[Cite as *Galazia v. Dir., Dept. of Job & Family Serv.*, 2021-Ohio-2337.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

RONALD GALAZIA,

Appellant,

v.

DIRECTOR, DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,

Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0062

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2019 CV 2124

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Atty. John A. McNally, IV, John A. McNally, III, Co., LPA 100 East Federal Street, Suite 600, Youngstown, Ohio 44503-1893, for Appellant

Atty. Laurence R. Snyder, 615 W. Superior Ave., 11th Floor, Cleveland, Ohio 44413, for Appellees.

Dated: June 22, 2021

WAITE, J.

{¶1} Appellant Ronald Galazia appeals the judgment of the Mahoning County Court of Common Pleas confirming the Unemployment Review Commission's decision to deny him unemployment benefits. Appellant's single assignment of error, that the trial court erred in affirming the denial of benefits, is without merit and is overruled. The judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellant was employed as a general laborer for Primetech Communications ("Employer") from October 22, 2018 until June 27, 2019. He reported to Todd Smith, Project Manager. Appellant resided in Struthers, Ohio but was working on a project in Columbus, Ohio. Employer provided Appellant with a hotel room in Columbus because the long distance precluded a daily commute.

{¶3} The parties presented differing accounts of the events leading to Appellant's termination. According to Appellant, he approached Bob Garber, his direct supervisor, on Wednesday, June 19, 2019, and informed him that he needed to return home for at least a week to handle an urgent family matter. Appellant contends that both Garber and Smith were aware of Appellant's ongoing family issues. Appellant testified that Garber responded, "[l]ook, go do what you got to do." (9/6/19 Tr., p. 16.) Appellant interpreted this response to mean that he had permission to return to Struthers for a week to take care of his family matter.

{¶4} According to the Employer, Appellant informed Smith on June 19, 2019, that he needed only the day off on June 20, 2019 in order to take care of family matters.

Appellant did not return to work on Friday, June 21, 2019, as expected and did not contact Smith or anyone else to explain his absence. Appellant then failed to report to work on Monday, June 24th and Tuesday, June 25th and did not contact Smith on either day. Smith called Appellant on June 25th. Appellant did not answer the call but texted and said he was at the police department and could not talk. Smith again called Appellant on the following day, June 26th, at approximately 7:25 a.m. but Appellant did not answer the call. Smith immediately sent a text message asking Appellant what was happening, but there was no reply. At 4:45 p.m. Smith sent Appellant a text message that consisted of only a question mark. At 7:15 p.m. Appellant sent Smith another text message saying that he had been trying to reach him. On June 27, 2019, Smith sent Appellant a text message stating that the Employer was giving up his hotel room and that he had been terminated.

{¶5} Appellant was terminated based on Section 405 of the Employer's handbook which states, "[a]n employee who fails to report for work without calling or giving notice for three consecutive days will be considered terminated." (9/10/19, UCRC Decision, Appendix 1, pp. 3-4, Review Commission File.)

{¶6} On July 22, 2019, Appellant filed an application for unemployment benefits. On August 6, 2019, the Director issued an initial determination disallowing the application, finding that Appellant was discharged from his employment for just cause. Appellant appealed the initial determination on August 8, 2019. On August 21, 2019, a Director's Redetermination affirmed the determination that Appellant was terminated for just cause. Appellant filed an appeal. Jurisdiction was transferred to the unemployment compensation review commission and the matter was set for a telephone hearing. A

hearing was held on September 6, 2019. Employer appeared and presented the testimony of Nicolas Shoemaker, Director of Operations and Human Resources and Smith, Appellant's direct supervisor and Project Manager. Appellant appeared and testified on his own behalf. The review commission issued its decision on September 10, 2019, affirming the Director's determination finding that Appellant was terminated for just cause. Appellant filed a request for further review which was disallowed on September 18, 2019.

{¶7} On October 18, 2019, Appellant filed a timely appeal of the Review Commission's decision with the Mahoning County Court of Common Pleas pursuant to R.C. 4141.282. On May 12, 2020, the trial court affirmed the review commission's determination.

{¶8} Appellant filed this timely appeal.

ASSIGNMENT OF ERROR

> The Mahoning County Common Pleas Court erred in affirming the September 18, 2019 Determination of the Unemployment Compensation Review Commission where the Determination of the Commission was unlawful, unreasonable, or against the manifest weight of the evidence.

{¶9} Unemployment compensation is payable to eligible individuals who suffer a loss of income due to involuntary total or partial unemployment. R.C. 4141.29. However, no individual may be paid benefits if he has quit without just cause or if he has been discharged for just cause in connection with the individual's work. R.C. 4141.29(D)(2)(a). An appellate court applies the same standard of review as the commission when

evaluating a review commission's determination denying unemployment benefits due to a termination for just cause. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.,* 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995), paragraph one of the syllabus. R.C. 4141.282(H) limits a court's review of the commission's determination. A court may only review whether the decision was "unlawful, unreasonable, or against the manifest weight of the evidence." If the court concludes that the commission's decision is unlawful, unreasonable, or against the manifest weight of the evidence, the court "shall reverse, vacate, or modify the decision, or remand the matter to the commission." R.C. 4141.282(H). On review, if the court finds no error occurred, the court "shall affirm the decision of the commission." R.C. 4141.282(H). Appellate courts are not permitted to make factual findings or to determine the credibility of witnesses as they are "primarily within the province of the referee and the board." *Irvine v. Unemployment Comp. Bd. of Review,* 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). However, a reviewing court has the duty to determine whether the decision is supported by evidence in the record. *Tzangas,* 697. Therefore, our review is limited to determining whether the review commission had enough evidence to support its decision that the employee was terminated for just cause. The Ohio Supreme Court has held that just cause is "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine* at 17. Whether there is just cause for termination depends on the factual circumstances presented in each case. *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 207, 569 N.E.2d 489 (1991). The facts constituting just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, the Act's purpose "is to enable unfortunate employees,

who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day." *Leach v. Republic Steel Corp.,* 176 Ohio St. 221, 223, 199 N.E.2d 3 (1964).

{¶10} Appellant contends that the trial court's judgment affirming the review commission was unlawful, unreasonable, and against the manifest weight of the evidence because he had received permission from Employer to be off of work for a week to take care of his family matter. Appellant's contention rests almost entirely on Garber's statement that Appellant should "do what you have to do" in response to his request for time off. Appellant asserts that his interpretation that he was given permission to return home for a week was reasonable. Thus, he did not violate the Employer's policy regarding failure to call off for three consecutive days.

{¶11} Employer contends that Appellant requested and was granted permission to be absent on only Friday, June 20, 2019, and that Smith attempted to contact Appellant several times beginning Tuesday, June 25, 2019 through Thursday, June 27, 2019 in an attempt to find out why Appellant had not returned to work. Employer notes it had a written policy in which an employee could be terminated after three consecutive days of unexcused absence from work.

{¶12} Thus, the validity of Employer's decision to terminate Appellant is before this Court. The hearing officer was presented with two versions of the facts from which to determine whether Employer terminated Appellant for just cause. At the hearing, Employer's human resource manager, Nicolas Shoemaker, testified that the Employer had a three-day, no-call/no-show policy and that this policy was consistently applied to all

employees, and that others had been discharged for violating the policy in the past. (9/6/19 Tr., p. 8.) Shoemaker testified that his violation of this policy was the sole basis for Appellant's discharge. (9/6/19 Tr., p. 8.) Smith testified that Appellant spoke to Garber and requested to take only Thursday, June 20th off of work, which was granted. Smith testified that Appellant was classified as a no call/no show beginning Friday, June 21, 2019 and that he made numerous attempts to reach Appellant via telephone and text message to no avail. He testified that Employer had continued to pay for Appellant's hotel room, which totaled $700. (9/6/19 Tr., p. 11.) Employer also testified that when the hotel stay was ended by Employer the hotel manager entered the room and found it nearly empty, "like he was gone for good." (9/6/19 Tr., p. 11.) Smith further testified that when he texted Appellant that he was being discharged, Appellant responded, "[p]erfect. No hard feelings." (9/6/19 Tr., p. 12.)

