[Cite as *Massengale-Hasan v. Ohio Dept. of Job & Family Servs.*, 2010-Ohio-251.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92951

CAROLYN MASSENGALE-HASAN

PLAINTIFF-APPELLANT

vs.

DIRECTOR, OHIO DEPT. OF JOB AND FAMILY SERVICES

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-655193

BEFORE: Dyke, J., Blackmon, P.J., and Cooney, J.
RELEASED: January 28, 2010

JOURNALIZED:

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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).

ANN DYKE, J.:

{¶ 1} Plaintiff Carolyn Massengale-Hasan appeals from the judgment of the trial court that affirmed an administrative determination that she was fired from her position with Consumer Support Services, Inc. ("CSS") for just cause, and therefore not entitled to unemployment compensation. For the reasons set forth below, we affirm.

{¶ 2} In January 2006, plaintiff was hired as a personal caregiver at CSS, an entity that provides services to disabled individuals. At this time, she received an employee handbook that defined prohibited conduct. Plaintiff received a written warning on September 20, 2006, which cited her for creating a disturbance by engaging in a verbal confrontation with a coworker. On May 29, 2007, CSS determined that plaintiff engaged in an "aggressive verbal confrontation" and was insubordinate to her supervisor. Plaintiff was cited for improper conduct (failure to accept authority or supervision); refusal to obey orders; and creating a disturbance (harassment, threats, and abusive language), and was terminated.

{¶ 3} Plaintiff filed a grievance with CSS that was rejected. She then filed for unemployment compensation, indicating that there was no legitimate basis for her discharge. CSS challenged the claim and maintained that she was discharged for violating a company rule.

{¶ 4} The Office of Unemployment Compensation determined that plaintiff disregarded a company rule and was justifiably discharged. Plaintiff appealed the denial of the claim, but the decision was affirmed upon redetermination.

{¶ 5} Plaintiff commenced a further review to the Unemployment Compensation Review Commission, which held an evidentiary hearing. CSS Area Director Kimberly Wosotowsky testified that plaintiff provided direct care to three individuals who share a home. After learning that one of the residents would not be present at the home from May 26-27, 2007, Wosotowsky telephoned plaintiff to advise her that she would not be needed but could make up the lost hours in another week. Wosotowsky also left a message advising that plaintiff was only to work until 1:00 p.m., on May 28, 2007, and should end her shift when Team Leader Tyshia Bulger arrived.

{¶ 6} When Bulger arrived at 1:00 p.m., however, plaintiff left the home with the residents and did not end her shift. Later that afternoon, plaintiff informed Wosotowsky that she wanted to meet on the following day to discuss what had happened.

{¶ 7} At the meeting the next day, Wosotowsky and Human Relations Coordinator Matt Gurwell planned to inform plaintiff that due to personality conflicts, she would be reassigned to doing "drop ins" that would involve less contact with other staff members. Plaintiff became angry and believed she was being terminated. She began to shout and would not let Wosotowsky explain the reassignment. According to Wosotowsky, plaintiff "got so close in my personal

space and was so loud that when she was speaking she was spitting on me. She had backed me into the corner or * * * towards the wall."

{¶ 8} Wosotowsky informed plaintiff that she was terminated and asked her to leave. Plaintiff refused, and Wosotowsky called the police.

{¶ 9} Gurwell testified that plaintiff had been disciplined in connection with an earlier disagreement with a coworker. As the May 2007 meeting began, plaintiff "exploded" and became extremely argumentative.

{¶ 10} Plaintiff testified that she never received notice of the scheduling change and did not know that she was only to work a half day on May 28, 2007 and was upset to later find out that she would not be paid for a full day's work. Plaintiff became further upset upon learning that she was to be reassigned, which she understood to involve a reduced salary. Plaintiff testified that if she shouted, it was not intentional, and she denied backing Wosotowsky into a corner. Wosotowski did not explain to her why she had been fired. Later, after plaintiff requested a written explanation, Wosotowsky presented her with a letter outlining three reasons for the discharge.

{¶ 11} The hearing officer subsequently affirmed the earlier order, concluding:

{¶ 12} "Claimant was discharged * * * due to inappropriate conduct during a discussion with the employer's area director. During that discussion, claimant shouted at the area director, interrupted the area director, and refused to leave when asked to do so. Based upon a prior warning regarding her conduct,

claimant knew or should have known that inappropriate conduct would not be tolerated by her employer. Claimant was discharged * * * for just cause in connection with her work."

