

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

COLENE REDDICK,	:	OPINION
Appellant,	:	
- vs -	:	CASE NO. 2009-L-092
THE SHEET METAL PRODUCTS CO., INC., et al.,	:	
Appellees.	:	

Administrative Appeal from the Lake County Court of Common Pleas, Case No. 08 CV 003215.

Judgment: Affirmed.

Paul Kriwinsky, P.O. Box 25583, Beachwood, OH 44122 (For Appellant).

I. James Hackenberg, Baker, Hackenberg & Henning Co., L.P.A., 100 Society National Bank Building, 77 North St. Clair Street, Painesville, OH 44077 (For Appellee-The Sheet Metal Products Co., Inc.).

Richard Cordray, Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Patrick MacQueeney*, Assistant Attorney General, 615 West Superior Avenue, 11th Floor, Cleveland, OH 44113 (For Appellee-Department of Job and Family Services).

DIANE V. GRENDELL, J.

{¶1} Appellant, Colene Reddick, appeals the Judgment Entry of the Lake County Court of Common Pleas, in which the trial court affirmed the decision of the

Unemployment Compensation Review Commission, denying Reddick's unemployment claim. For the following reasons, we affirm the decision of the trial court.

{¶2} Reddick was employed by appellee, The Sheet Metal Products Company, Inc. (SMP), a custom metal fabricating company, in the quality control department from September 12, 2007, until her employment was terminated on February 14, 2008.

{¶3} Reddick filed a claim for unemployment benefits with the Ohio Department of Job and Family Services (ODJFS) on February 19, 2008, which was denied on March 11, 2008. Reddick subsequently appealed the decision, and ODJFS issued a redetermination of benefits, reversing the original determination and finding that Reddick was discharged without cause. Thus, she was then entitled to receive unemployment compensation.

{¶4} On April 21, 2008, SMP appealed the redetermination and an evidentiary hearing was held. The hearing officer upheld the redetermination, affirming the finding that Reddick was discharged without cause.

{¶5} SMP filed a request for review on July 1, 2008. A final decision was issued on September 10, 2008, by the Unemployment Compensation Review Commission. The Commission found that Reddick "did, without authority, access her evaluation prior to the time that it was presented to her and that she shared this information with co-workers. This constitute[d] sufficient fault on her part to justify her discharge. [Reddick] was discharged with just cause in connection with work and her benefits must therefore, be suspended." The Commission reversed the hearing officer's decision and denied Reddick's unemployment claim.

{¶6} Reddick subsequently appealed the decision, pursuant to R.C. 4141.282, to the Lake County Court of Common Pleas. The trial court upheld the Commission's decision; finding that "there is evidence in the record supporting the commission's decision. *** Thus, the commission's findings are supported by the record and are not unlawful, unreasonable, or against the manifest weight of the evidence."

{¶7} Reddick subsequently appeals and raises the following assignments of error:

{¶8} "[1.] The trial court abused its discretion when it affirmed the decision of the Unemployment Compensation Review Commission's Decision of September 10, 2008, because it failed to recognize that Appellant was terminated without cause.

{¶9} "[2.] The trial court abused its discretion when it did not determine that the commission's decision was unlawful.

{¶10} "[3.] The trial court abused its discretion when it did not determine that the commission's decision was unreasonable.

{¶11} "[4.] The trial court abused its discretion when it did not determine that the commission's decision was against the manifest weight of the evidence."

{¶12} "An 'eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment' as provided for by Ohio's unemployment compensation laws. R.C. 4141.29. However, 'no individual may *** be paid benefits ***[f]or the duration of the individual's unemployment if the director [of job and family services] finds that *** [t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work ***.'" *Groves v.*

Ohio Dept. of Job & Family Servs., 11th Dist. No. 2008-A-0066, 2009-Ohio-2085, at ¶12 quoting R.C. 4141.29(D)(2)(a).

{¶13} “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.” *Id.*, quoting *Irvine v. Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17.

{¶14} As Reddick’s assignments of error are interrelated, they will be addressed in a consolidated manner.