{¶13} Appellant testified on his own behalf. He testified that he had requested more than just one day off:

> [W]hen I talked to [Garber] and I told him that I needed to go home and to take care of stuff and he's like, 'Look, go do what you got to do.' And, you know, I'd been con… to my understanding, you know, with me and [Garber], he knew that I needed at least that next week of work off * * * But, it was to my understanding with Mr. Bob Garver [sic] (phonetic) that he knew I needed it off and it was all good. He got it. It's all good.

(9/6/19 Tr., pp. 16-17.)

{¶14} The hearing officer asked Appellant whether he had been clear about how many days he would be gone and whether he would check in. Appellant responded, "Over a week… over the weekend it was like, 'Listen, you know, pretty much just can you talk to [Smith]. I need, you know, a week off at least. I have to get this thing straightened out, like I said, or I'm going to lose my family.' " (9/6/19 Tr., p. 18.)

{¶15} The hearing officer asked Appellant about Smith's numerous attempts to contact him. Appellant testified:

> I'll tell you what, um, me and [Smith] have always had a great deal of phone tag. * * * but I could say that at that time, like I said, when I thought I was covered, I was literally 24/7, you know, totally focused on doing everything I could in that time to rectify the situation so that I could go back and make sure that I had money to pay the bills and not worry about the electric getting shut off or the water getting shut off or… You know what I mean?

(9/6/19 Tr., p. 19.)

{¶16} Appellant also denied getting any messages while he was absent that indicated that he was expected to return and was not given a week off as he had thought. (9/6/19 Tr., p. 20.)

{¶17} Appellant contends that even if he was mistaken about how much time he had been given off, he did not exhibit an "unreasonable disregard for [his] employer's best interest." (Appellant's Brf., p. 4.) *McCarthy v. Connectronics Corp.,* 183 Ohio App.3d 248, 2009-Ohio-3392 (6th Dist.). In *McCarthy,* claimant was initially found to be ineligible for unemployment benefits for being terminated for just cause based on insubordination.

Claimant appealed and the trial court reversed the review commission's decision finding the employer's testimony was not credible. On appeal, the Sixth District reversed, concluding that it was not within the trial court's purview to determine the credibility of the witnesses. Thus, the claimant's request for benefits was declined. In *McCarthy* the court stated that just cause was not a matter of whether the employee technically violated a company policy but, rather, "whether the employee, by her actions, demonstrated an unreasonable disregard for her employer's best interests." *Id.* at ¶ 18. The court concluded that the claimant had in fact demonstrated that unreasonable disregard. *Id.*

{¶18} Here, Appellant asserts that even if he had not been given permission to take multiple days off, his belief was not unreasonable based on Garber's response to just do what "he had to do." (9/6/19 Tr., p. 16.) However, Appellant completely disregards Employer's testimony regarding Smith's multiple attempts to reach him over several days. Even if Appellant had initially understood Garber's comment to mean that he had permission to take several days off, the multiple text messages introduced into the record by Employer clearly indicate that Smith was trying repeatedly to reach him and inquire about his whereabouts and his return.

{¶19} The hearing officer was not persuaded by Appellant's testimony and ultimately concluded that he had been terminated for just cause for violating the company policy against three consecutive days of absenteeism without notifying the employer. The trial court concluded that the hearing officer's findings and the review commission's affirmance were supported by the record and were not unreasonable, unlawful or against the manifest weight of the evidence. We agree with this conclusion. The record demonstrates that the factual dispute between the parties as to whether Appellant had

requested one or multiple days was no longer in dispute once Employer presented evidence of multiple attempts to locate Appellant over the course of three days in order to ascertain when or whether he was returning to work. After a review of the evidence, we conclude that the review commission's determination was supported by competent, credible evidence and is not against the manifest weight of the evidence. Accordingly, Appellant's sole assignment of error is without merit and is overruled.

{¶20} Based on the foregoing, Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.