

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

DWAYNE D. PRYOR, :
 :
 Defendant-Appellant, :
 : No. 110403
 v. :
 :

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

Plaintiffs-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: December 9, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-20-942325

Appearances:

Dwayne D. Pryor, *pro se*.

David Yost, Ohio Attorney General, and Patrick Macqueeney, Assistant Attorney General, *for appellee* Ohio Department of Job and Family Services.

EILEEN T. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Dwayne D. Pryor (“Pryor”), appeals a judgment of the Cuyahoga County Court of Common Pleas affirming a decision of the Ohio Unemployment Compensation Review Commission (“the Review Commission”)

that denied his claim for unemployment benefits. Pryor, pro se, claims the following error:

My brief was stricken because I did not know how to log into the docket and could not find a lawyer to represent me and help submit my brief. I am here today to notify you that the reason this case has gone this far is because the law indicates you must go through the chain of command. I never wanted my unemployment case to be redetermined and that is what I am trying to prove. Unemployment has a recorded line and I never asked or requested a redetermination. If possible, I would like for my unemployment claim to be returned to the Cleveland processing center where it was originally approved.

{¶ 2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} Pryor filed an application for unemployment benefits with the Ohio Department of Job and Family Services ("ODJFS") in April 2020. The claim was allowed for a benefit year beginning March 29, 2020, and awarded Pryor a weekly benefit in the amount of \$480.00 per week, up to a total of \$12,480.00. (R. 19.)

{¶ 4} Pryor subsequently appealed the determination of unemployment benefits to the Director of ODJFS in August 2020. On September 9, 2020, the Director of ODJFS issued a redetermination, finding that Pryor quit his job with Lencyk Masonry Company, Inc. ("Lencyk") without just cause and that he had been overpaid unemployment benefits. Consequently, Pryor's benefits were suspended until he worked six weeks of covered employment, earned at least \$1,614, and was otherwise eligible.

{¶ 5} Pryor appealed the redetermination to the Review Commission. A Review Commission hearing officer heard sworn testimony from Pryor and Diane

Jarrell (“Jarrell”), a fraud investigator with the ODJFS. Jarrell testified that the ODJFS received a report from Lencyk indicating that Pryor began employment with Lencyk in May 2020, after his unemployment application had been approved. Lencyk also reported that Pryor quit the job after two days. (R. 120.)¹

{¶ 6} Pryor admitted at the hearing that he worked for Lencyk for two days in May 2020 and that he quit the job due to health reasons. (R. 114.) Pryor also admitted that he did not disclose the fact that he had been hired by Lencyk to ODJFS. (R. 115.) He claimed he failed to report the hiring by mistake. (R. 115-116.) Jarrell testified that, during her investigation, she questioned Pryor regarding his employment with Lencyk. In response to her inquiry, Pryor sent Jarrell a copy of his Lencyk paystub and medical information indicating he was unable to work due to a health condition. (R. 120-121.) When Jarrell asked if Pryor had quit his employment at Lencyk, he denied quitting. (R. 121.) When asked if he was available for, or able to, work, Pryor indicated he was available and able to work. (R. 121.)

{¶ 7} Jarrell testified that Pryor worked for Lencyk and did not report it and subsequently separated himself from that employment and did not report the separation. Jarrell explained that the denial of a claim prohibits the ability to collect unemployment benefits going forward. (R. 122.) Consequently, the ODJFS determined it had overpaid Pryor the sum of \$1,440.00.

¹ The pages of the Review Commission hearing transcript are numbered according to each page’s place in the administrative record rather than the pagination of a transcript filed independent of its place in the entire record. We, therefore, follow the page numbers included in the transcript as they appear in the record.

{¶ 8} The hearing officer affirmed the ODJFS's decision and found that (1) Pryor was not eligible for unemployment benefits because he quit his job at Lencyk without just cause, and (2) the denial of his unemployment claim resulted in an overpayment of unemployment benefits. The hearing officer noted in her decision that Pryor had participated in the unemployment compensation process several times in the past and that he was more familiar with the process than a first-time applicant. The hearing officer's decision further states, in relevant part:

The Hearing Officer did not find Claimant's testimony credible. Claimant maintained that he did not intend to fail to disclose his employment with Lencyk Masonry Company, Inc., but the evidence establishes otherwise. Claimant's work with this employer was his most recent employment. Claimant answered "no" to a question that he knew he should have answered "yes." He did not err, he lied. Therefore, it was not believable that Claimant "forgot" to disclose the existence of this employment, it seems more plausible that Claimant never intended to disclose that he quit this job due to a concern that this separation in this manner might jeopardize his ability to continue receiving unemployment compensation benefits. Moreover, Claimant's evasiveness during the hearing coupled with his remark that he did not think that he had to disclose the job because he had only worked for a few days also confirmed that the failure to disclose the employment was intentional.

In addition, although Claimant stated that he quit his employment with Lencyk Masonry Company, Inc. due to health problems, there is no record that Claimant established the existence of an alleged health/medical condition and/or that he disclosed this alleged issue at the time that he elected to quit. It is also noted that the documentation submitted by the Claimant in support of this contention, fails to actually support Claimant's claimed basis.

The medical documentation Claimant submitted herein, addresses a period *after* his separation from his employment with Lencyk Masonry Company, Inc. The documentation reflects a period after the separation at issue herein. Consequently, the documentation fails to

establish just cause for the Claimant's decision to quit his employment with Lencyk Masonry.

