[Cite as *Doering v. Holmes Cty. Dept. of Job & Family Servs.*, 2009-Ohio-5719.]

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
SHELLY DOERING	:	Sheila G. Farmer, P.J.
	:	Julie A. Edwards, J.
Plaintiff-Appellant	:	Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2008 CA 015
HOLMES COUNTY DEPT. OF JOB & FAMILY SERVICES	:	
	:	
	:	O P I N I O N
Defendants-Appellees		

CHARACTER OF PROCEEDING: Civil Appeal From Holmes County Court of Common Pleas Case No. 2008 CV 100

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 29, 2009

APPEARANCES:

For Plaintiff-Appellant

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Edwards, J.

{¶1} Plaintiff-appellant, Shelly Doering, appeals from the November 14, 2008, Judgment Entry of the Holmes County Court of Common Pleas which reversed the decision of the Ohio Unemployment Compensation Review Commission finding that plaintiff-appellant had been terminated without just cause and was entitled to unemployment compensation.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Shelly Doering, a case worker, was employed as an eligibility referral specialist II with appellee Holmes County Department of Job and Family Services commencing October 28, 2004. Appellant initially was responsible for helping families and children obtain Medicaid coverage.

{¶3} In October of 2006, Lucinda Reidenbach, became appellant's supervisor. In January of 2007, appellant became responsible for helping residents of long-term care facilities to obtain Medicaid coverage. Appellant received one day of training on July 31, 2007

{¶4} On August 29, 2007, appellant was placed on a work improvement plan after concerns over her progress were raised. The plan indicated that "[t]he immediate concerns are of the need for intensive training, correct application of knowledge to the caseload and improved communication with customers, colleagues and community partners, including representatives of local nursing homes." The goal of the plan was to improve appellant's performance in all of these areas.

{¶5} On September 13, 2007, appellee received a customer complaint over the telephone that appellant had failed to process an application to determine eligibility for

Medicaid benefits. On September 14, 2007, appellant received a pre-investigation notice. The notice indicated that appellant had violated the following sections of the personnel policy manual of appellee Holmes County Department of Job and Family Services:

{¶6} "Section 9.5 (C)(1) Wanton or willful neglect in the performance of assignment duties or in the care, use or custody of any county property or equipment. Abuse or deliberate destruction in any manner of county property, tools, equipment or the property of employees.

{¶7} "Section 9.5(C)(3) Falsifying testimony when accidents are being investigated; falsifying or assisting in falsifying or destroying any county records.

{¶8} "Section 9.5(C)(14) Insubordination by refusing to perform assigned work or to comply with written or verbal instruction of the supervisors."

{¶9} Pre-disciplinary conferences were held on October 5, 2007 and October 17, 2007.

{¶10} On October 23, 2007, appellee Holmes County Department of Job and Family Services discharged appellant for wanton or willful neglect in performance of assigned duties, for falsifying county records, for being dishonest and for giving false testimony. Appellee, in terminating appellant, alleged that appellant had failed to process a Medicaid application and/or destroyed an initial Medicaid application, had altered a date stamp on documents and had made false and misleading statements during the investigation of the claims against appellant.

{¶11} Appellant then applied for unemployment compensation benefits. After her request was denied on the basis that appellant was dimissed with just cause,

appellant appealed to the Unemployment Compensation Review Commission. A hearing before the Commission commenced on March 28, 2008.

{¶12} At the hearing, Lacinda Reidenbach, who was appellant's supervisor from October 30, 2006, through appellant's termination date, testified regarding the allegations that appellant had wantonly and willfully neglected the performance of her assigned duties. Testimony was adduced at the hearing that Job and Family Services has thirty days to process Medicaid applications. Reidenbach testified that appellant asked her to deny an application for a client known as "JE" on August 20, 2007. When asked the reason why, Reidenbach testified that appellant said that she had received two applications and needed one denied so that she could determine Medicaid eligibility for the applicant. According to Reidenbach, an application had already been received for JE in June of 2007 and was left hanging with no action taken on the same. Reidenbach testified that appellant should not have asked for the second application, which was requested on August 14th or 15th, and was "trying to cover up the fact that she did ask for the two applications." Transcript of March 28, 2008 hearing at 18. She further testified that appellant was trying to preserve a date in the computer system that determines the eligibility date. According to Reidenbach, the June 2007 application was not entered into the computer system until August 14, 2007.

