**[Cite as *Isenberg v. Artcraft Mems.*, 2012-Ohio-2564.]**

**IN THE COURT OF APPEALS**

**ELEVENTH APPELLATE DISTRICT**

**TRUMBULL COUNTY, OHIO**

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| MARK A. ISENBERG, | : | **O P I N I O N** |
| Appellant, | : | **CASE NO. 2011-T-0093** |
| - vs - | : | |
| ARTCRAFT MEMORIALS, INC., et al., | : | |
| Appellees. | : | |

Administrative Appeal from the Court of Common Pleas, Case No. 2010 CV 156.

Judgment: Affirmed.

*T. Christopher O'Connell,* 3333 Richmond Road, Suite 370, Beachwood, OH 44122 (For Appellant).

*Thomas C. Nader,* Nader & Nader, 5000 East Market Street, #33, Warren, OH 44484 (For Appellee Artcraft Memorials, Inc.).

*Mike DeWine,* Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215, and *Susan M. Sheffield,* Assistant Attorney General, 20 West Federal Street, Third Floor, Youngstown, OH 44503 (For Appellee Director, Ohio Department of Job and Family Services).

CYNTHIA WESTCOTT RICE, J.

**{¶1}** This matter is before the court upon appellant Mark A. Isenberg's appeal from the judgment of the Trumbull County Court of Common Pleas affirming the December 22, 2009 decision of the Unemployment Compensation Review Commission ("UCRC") denying his claim for unemployment compensation against his employer,

Gary Ventling, owner of Artcraft Memorials, Inc. At issue is whether the trial court properly affirmed the hearing officer's conclusion that appellant was issued a disciplinary layoff for misconduct in connection with his employment. We hold the trial court did not err.

**{¶2}** Appellant was employed by Artcraft Memorials, Inc. ("Artcraft"), Champion, Ohio, as a salesperson and manager from September 26, 2005 through February 13, 2009.[1] On January 5, 2009, appellant was sent home from work without pay due to an argument he had with his boss, Gary Ventling. The following facts are relevant to this appeal:

**{¶3}** In January 2009, Ventling discovered that an undisclosed amount of granite, stored adjacent to appellant's office, had been damaged. Ventling was concerned that appellant had not notified him about the damaged material and, on January 5, 2009, visited appellant at the Champion office to question him about the issue. According to Ventling, during the discussion, appellant became belligerent, disrespectful, and threatening. Ventling recalled appellant cursing at him and advising him to call the police if there was a problem. Ventling testified that, when he attempted to reach for the phone, appellant blocked him. As a result of the exchange, appellant was sent home without pay. Ventling testified appellant was sent home as a disciplinary measure due to his conduct during the argument.[2]

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1. The record indicates that even though appellant did not return to work after January 5, 2009, he was not formally discharged but merely on suspension. On February 13, 2009, appellant called Artcraft and allegedly advised the company he would not be coming back.

2. Ventling additionally testified that, between January 5, 2009 and January 20, 2009, he discovered that a significant amount of money was missing from Artcraft's accounts. However, the hearing officer properly limited the evidence to what was known and what occurred on or before the day appellant was sent home. Thus, any evidence relating to how the money was missing and/or appellant's connection, if any, to the suspected theft is beyond the scope of the issue before this court.

**{¶4}** Appellant admitted that, on January 5, 2009, Ventling questioned him about the damaged stone; and, according to appellant, the conversation was "heated" because he "needed to defend the actions that [he] took, or that [Ventling said he] did not take." Appellant nevertheless testified that he was calm, non-threatening, and used no profanities. Given the nature of Ventling's questions, appellant maintained he simply proposed that Ventling call the police to investigate the damage. As a result of this proposal, however, he was immediately sent home. According to appellant, Ventling "said he sent me home because I wasn't communicating with him." Appellant never returned to work at Artcraft.

**{¶5}** On January 20, 2009, appellant filed an application for unemployment compensation benefits; and, on March 2, 2009, the Ohio Department of Job and Family Services ("ODJFS") filed its decision allowing appellant benefits. The decision stated that appellant "was given a disciplinary layoff from ARTCRAFT MEMORIALS INC. on 01/05/2009. Facts available do not establish misconduct in connection with the work. In accordance with Section 4141.29, Ohio Revised Code, this disciplinary layoff has been determined to be non-disqualifiying." An appeal was filed and, on April 13, 2009, the ODJFS director, affirmed the original decision. Appellee filed a timely appeal of the redetermination and the matter was transferred to the UCRC pursuant to R.C. 4141.281(B) and (C).

**{¶6}** On October 26, 2009 and November 19, 2009, a hearing on the matter took place before the OCRC's hearing officer. Both Ventling and appellant testified at the hearing. And, after receiving evidence of the circumstances relating to the disciplinary suspension, the hearing officer reversed the decision on redetermination of the ODJFS director. The hearing officer underscored that, pursuant to R.C. 4141.29(D)(1)(b), an individual is not eligible for unemployment compensation benefits if

he or she was issued a disciplinary layoff for misconduct in connection with his or her employment. Based upon the testimony and other evidence, the hearing officer determined appellant's layoff met this definition. In particular, the hearing officer found:

> **{¶7}** What is relevant, and has the most sway with the Hearing Officer, is the claimant's admission that he told the company president that he should call the police. This very admission by the claimant leads the Hearing Officer to the finding it is more likely than not that he was upset and did act in an unprofessional manner, arguing with the company president, which led to his disciplinary suspension on January 5, 2009. As he was suspended for arguing with the company president, and for telling the president he should call the police, the claimant was given a disciplinary suspension that was for misconduct in connection with work. Therefore claimant is ineligible for benefits for the period of January 5, 2009 through February 12, 2009.

**{¶8}** Based upon this analysis, the hearing officer concluded appellant had been overpaid benefits in the amount of $1,116.00. Appellant subsequently filed an appeal with the Trumbull County Court of Common Pleas.

**{¶9}** After reviewing the case history and the hearing officer's findings and conclusion, the trial court accepted the hearing officer's findings of fact. The court further determined that, given the factual findings, the hearing officer's conclusion was not unlawful, unreasonable, or against the manifest weight of the evidence. The court therefore affirmed the hearing officer's denial of benefits. Appellant now appeals the trial court's affirmance, assigning the following error for this court's review:

**{¶10}** "The hearing officer's decision finding that it was more likely than not that appellant was upset and did act in an unprofessional manner which led to appellant's disciplinary suspension was unlawful, unreasonable and against the manifest weight of the evidence."

**{¶11}** In an appeal from the UCRC to the court of common pleas, the court is empowered to reverse, vacate, or modify the hearing officer's decision if it is "unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282(H). The Supreme Court of Ohio has observed that "[t]his limited standard of review applies to all appellate courts." *Williams v. Ohio Dept. of Job & Family Servs*., 129 Ohio St.3d 332, 2011-Ohio-2897, ¶20, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18 (1985). Accordingly, a reviewing court may not make factual findings or weigh witness credibility and must affirm the decision if there is competent, credible evidence to support it. *Id.*

**{¶12}** Initially, appellant contends that, although he was suspended for purported disciplinary reasons on January 5, 2009, the indefinite nature of the suspension transformed the layoff into a discharge. This appeal, however, addresses *only* whether the event triggering the suspension was a result of misconduct connected to appellant's employment. Consequently, we need not consider whether the suspension evolved into a constructive discharge. Such a question is beyond the scope of and therefore irrelevant to the matter sub judice.

**{¶13}** With this in mind, the record demonstrates that appellant was placed on a disciplinary suspension on January 5, 2009. Pursuant to R.C. 4141.29(D)(1)(b), an individual is not entitled to unemployment compensation benefits for any week where he or she has been given a disciplinary layoff for "misconduct in connection with the

individual's work." Pursuant to this statutory subsection, the hearing officer concluded appellant's disciplinary suspension was issued in connection with his employment as it was occasioned by his unprofessional conduct during an argument with his employer about matters related to his job.