Accordingly, the Hearing Officer finds that Claimant has not established that he had just cause to quit his employment with Lencyk Masonry Company, Inc. making his separation from this employer, a disqualifying event. Claimant's benefits rights should have been suspended due to this disqualifying separation from employment. However, because Claimant failed to disclose his employment with and subsequent disqualifying separation from Lencyk Masonry Company, Inc., he continued to receive unemployment compensation benefits after benefits should have been suspended.

Based upon the findings herein, for the period from week ending May 30, 2020 through September 5, 2020, Claimant received unemployment compensation benefits to which he was not entitled. As a result, Claimant remains required to repay those benefits to the Ohio Department of Job and Family Services.

{¶ 9} Pryor appealed the Review Commission's decision to the Cuyahoga County Court of Common Pleas. After reviewing the record and transcript from the Review Commission, the common pleas court concluded it was "unable to find that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." (Journal entry dated Mar. 23, 2021.) Therefore, the common pleas court affirmed the Review Commission's decision pursuant to R.C. 4141.282(H). Pryor now appeals the common pleas court's decision.

II. Law and Analysis

{¶ 10} R.C. 4141.282(H) governs the standard of review to be applied by all appellate courts reviewing decisions made by the Review Commission. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). Courts hearing appeals from the Review Commission must determine

the appeal based on the certified record provided by the Review Commission. *Id.* at 696. If the court finds that the Review Commission’s decision 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 Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission’s decision. R.C. 4141.282(H). “This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in [the Ohio Supreme Court].” *Tzangas* at 696.

{¶ 11} In reviewing the certified record, appellate courts are not permitted to make factual findings or to determine the credibility of witnesses. *Id.* at 696. The reviewing court must determine whether the Review Commission’s decision is supported by the evidence in the record. *Id.*, citing *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985); *see also Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031. If the appellate court finds that the Review Commission’s decision is supported by the certified record, the reviewing court cannot substitute its judgment for that of the Review Commission. *Hampton v. JKB Mgmt. Co.*, 10th Dist. Franklin No. 18AP-719, 2020-Ohio-277, ¶ 12; *Kent State Univ. v. Hannam*, 11th Dist. Portage No. 2018-P-0109, 2019-Ohio-2971, ¶ 10.

{¶ 12} In the sole assignment of error, Pryor argues the common pleas court’s judgment should be reversed because he made a mistake when he failed to disclose his employment with Lencyk. He asserts that he was hospitalized at the time he

completed the unemployment forms and that he “made a mistake on a few questions.”

{¶ 13} As previously stated, the Commission determined that Pryor was not eligible for unemployment benefits because he quit his employment at Lencyk without just cause. Under R.C. 4141.29(D)(2)(a), no individual who has “quit work without just cause or has been discharged for just cause in connection with the individual’s work” is eligible for unemployment compensation. “The word ‘quit,’ for purposes of unemployment compensation, connotes a voluntary act of the employee not controlled by the employer.” *Meinerding v. Coldwater Exempted Village School Dist. Bd. of Edn.*, 3d Dist. Mercer No. 10-19-06, 2019-Ohio-3611, ¶ 20, citing *Watts v. Community Health Ctrs. of Greater Dayton*, 12th Dist. Warren No. CA2015-07-068, 2015-Ohio-5314, ¶ 15.

{¶ 14} “Just cause” is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Shephard v. Dir., Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006-Ohio-2313, 853 N.E.2d 335 ¶ 19 (8th Dist.); *see also Tzangas* at 697. The determination as to whether an individual had just cause to quit his or her job “depends on the ‘unique factual considerations’ of a particular case and is, therefore, primarily an issue for the trier of fact.” *Shephard* at ¶ 19, quoting *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587.

{¶ 15} Pryor quit his employment at Lencyk due to an alleged health condition.

“[G]enerally[,] employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore, will not be entitled to unemployment benefits.”

Shepard at ¶ 26, quoting *DiGiannantoni v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist.1996); *see also Irvine* at 19 (“[A]n employee’s voluntary resignation on the basis of health problems is without cause within the meaning of R.C. 4141.29(D)(2)(a) when the employee is physically capable of maintaining a position of employment with the employer, but fails to carry her burden of proving that she inquired of her employer whether employment opportunities were available which conformed to her physical capabilities and same were not offered by her employer.”).

{¶ 16} Pryor admitted at the hearing that he quit his employment with Lencyk after two days due to an alleged health condition. (R. 114.) However, there is no evidence that Pryor informed Lencyk of his alleged medical condition before he quit or that he requested any work that conformed to his physical capabilities. Pryor also failed to provide any medical evidence demonstrating he was unable to work on the day he quit Lencyk. Although there is evidence that Pryor was hospitalized for a pulmonary embolism, Pryor quit his job with Lencyk on May 29, 2020, and the medical documentation he submitted shows that he was not hospitalized until June 4, 2020. (R. 39, 114.) Moreover, there is no evidence

establishing that this condition prevented Pryor from working on any days between May 29, 2020, and June 4, 2020.

{¶ 17} An employee seeking unemployment benefits bears the burden of proving that he or she quit work with just cause and is, therefore, entitled to unemployment benefits under R.C. 4141.29(D)(2)(a). *Irvine* at 18; *Shephard* at ¶ 20. Despite being afforded the opportunity for a fair hearing, Pryor failed to meet his burden of proof in this case. We, therefore, agree with the common pleas court's finding that the Review Commission's decision is not against the manifest weight of the evidence.

{¶ 18} The sole assignment of error is overruled.

{¶ 19} Judgment 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 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.

EILEEN T. GALLAGHER, JUDGE

ANITA LASTER MAYS, P.J., and
LISA B. FORBES, J., CONCUR