{¶ 13} Plaintiff was denied further review of this decision. She then appealed to the court of common pleas, which determined that the review commission's decision was not unlawful, arbitrary, or against the manifest weight of the evidence, and affirmed the decision. Herein, plaintiff raises two errors for our review.

{¶ 14} In her first assignment of error, plaintiff asserts that the trial court erred in affirming the "just cause" finding.

{¶ 15} An employee is not eligible for unemployment benefits if he or she was terminated for just cause. R.C. 4141.29(D)(2)(a). "Just cause" is the type of conduct that "an ordinarily intelligent person would regard as a justifiable reason for discharging an employee." *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 463 N.E.2d 1280. Just cause is predicated upon employee fault. *Durgan v. Ohio Bur. of Emp. Serv.* (1996), 110 Ohio App.3d 545, 674 N.E.2d 1208.

{¶ 16} In *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv*. (1995), 73 Ohio St.3d 694, 653 N.E.2d 1207, paragraph one of the syllabus, the Ohio Supreme Court held that the standard of review of "just cause" determination is the same in all courts:

{¶ 17} "[R]eviewing courts may reverse 'just cause' determinations 'if they are unlawful, unreasonable, or against the manifest weight of the evidence.' This court noted that while appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record." Id., citing *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587. Accord, *Gualtieri v. Stouffer Foods Corp*. (March 24, 1999), Summit App. No. 19113.

{¶ 18} Repeated instances of insubordination have been deemed to constitute just cause for termination. *Yarian v. Struthers City Schools Bd. of Edn.* (June 29, 1988), Mahoning App. No. 87 C.A. 95. However, "[i]t cannot be stated, as a general rule, that a single incident of misconduct is not enough to deny unemployment compensation benefits." Id., citing to *Neilsen v. KBI Corp./Ohio Materials* (June 18, 1982), Lucas App. No. L-82-063; *Hoffacher v. Pace Engineering* (Dec. 18, 1987), Geauga App. No. 1376; *Laughbaum v. Bd. of Rev*. (Aug. 28, 1985), Crawford App. No. 3-84-16. That is, the seriousness of the misconduct and the circumstances surrounding the discharge must be considered in each instance. *Gualtieri v. Stouffer Foods Corp.,* supra.

{¶ 19} Willfully refusing to follow a direct order of superiors has been deemed insubordination and sufficient justification for termination. *Watson v. Ohio Home Health Care,* Montgomery App. No. 22837, 2009-Ohio-537. Continuing a confrontation and refusing to leave a room have also been found to

constitute insubordination comprising just cause for termination. *Curtis v. Infocision Mgt. Corp.,* Summit App. No. 24305, 2008-Ohio-6434. Likewise, conduct that is intimidating to the employer or a coworker has been deemed just cause for termination, *Saini v.Cleveland Pneumatic Co.* (May 14, 1987), Cuyahoga App. No. 51913, as has conduct that creates a hostile or offensive work environment. *Vitatoe v. Lawrence Industries Inc*., 153 Ohio App.3d 609, 2003-Ohio-4187, 795 N.E.2d 125.

{¶ 20} By application of the foregoing, we cannot conclude that the "just cause" determination rendered in this matter is unlawful, unreasonable, or against the manifest weight of the evidence. The record clearly indicated that plaintiff confronted Wosotowsky at the May 28, 2007 meeting. She got within inches of Wosotowsky's face, and shouted and behaved in a hostile and aggressive manner. Plaintiff then refused to leave the office and was terminated. This record is sufficient to establish insubordination, refusal to obey the order of a supervisor, and hostile and offensive conduct. Moreover, the record further indicates that plaintiff had been previously disciplined for a hostile and intimidating confrontation with a coworker. We find no basis for overturning the determination that plaintiff was discharged for just cause. The first assignment of error is overruled.

{¶ 21} For her second assignment of error, plaintiff asserts that the trial court erred in affirming the decision of the Review Commission because the

hearing officer refused to allow plaintiff to question a witness about events that transpired when police arrived.

{¶ 22} Errors not raised below are deemed waived on appeal, unless the trial court has committed plain error. *Sellers v. Logan-Hocking City School Dist. Bd. of Edn.* (Feb. 21, 1992), Hocking App. No. 91 CA 12.

{¶ 23} We find no plain error, as we concur with the hearing officer's reasoning that his focus was the termination, and plaintiff was terminated before the police were summoned to CSS.

{¶ 24} The second assignment of error is overruled.

Affirmed.

It is ordered that appellee recover from appellant 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.

ANN DYKE, JUDGE

PATRICIA ANN BLACKMON, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR