

[Cite as *Haynes v. Ohio Turnpike Comm.*, 2010-Ohio-665.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92981

BENNIE MICHAEL HAYNES

PLAINTIFF-APPELLEE

vs.

OHIO TURNPIKE COMMISSION, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-637239

BEFORE: McMonagle, P.J., Stewart, J., and Cooney, J.

RELEASED: February 25, 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).

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} Defendant-appellant, the Ohio Turnpike Commission (“OTC”), appeals the trial court’s judgment reversing the Unemployment Review Compensation Commission’s (“Review Commission”) decision that plaintiff-appellee, Bennie Michael Haynes, was discharged for just cause. We reverse.

{¶ 2} Haynes, who had been employed by the OTC as a maintenance worker, was discharged on March 3, 2006, and filed for unemployment benefits on March 6, 2006. The Ohio Department of Job and Family Services (“ODJFS”) issued an initial determination denying benefits to Haynes on the ground that he was discharged for just cause. The ODJFS issued a redetermination decision affirming its initial decision. Haynes appealed to the Review Commission.

{¶ 3} A two-day hearing was conducted by a hearing officer of the Review Commission. The hearing officer reversed ODJFS’s decision and held that Haynes was discharged without cause. The OTC requested review before the Review Commission. After reviewing the evidence presented before the hearing officer, the Review Commission reversed the hearing officer’s decision and found that Haynes was discharged for just cause.

{¶ 4} Haynes appealed the Review Commission’s decision to the court of common pleas. The trial court reversed the Review Commission’s decision

and the OTC filed this appeal, raising two assignments of error for our review. We consider the second assignment first.

{¶ 5} In that assignment, the OTC contends that the trial court's decision should be reversed because it applied the wrong standard of review. The court's judgment reads in its entirety as follows: "Upon a review of all the briefs and exhibits the decision of the Review Commission is reversed [and] the decision of the Hearing Officer is reinstated as based on relevant and competent evidence."

{¶ 6} 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. Services* (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. Services* (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.

{¶ 7} Although the trial court's judgment in this case did not use the "unlawful, unreasonable, or against the manifest weight of the evidence" language, the focus of our review is not on the trial court's decision. *Meyers v. Director, Ohio Dept. of Job and Family Services*, Wayne App. No. 09CA0024, 2009-Ohio-6023, ¶6. Instead, we are "required to focus on the decision of [the] Review Commission, rather than that of the common pleas court[.]" Id., quoting *Markovich v. Employers Unity, Inc.*, Summit App. No. 21826, 2004-Ohio-4193, at ¶10, and citing *Barilla v. Director, Ohio Dept. of Job and Family Services*, Lorain App. No. 02CA 008012, 2002-Ohio-5425, at ¶6.

{¶ 8} Accordingly, in light of the above, the second assignment of error is overruled and we consider the first assignment of error which reads: "The Review Commission's decision is not unlawful, unreasonable or against the manifest weight of the evidence because competent, credible evidence establishes that Mr. Haynes was discharged for just cause."

{¶ 9} The facts in the record are as follows. On January 22, 2005, Haynes was assigned to operate a snow-plow truck on the Ohio Turnpike. As he was driving on the entrance ramp to the Turnpike at exit 135, he slid across the median strip and struck a vehicle driving on the exit ramp,

pushing it to the far berm. Haynes called his dispatcher to report the accident and requested an ambulance for the occupants of the other vehicle. He also turned his truck around, drove up the exit ramp, turned around at the toll booth, and drove back down the entrance ramp, plowing snow onto the median as he drove.

{¶ 10} An Ohio State Highway Patrol officer and a foreman from the OTC responded to the scene of the accident. Both testified that Haynes was not in the area where the accident occurred. They also both testified that an occupant of the other vehicle told them that Haynes “came into our lane and hit us and then he left.” Haynes told the officer and foreman that the other vehicle crossed the median and struck his truck as he was driving on the entrance ramp.

{¶ 11} After investigation, the Ohio State Highway Patrol concluded that Haynes was at fault for the accident. The investigating officer recommended that Haynes be charged with hit-skip, but the prosecutor declined and instead charged him with reckless operation of a vehicle. Haynes subsequently pled guilty to a reduced charge of failure to control. On February 10, 2006, the OTC notified Haynes that it was considering taking disciplinary action against him; on March 3, 2006, it terminated him for leaving the scene of an accident.

{¶ 12} R.C. 4141.29(D)(2)(a) provides that an individual is not entitled to receive unemployment benefits if that individual “has been discharged for just cause in connection with the individual’s work.” “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* at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12, 335 N.E. 2d 751.

{¶ 13} “The [Unemployment Compensation] Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protection. Thus, fault is essential to the unique chemistry of a just cause termination.” *Tzangas* at 697-698.

{¶ 14} In its decision, the Review Commission found that Haynes “did, in fact, leave the immediate scene of the accident shortly after it occurred for the improper purpose of plowing snow over the median strip in an attempt to hide evidence of how the accident occurred.” Haynes argues that because the OTC did not have a written policy prohibiting leaving the scene of an accident, R.C. 4549.02(A), governing criminal hit-skip, applied. He argues that he complied with the requirement of the hit-skip statute of stopping and

exchanging information. He also contends that his stopping and exchanging information fulfilled the purpose of the statute, which is “preventing negligent and wanton drivers from evading civil and criminal prosecution by not stopping so that their identity [can] be established.” *State v. Kirchner* (1968), 15 Ohio Misc. 154, 156, 236 N.E.2d 236. Haynes notes that he was not charged with hit-skip and the Highway Patrol crash report indicated that the accident was “not hit/skip.”

{¶ 15} The fact that Haynes was not charged criminally with hit-skip is not dispositive. “The standard of proof necessary to support the finding of a dismissal for just cause under R.C. 4141.29(D)(2)(a) is substantially less than that required for a criminal conviction. * * * Therefore, the finding of not guilty in a criminal prosecution, involving the same dishonest conduct which precipitated the employee’s discharge, is of limited significance. It is not conclusive as to the absence of relevant probative evidence to support the dismissal for just cause.” *Nordonia Hills City School Dist. Bd. of Edn. v. Unemployment Comp. Bd. of Rev.* (1983), 11 Ohio App.3d 189, 191, 463 N.E.2d 1276. Likewise, the fact that the crash report indicated that the accident was “not hit/skip,” is not dispositive because it was generated by the Highway Patrol, not the OTC.¹

¹ Haynes insinuates that the Highway Patrol and OTC are one in the same because their payroll funding comes from the same source, but the officer from the Highway Patrol who issued the crash report testified that he “didn’t take orders from

{¶ 16} Those issues aside, we find that the Review Commission’s determination that Haynes was discharged for just cause was not unlawful, unreasonable, or against the manifest weight of the evidence, and was supported by the evidence in the record. In making our determination, we have confined our review solely to the Review Commission’s determination that Haynes “did, in fact, leave the immediate scene of the accident shortly after it occurred[,]” which was the ground given by the OTC for his discharge.²

{¶ 17} The evidence in the record supporting the Review Commission’s determination that Haynes left the scene includes the following: (1) repeated testimony from the Highway Patrol officer, summed up, that when he arrived at the scene “there was just the [other vehicle] there. There was no turnpike truck around”; (2) repeated testimony from the OTC foreperson, summed up, that as he approached the scene, approximately ten minutes after the accident, he was driving behind Haynes’s truck on the exit ramp, they both turned around at the toll booth, and drove down the entrance ramp to where the other vehicle was, and (3) testimony from both the Highway Patrol officer

anybody at the Turnpike Commission[,]” and that his “contact [with] people from the Turnpike Commission [was] very minimal.”

²We specifically disregard the Review Commission’s determination that Haynes left for the purpose of concealing the evidence, as well as references in the record to Haynes’s dishonesty about the accident as a ground for termination.

and the OTC foreman that an occupant of the other vehicle told them that Haynes “came into our lane and hit us and then he left.”

{¶ 18} This record supports the Review Commission’s finding that the OTC discharged him for just cause, that is, leaving the scene of an accident. Accordingly, the first assignment of error is well taken, and the judgment of the trial court is reversed and the case is remanded with instructions to reinstate the decision of the Review Commission.

It is ordered that appellant recover from appellee 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, PRESIDING JUDGE

MELODY J. STEWART, J., and
COLLEEN CONWAY COONEY, J., CONCUR