{¶13} Reidenbach testified that they became aware of the problem when a guardian who had been assigned to the particular nursing home resident called the beginning of September of 2007 and asked why there was a delay in processing the June application. When advised that the agency had thirty days to process an application and that the agency was well within its thirty days, the guardian, according to

Reidenbach, became angry and indicated that more than one application had been submitted. The initial application from June 27, 2007, was found in an unmarked, unlabeled file in a cabinet drawer. Because of the delay in processing the application, the client had to remain approximately three weeks longer in a nursing home than she needed to be.

{¶14} Reidenbach testified that she was present at appellant's pre-disciplinary conference and that, at the conference, appellant denied that she had ever asked Reidenbach to deny an application. Reidenbach testified that appellant's story changed over time.

{¶15} On cross-examination, Reidenbach testified that she did not recall the guardian telling her that appellant had contacted the guardian several times to obtain information for the application.

{¶16} At the hearing, appellant testified that she did not receive additional training for the nursing home cases and that she was continually behind in her caseload because she was so unfamiliar with such cases. Appellant testified that she expressed her concerns to her supervisor and that it was not until August that her supervisor "acknowledged that I wasn't getting the training that she thought I was receiving and implemented a work improvement plan,…" Transcript of March 28, 2008, hearing at 33. Appellant testified that when she was first approached about the nursing home position, she believed that she would receive training.

{¶17} Appellant was questioned about the Medicaid application for JE. She testified that she received the application on June 27, 2007, and noticed the same was incomplete. Appellant testified that she then notified JE's guardian and let the guardian

know that appellant needed income and resources information to determine Medicaid eligibility. Appellant then put the application in a file. Appellant testified that after not receiving this information, she contacted the guardian on August 14, 2007, and told the guardian that she was going on vacation and that the application was getting old. Appellant testified that she was told that if an application was more than thirty days old and you were unable to take action on it, you needed to request an updated application. Appellant testified that for such reason, she requested an updated application and received an updated application on August 14, 2007.

{¶18} Appellant further testified that when she attempted to enter the information from the second application into the computer, she was informed that the client already existed in the system. According to appellant, "I screened it [the application] myself, which typically we have a screener that screens application and she does that…" Transcript of March 28, 2008, hearing at 41. Appellant testified that a co-worker named Pam Schulz told appellant that she would have to get her supervisor to delete or close the other application before she could proceed with the August application. When asked what she did with such information, appellant responded as follows:

{¶19} "A. Well, um, honestly, I can't recall what I did with it. But apparently, I asked Lacinda or took that to her because she said that on such and such a date I brought her this paper that said there was an error on it and that she had to deny that application. Now, if in fact, I did ask her to deny that application, which I wouldn't ask her to deny the application merely to have it denied. I may have taken it to her and says I got this with an error message, what do I do to proceed? Um, suddenly it's construed as I took it to her and had her deny it like, because I wanted the application denied.

And that wasn't my motive at all. I was trying to get the application processed and either approved or denied and, and frankly I knew that, the, the client was eligible for Medicaid because she barely had an income and, um, and she was in the nursing home." Transcript of March 28, 2008, hearing at 42.

{¶20} Appellant testified that she put the original application in a file under the name Castle Nursing Home rather than under the client's name, but that she did not intend to hide the original application. She testified that she had a file for that particular client already that contained the current application, but that she never put the original application in with the current one because she did not have time.

{¶21} Lacinda Reidenbach also testified about another case involving a client identified as "SM" who was in a nursing home. Reidenbach testified that appellant requested a second application from SM's guardian when it was not needed. According to Reidenbach, the application was later found in an unrelated case file and was never processed by appellant. Because the case was proposed to close, the nursing home was required to submit a second application so that the client could continue receiving Medicaid benefits. According to Reidenbach, appellant also failed to process an application for a client known as "MO." She testified that appellant failed to assist the client's authorized representative in getting verifications for MO and that, when she spoke with the representative, he stated that he was not getting anywhere with appellant. As a result of the failure to process MO's application, MO's wife had to pay out of pocket for medical expenses that should have been covered by Medicaid.

{¶22} The final case Reidenbach testified to in relation to the allegations that appellant was wantonly and willfully negligent in the performance of her assigned duties

concerned a client known as "LG." Reidenbach testified that appellant failed to assist the client or clients authorized representative in obtaining verifications that were necessary to determine Medicaid eligibility and that, as a result, the nursing home was not receiving payment for the client's stay.

{¶23} With respect to the above cases, Reidenbach testified that they were not the type of cases that agency was trying to address with the work improvement plan because these were simple Medicaid cases. She further testified that the procedure utilized in such cases was similar to the type of programs that appellant had experience in when working with families and children.

{¶24} Testimony was also adduced at the hearing regarding the allegations that appellant falsified or destroyed county records. One of the instances concerned the client known as "JE." When asked how appellant falsified records with respect to such case, Reidenbach testified as follows:

{¶25} "A. It basically was how the, um, information was entered into, our state system which is called CRIS-E, it's um, Client Registration Information System/Enhance. And that's how we, that's the computer system the state has that we determine eligibility from. And, um, the falsification came in as far as, um, the second application was in the case file to represent the first application that was entered into the computer system….

{¶26} "Q. I'm confused by that. What, eh, eh, so were both applications, the June one and the August one entered into the system? Cause I thought one was entered in and then denied?

{¶27} "A. Right. There was one entered in, um, on August the 14th. And an application, that that application had been received in, um, the end of June. So that application and, um, again was entered August 14th and the application was entered on, was received on August 15th. That second application was entered on August 29th but she had me deny the August 15th application which had the date…. 6, uh, uh, she had my deny that August, um, the second application.

{¶28} "Q. Right.

{¶29} "A. Six minutes later after she entered it into the system. So what she did is she had the old application, not the … old application date still in the computer system, but she presented to the QA reviewer with the August application. Does that make sense?

{¶30} Q. I guess I'm still not getting where that's falsification. There were two applications and only one was presented to QA? Is that, that's the problem?

{¶31} "A. That's the problem. I mean, she had, the application she presented to QA had a, um, registration date into the computer system to the end of June but the application that coincides with that date was actually the August 15th application." Transcript of April 24, 2008, hearing at 18-19.

{¶32} Reidenbach also testified that, with respect to the case involving SM, appellant had entered notes in the computer that an application had never been received from the nursing home when in fact one was received, but was not processed.

{¶33} Reidenbach also was questioned about other falsification violations. With respect to the first case, which involved a client known as "MO", Reidenbach testified that appellant "had taken her date stamp and attempted to cover up the initial

application date …so it was false date on that application." Transcript of April 24, 2008 hearing at 20. According to Reidenbach, appellant used her date stamp and stamped four or five times over the initial date time stamp. While the original date of the application was January 10, 2007, it was date stamped over February 10, 2007, which was a Saturday. Appellant did not work that particular day. Examples of the falsification were admitted as Exhibit 45.

{¶34} The next application alleged to have been falsified concerned "EM." Reidenbach testified that a different date stamp was placed over the initial date stamp on the application.

{¶35} At the hearing, Reidenbach also was questioned about the dishonesty or dishonest action violations against appellant. She testified that with respect to the case involving "JE," appellant misrepresented the reason that she needed JE's application denied. Reidenbach testified that by using the second application with the first application date, appellant was hiding the fact that she never processed the application. With respect to an October 12, 2007, violation, Reidenbach testified that such violation concerned EM and the altered date stamp. Reidenbach further testified that, at the pre-disciplinary conference, appellant denied asking Reidenbach to deny applications and then later admitted that on several occasions she had done so.

{¶36} Reidenbach also testified that appellant was dishonest when she requested help from Pam Schulz, a co-worker. The following is an excerpt from Reidenbach's testimony:

{¶37} "To deny that application. Um, and that's for case number JE, case Initials JE. Um, along with case JE, um, she was dishonest in how she requested help from a

fellow co-worker. We have a person who does the screening and, um, she is the one that enters the application into the computer system. And so, um, she she wants, she had asked this person for help to get this application into into the system. She wasn't sure how to screen it when in fact, um, and there was some dis, some inconsistencies in her story as to what actually happened. Um, she couldn't find the application. She didn't, you know, wasn't sure what that, where that application was. Um, she was trying to get rid of it. Um, and she had also said that she just needed help in getting the screening done. And when the co-worker went into the office, she seen that the application had already been entered and, and Hope had an error message at the bottom of her, of her computer because you can't have two applications for the same person at the same time. The, the system just won't allow it. So that's what prompted Pam to have her come to me to deny one of those applications." Transcript of April 24, 2008, hearing at 24.

{¶38} Finally, Reidenbach testified that, at the October 5, 2007 pre-disciplinary conference, appellant alleged that she had been trained to falsify date stamps by her previous supervisor, Lori Kaser. According to Reidenbach, every case worker who would have been trained under Kaser was interviewed and all denied that Kaser had trained or instructed them to falsify a date stamp.

{¶39} The following testimony was adduced when Reidenbach was asked how she was sure that the falsified stamp was appellant's:

{¶40} "A. Yeah, I had, um, taken a sample of, uh, all of the case worker's date stamps. Um, it would have been, and actually the front desk that to, we would stamp it incoming in processing the mail. Um, the date stamps originally on the two documents

were a red and blue date stamp. And when I went, went around to, um, the three customer service representatives, which are our front desk ladies, our receptionists, and also to, um, our two QA review/trainers, and any case worker, um, they, there was only one other one besides Ms. Doering who had a black and red date stamp which was what the color was over top of the red and blue. Um, and again there was two black and red ones. One was Ms. Doering's, the other one was, um, Lisa Alverson, which is a QA review/trainer and her date stamp was still on 2006. It hadn't even been switched to 2007.

{¶41} "Q. Ok. And, and would that particular employee have much reason to be date stamping documents?

{¶42} "A. No. No she doesn't do intakes. Um, so she would not have had an opportu…would wouldn't have had a reason to be date stamping." Transcript of April, 24, 2007, hearing at 27-28.

{¶43} Appellant denied falsifying records. With respect to the case involving SM, appellant testified that SM's application was submitted attached to another client's application and was overlooked. Appellant testified that once a new application was submitted, the application was later processed. She further testified with respect to the case involving MO. According to appellant, MO's representative, who was his stepson, was very bitter towards MO and did not want to help his stepfather. Appellant testified that, for such reason, she was unable to get information that she needed to determine MO's Medicaid eligibility.

{¶44} Appellant also was questioned about the case involving LG. She testified that she had just started doing the nursing home case load at the time and had been

told that the person or their representative needed to come in for a face to face meeting with her because they had never been on Medicaid before. Appellant testified that she advised the nursing home representative of this and that the home never had the client come in. With respect to such case, she further testified that no verification of income or resources was ever submitted despite her attempts to obtain such information from a family member.

{¶45} When questioned about the falsification allegations, appellant denied ever asking Reidenbach to deny the application for JE and denied that she ever changed her story. She further testified that she had JE's original application in a holding file waiting for information. She testified that after receiving the second application, she failed to put the initial application in with the second application because she was leaving for vacation the next day and wanted to get the application processed. Appellant testified that after she got back, she pulled the initial application out of her holding file and filed it alphabetically in the Castle Nursing Home file as was her practice. With respect to the cases involving MO and EM, appellant testified that she had no idea who EM was and denied stamping over any date stamps. According to appellant, there would have been no reason to falsify any records involving MO because MO's application was never even processed due to the lack of a face to face meeting with the client.

{¶46} At the hearing, appellant denied ever stating that Pam Kaser had trained her to alter a date stamp. Appellant testified that at the pre-disciplinary hearing, she asked why, if there was no such thing as a thirty day time line for processing applications, she recalled seeing someone changing a date on a document to bring it within the thirty day parameter. The following is an excerpt from appellant's testimony:

{¶47} "I said, Cassandra, I says, if there's no such thing as a thirty day issue and me being able to process an application, I says, why do I distinctly remember somebody changing a date on, on a document to bring to within the thirty day parameter? Mrs. Bricoe that is exactly the context in which I made that statement and this had been turned around into, I mean, in in a letter that they've sent you on November 13th, she, Cassandra, says that when I was questioned about, questioned about why I didn't timely complete an application, that I responded with, I was trained to to manipulate a date stamp which doesn't even make sense. I mean my words have been manipulated even if you read the original handwritten minutes as opposed to the typed ones. The paragraphs that are in the typed ones don't even reflect what was in the handwritten ones. I did not make that statement in that context that I was trained to change a date stamp. I was bringing it up because I did witness a time when my supervisor came over and, and I don't remember exactly what the situation was but for some reason, this, parameter was not within the thirty day thing and she had stamped over a date. And I was like, man, I says, how do you get that right over that because it was clear to me that it was a stamped over stamp and she's like, well Grab a sticky note. And actually I, the little practice session ensued. And I even discussed it with, uh, co-workers, you know, saying, and I and I don't even remember why we, it came up, but this was like a year and a half ago. I, I had had a discussion with a co-worker that I distinctly remember saying, you know, that she did this. And, honestly at the time that I witnessed this and even when we had the discussion, I didn't realize the ramifications or the wrongness even in it until this whole thing blew up." Transcript of April 24, 2008, hearing at 44-45.

{¶48} Pursuant to a Decision mailed on April 28, 2008, the Hearing Officer found that appellant had been discharged without just cause in connection with her work and allowed her claim for unemployment benefits. The Hearing Officer, in her Decision, stated, in relevant part, as follows:

{¶49} "Upon a thorough review of the evidence presented by both parties, the Hearing Officer concludes that the employer has failed to establish 'wanton or willful neglect in the performance of assigned duties' or 'falsifying county records' on the part of claimant. All parties acknowledge that claimant was placed on a Work Improvement Plan less than two months before her discharge. If claimant was lacking in more basic skills that were contemplated in the WIP, a better approach would have been to address training to these areas before providing more advanced training. The Hearing Officer also notes that in the September 27, 2007, interview notes from Cassandra Holtzman's discussion with Carol Snyder, Ms. Holtzmann is quoted as saying claimant is 'in a learning process here, so we want to get her up to where she needs to be.' The employer was aware that claimant needed additional training in order to do her job properly, yet presumed intentional acts when it was revealed that she had made mistakes. Claimant clearly made errors, but the employer has not established that her behavior was wanton or willful, or that she falsified documents.

{¶50} "As to the charges that claimant was dishonest or falsified her statements during the investigation, claimant presented credible, sworn testimony that she had tried to explain her actions as clearly as possible, often without the benefit of access to supporting documents. The Hearing Officer finds that claimant's perceived dishonesty

more likely reflects the employer's unwillingness to believe any of claimant's explanations."

{¶51} After appellee's request for further review by the Review Commission was denied, appellee then filed an administrative appeal in the Holmes County Court of Common Pleas. Both parties filed briefs.

{¶52} As memorialized in a Judgment Entry filed on November 17, 2008, the trial court reversed the decision of the Unemployment Review Commission and found that appellant had been discharged for just cause and was not eligible for unemployment compensation. The trial court, in is Judgment Entry, found that appellant had intentionally falsified county documents. The trial court further found that appellant had intentionally entered two applications for the same applicant and then intentionally asked her supervisor to deny the second one "which [appellant] intentionally put into the claimant's file as complete in order to cover up her malfeasance." The trial court further found that appellant had engaged in numerous, intentional dishonest acts and were not "inadvertent mistakes due to lack of training."

{¶53} Appellant now raises the following assignments of error on appeal:

{¶54} "I. THE HOLMES COUNTY COMMON PLEAS COURT ERRED BY FAILING TO AFFIRM THE UNEMPLOYMENT COMPENSATION BOARD OF REVIEW'S DETERMINATION, WHICH WAS NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶55} "II. THE HOLMES COUNTY COMMON PLEAS COURT ERRED BY EXCEEDING ITS SCOPE OF REVIEW UNDER R.C. 4141.28(O)(1) AND

SUBSTITUTING ITS JUDGMENT FOR THAT OF THE UNEMPLOYMENT COMPENSATION BOARD OF REVIEW."