{¶15} R.C. Chapter 4141 does not distinguish between the scope of review of a common pleas court and that of an appellate court with respect to Review Commission decisions. Additionally, the Supreme Court of Ohio has confirmed that “there is no distinction between the scope of review of common pleas and appellate courts regarding ‘just cause’ determinations under the unemployment compensation law.” *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696-697, 1995-Ohio-206. This Court is required to focus on the decision of the Review Commission, rather than that of the common pleas court, in such cases. *Barilla v. Ohio Dept. of Job & Family Servs.*, 9th Dist. No. 02CA008012, 2002-Ohio-5425, at ¶6, citing *Tenny v. Oberlin College*, 9th Dist. No. 00CA007661, 2000 Ohio App. LEXIS 6169, at *5.

{¶16} “An appellate court may reverse the Unemployment Compensation Board of Review’s ‘just cause’ determination only if it is unlawful, unreasonable or against the manifest weight of the evidence.” *Groves*, 2009-Ohio-2085, at ¶13, quoting *Tzangas*, 73 Ohio St.3d 694, at paragraph one of the syllabus; R.C. 4141.282(H). Furthermore, the Supreme Court has noted that applying the same standard of review at both the

common pleas and appellate court levels does not result in a de novo review standard. *Tzangas*, 73 Ohio St.3d at 697.

{¶17} “Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the UCRC].’ *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19; see, also, *Long v. Hurler* (1996), 113 Ohio App.3d 228, 233 *** “[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the trial court’s verdict and judgment.’ *Karches*, 38 Ohio St.3d at 19.” *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, at ¶7; *Wilson v. Unemployment Comp. Bd. of Rev.* (1984), 14 Ohio App.3d 309, 310 (if the record reveals evidence to support the UCRC’s findings, the reviewing court cannot substitute its own findings of fact for those of the UCRC).

{¶18} “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission’s] decision.” *Irvine*, 19 Ohio St.3d at 18; *Tzangas*, 73 Ohio St.3d at 696 (the court’s role is to determine whether the decision of the Review Commission is supported by evidence in the certified record). If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the Review Commission. *Durgan*, 110 Ohio App.3d at 551, citing *Wilson*, 14 Ohio App.3d at 310.

{¶19} Moreover, the investigation into just cause is a factual inquiry. *Irvine*, 19 Ohio St.3d at 17. The appellate court is not to make factual findings or determine the credibility of the witnesses; rather, the court “is to determine whether the decision of the board is supported by the evidence in the record.” *Id.* at 18 (citations omitted). “This

duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in this court.” *Tzangas*, 73 Ohio St.3d at 696.

{¶20} “The UCRC must not be reversed on the weight of the evidence if reasonable minds could weigh the evidence and come to contrary conclusions. *** The UCRC’s decision should remain undisturbed on close calls.” *McCarthy v. Connectronics Corp.*, 183 Ohio App.3d 248, 2009-Ohio-3392, at ¶10. “Judgments that are supported by some competent evidence will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *Id.* at ¶9.

{¶21} Reddick contends that she “was not at reasonable fault where the Employer did not foresee to explain some things are confidential in this company and not accessible without supervision. *** Where an accidental view of one’s 45-day employment review is seen, that should not be reasonable fault.”

{¶22} “The determination of whether just cause exists depends upon the factual circumstances of each case. Purely factual determinations are primarily within the province of the hearing officer and commission.” *Atkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-182, 2008-Ohio-4109, at ¶12 (citation omitted). The conduct need not constitute misconduct, but there must be a showing of some fault on the part of the employee. *Sellers v. Bd. of Review* (1981), 1 Ohio App.3d 161, at paragraph 2 of the syllabus; *Schienda v. Transp. Research Ctr.* (1984), 17 Ohio App.3d 119, at paragraph 2 of the syllabus. “If an employer has been reasonable in finding fault on behalf of an employee, the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination.” *Tzangas*, 73 Ohio St.3d at 698.

{¶23} Reddick further alleges that the Commission set “aside a gross finding of lack of credibility, without a new hearing, the polarity of such a decision implies abuse of discretion.” We disagree.

