 17} "A termination pursuant to company policy will constitute just cause only if the policy is fair, and fairly applied. This court's review of the

fairness of a company policy is necessarily limited to a determination of whether the employee received notice of the policy; whether the policy could be understood by the average person; and whether there was a rational basis for the policy. The issue of whether the policy was fairly applied relates to whether the policy was applied to some individuals but not others." (Citation omitted.) *Shaffer v. Am. Sickle Cell Anemia Assn.* (June 12, 1986), Cuyahoga App. No. 50127; see, also, *Apex Paper Box Co. v. Adm., Ohio Bur. of Emp. Servs.* (May 11, 2000), Cuyahoga App. No. 77423.

{¶ 18} Here, it is undisputed that Williams was aware of the licensing requirement and understood it. Even assuming that there is a rational basis for the policy,[3] it was not fairly applied. Another Bridgeway employee had been working as a program manager for over 13 years without her LISW license. And another program manager had served in that capacity for five or six years without a LISW license and did not obtain her license for 20 months after being promoted to residential program director.

{¶ 19} The officer justified the differing requirements for the licensing of the program managers, stating that "[i]t is not uncommon to have employers increase the educational pre-requisites in order to be hired or maintain employment." But Bridgeway's representative who testified at the hearing

[3]Williams's supervisor testified that in addition to allowing a program manager to sign off on his or her treatment plans, a LISW license gives a person "a certain expertise" in providing their service.

stated twice that she did not know of *any* policy of the agency requiring program managers to have a LISW license and did not know if any employees had been hired as program managers on the condition of obtaining a license, as Williams had been. She further testified that there was no governmental requirement that program managers have a LISW licence. None of the other evidence in the record shows the existence of such a Bridgeway policy.

{¶ 20} On this record, the requirement imposed on Williams was not fairly applied to other program managers and therefore her assignments of error are sustained.

Judgment reversed and remanded.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
LARRY A. JONES, J., CONCUR