**{¶14}** Appellant initially contends the trial court erred in affirming the hearing officer's decision because the record indicates the January 5, 2009 disagreement related to matters for which he was not responsible at work. Specifically, appellant concedes Ventling confronted him about a load of granite owned by Artcraft, situated on property adjacent to appellant's office, that had been damaged. Appellant asserts, however, that he was not responsible for the property on which the granite was situated. Given this point, appellant contends that the ensuing argument, which led to him being suspended, was not "in connection" with his work. We do not agree.

**{¶15}** Even if appellant was not responsible for the property where the stone was stored, this does not imply the condition of the stone on the property was not his responsibility. In fact, the evidence indicates appellant, as the manager of the Champion Artcraft store, oversaw, in some capacity, the company's materials and overstock. Moreover, the record demonstrates that Ventling's purpose in visiting appellant was not to blame him for the damage, but to question him regarding why he did not report the damage. Accordingly, appellant's suspension, which resulted from an argument related to his failure to notify Ventling of the damaged granite, was "in connection" with his employment. Appellant's argument to the contrary is unpersuasive.

**{¶16}** Next, appellant asserts the trial court erred in affirming the hearing officer's decision because the decision conflicts with specific documentary evidence submitted by Artcraft. In particular, appellant argues that, in various documents

submitted to the ODJFS during the preliminary determination proceedings, Ventling stated appellant's suspension was a result of suspected theft; at the hearing before the UCRC, however, Ventling asserted the suspension was a result of appellant's belligerent, threatening and unprofessional behavior.

**{¶17}** Appellant is correct that some of the documentation indicates appellant's suspension was due to suspected theft; the documentation also reflects that the final event that led to his suspension was appellant's insubordination and disregard for authority. These competing points, however, do not necessarily contradict or undermine the hearing officer's ultimate decision. To wit, the documentation reflecting appellant was suspected of theft was filled out *after* Ventling's discovery that company funds were missing. This documentation, therefore, can be reasonably seen as offering additional, perhaps more serious reasons for appellant's *continuing* suspension. This does not undermine Ventling's testimony that appellant's suspension was a result of his statements and conduct, directed at Ventling, during their January 5, 2009 argument.

**{¶18}** Appellant next maintains he did not use profanity during the January 5, 2009 argument with Ventling, but assuming he used profanity, such a fact, by itself, is insufficient to support his discharge. Appellant's argument is problematic for two reasons. First, the record does not support he was discharged as a result of the January 5 argument. The evidence firmly shows appellant was simply suspended without pay as a result of the argument. Second, the hearing officer did not rely on Ventling's testimony that appellant used profanity as a basis for his denial of benefits. Accordingly, whether appellant used profanity is not a pivotal fact in this case.

**{¶19}** We shall now consider the trial court's substantive conclusion affirming the hearing officer's decision. Testimony indicated appellant knew that the stone on the

adjacent property had been damaged; the evidence also demonstrated he failed to notify Ventling. When Ventling confronted appellant about the damage, he emphasized that appellant should have alerted him. And, it appears the entire basis for Ventling's visit to the Champion Artcraft store on January 5, 2009 was to question appellant as to *why* he was not notified.

**{¶20}** According to appellant, Ventling was out of town when the damage was discovered. And, at the hearing, appellant explained he did not call Ventling because Ventling instructed appellant not to bother him unless he sent an email. Nothing in the record, however, indicates appellant sent an email regarding the damage.

**{¶21}** Appellant conceded at the hearing that Ventling justified the suspension due to appellant's lack of communication regarding employment matters. Instead of recognizing that he should have contacted Ventling in some fashion about the damaged stone, however, appellant advised his boss to call the police. Appellant was subsequently sent home for a disciplinary suspension.

**{¶22}** Given the admittedly "heated" nature of the argument, appellant's comment and behavior can be reasonably seen as evasive and recalcitrant. And, viewing the evidence as a whole, it is reasonable to conclude appellant was upset and responded in an unprofessional manner to Ventling's questions, which were fundamentally related to appellant's employment. From this, we conclude the hearing officer's decision was not unreasonable, unlawful, or against the manifest weight of the evidence. Thus, the trial court did not commit error in affirming the decision of the hearing officer.

**{¶23}** Appellant's sole assignment of error is without merit.

**{¶24}** For the reasons discussed in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDELL, J.,

concur.