{¶24} “At the review level, the commission may affirm, modify, or reverse a hearing officer’s decision or remand the decision to the hearing officer level for further hearing.’ R.C. 4141.281(C)(4). *** Nothing in R.C. 4141.281(C)(6) requires the commission, at the review level, to conduct an additional hearing. While the statute allows the commission the flexibility to remand the matter for further hearing before the hearing officer, or to conduct a hearing at the review level, it does not require that the commission do so.” *Watkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No., 06AP-479, 2006-Ohio-6651, at ¶19 and ¶20.

{¶25} At the hearing, James Saxa, president of SMP testified that Reddick, “without authorization, went into Mr. Greiner’s computer, *** and printed out her 45 day review. Took that report and shared it with two other employees.” Furthermore, he testified that it “was totally inappropriate for her to do so. She was not authorized to go in Andy [Greiner’s] computer.” He also testified that the only time Reddick had access to the computer “was in [Greiner’s] presence.”

{¶26} Maurene Nightingale, Reddick’s co-worker, testified that “during the week of January 7, [Reddick] had told [her] that she found her 45 day review in [Greiner’s] computer. *** [S]he printed it out, opened it up, put it on the corner of [Nightingale’s] desk.” Nightingale “opened it up realized what it was” and “gave it back to” Reddick. Nightingale then went to a superior co-worker, Laura Woods, and told her about the situation.

{¶27} Woods testified that “during the week of February 7,” Reddick “came into [her] office and was telling [Woods] the information that was on [Reddick’s] 45 day review. [Reddick] stated that she was looking in [Griener’s] computer and found it and [Reddick] said she was upset about what was on it.” Woods reported the incident to Saxa. Woods also testified that around February 4, Reddick told her that she had “lifted something and hurt her neck and shoulder.”

{¶28} Greiner testified that he supervised the work of Reddick. He further testified that Reddick stated to him that “she did not feel comfortable by herself on [his] computer and that she only wanted to do [work] while [he] was directly behind her making sure she was doing it correctly.” Moreover, “it was agreed upon” that the only time she should be on the computer was when Griener was there. Griener also testified that he did not inform Reddick of her 45 day performance review “until the day of” the review, which was January 15. He did not discover that Reddick had accessed her 45 day review until “shortly before her 90 day review.” Additionally, Griener testified that Reddick had met with him to fill out an accident report around February 4.

{¶29} Reddick testified that she did see her review on Griener’s computer; however, she was on the computer for legitimate reasons. She testified that Griener told her that “he was going into a meeting and to practice doing certifications on his computer *** [a]nd when [she] logged on his computer, [the review] was already on [the screen].” She claimed that this happened on the day of her review and she did not print it out or show it to anyone. However, she did show a copy of the review to Nightingale only after she had received it from Griener after their meeting. Furthermore, she testified that she never spoke with Woods about her review.

{¶30} The record reveals that SMP’s witnesses were consistent in their testimony that Reddick printed and showed a copy of her review to co-workers which she gained through unauthorized access to her supervisor’s computer. While Reddick denies that she printed the review and denies showing it to co-workers prior to her meeting with Griener, she does admit that she accessed the review prior to the time it was presented to her.

{¶31} Reddick asserts that “[i]t is not reasonable for a commission to hear of incredible testimony and regard that testimony as credible, especially where the controversy remains in evidence, controversy remains in testimony and controversy remains that such testimony was found incredible.” However, as stated above, “[a]s an appellate court, we are not permitted to make factual findings or to determine the credibility of witnesses. *** We are simply under a duty to determine whether the evidence in the record supported the Board of Review’s decision.” *Becka v. Ohio Unemployment Comp. Rev. Comm.*, 11th Dist. No. 2001-L-037, 2002-Ohio-1361, 2002 Ohio App. LEXIS 1326, at *7 (citation omitted).

{¶32} Upon a review of the record, we conclude that there was competent, credible evidence presented from which the Commission could have reasonably determined that Reddick was terminated for just cause. The decision of the trial court was not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, it is our determination that the court of common pleas did not err in affirming the Commission’s Decision.

{¶33} Reddick’s assignments of error are without merit.

{¶34} For the foregoing reasons, the Judgment Entry of the Lake County Court of Common Pleas, affirming the Unemployment Compensation Review Commission's decision finding that Reddick was terminated for just cause, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., dissents.