I, II

{¶56} Appellant, in her two assignments of error, argues that the trial court erred in failing to affirm the decision of the Unemployment Compensation Board of Review. Appellant contends that the decision of the Unemployment Compensation Board of Review that she was discharged without just cause was not unlawful, unreasonable or against the manifest weight of the evidence and that the trial court substituted its judgment for that of the Unemployment Compensation Board of Review.

{¶57} An appeal of a decision rendered by the Review Commission is governed by R.C. 4141.282(H), which provides, in pertinent part: " * * * If the court finds that the decision is unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, such court shall affirm the decision of the commission."

{¶58} An appellate court's standard of review in unemployment compensation cases is limited. An appellate court may reverse a board decision only if the decision is unlawful, unreasonable or against the manifest weight of the evidence. See, *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207, citing *Irvine v. Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587. An appellate court may not make factual findings or determine the credibility of the witnesses, but rather, is required to make a determination as to whether the board's decision is supported by evidence on the record. *Id.* The hearing officers are in best position to judge the credibility of the

witnesses as the fact finder. *Shaffer-Goggin v. Unemployment Compensation Review Commission,* Richland App. No. 03-CA-2, 2003-Ohio-6907, citing, *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St. 2d 11, 223 N.E.2d 582, *Brown-Brockmeyer Co. v. Roach,* (1947), 148 Ohio St. 511, 76 N.E.2d 79.

{¶59} A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the court's have no authority to upset the commission's decision. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587. "'Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].' " *Ro-Mai Industries, Inc. v. Weinberg,* 176 Ohio App.3d 151, 2008-Ohio-301, 891 N.E.2d 348, at ¶ 7, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, 526 N.E.2d 1350. "[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.

{¶60} We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶61} In order to qualify for unemployment compensation benefits, a claimant must satisfy the criteria set forth in R.C. 4141.29(D)(2)(a). That section provides:" * * *

{¶62} "(D) * * * [N]o individual may * * * be paid benefits * * *:

{¶63} "(2) For the duration of the individual's unemployment if the director finds that:

{¶64} "(a) The individual quit his work without just cause or has been discharged for just cause in connection with the individual's work, * * *."

{¶65} The Ohio Supreme Court has defined "just cause" as that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act. *Irvine*, supra at 17; *Tzangas*, supra at 697. The determination of whether just cause exists for an employee's dismissal under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal. *Benton* v. Unemployment Compensation Bd. Of Review, Hardin App. No. 6-2000-13, 2001-Ohio-2201, at 2, citing *Tzangas,* supra, at paragraph two of the syllabus. Furthermore, where an employee demonstrates '"unreasonable disregard for [the] employer's best interests," 'just cause for the employee's termination is said to exist. *Kiikka v. Ohio Bur. of Emp. Servs.* (1985), 21 Ohio App.3d 168, 169, 486 N.E.2d 1233, quoting *Stephens v. Bd. of Rev.,* Cuyahoga App. No. 41369, 1980 WL 355009. See, also, *Binger v. Whirlpool Corp.* (1996), 110 Ohio App.3d 583, 590, 674 N.E.2d 1232.

{¶66} Although we are required to make every reasonable presumption in favor of the Review Commission's decision and its findings of fact, we find that such presumptions are, based on the evidence, unreasonable and against the manifest weight of the evidence.

{¶67} As noted by the trial court, appellant failed to timely and properly process a Medicaid application for a nursing home resident. The Hearing Officer, in her decision, found that appellant had presented reasonable explanations for her failure to process Medicaid applications as soon as they arrived.

{¶68} However, testimony was adduced that the processing of Medicaid applications was a basic function of appellant's job and had been since she was initially hired as an eligibility referral specialist II. The testimony established that after client JE's Medicaid initial application was not processed in a timely manner, appellant requested that the client submit a second application. The testimony further established that after doing so, appellant attempted to cover up her error in failing to process the application in a timely manner by asking her supervisor to deny the initial application. Appellant, as noted by the trial court, also attempted to cover up her error by "[a]ttemt[ing] to manipulate the paper file, the computer file, and the date stamps for this client's case." Testimony also was adduced that appellant screened JE's application, which was not typically done by appellant, but rather by a screener. The initial application for JE was found in an unmarked, unlabelled file.

{¶69} The Hearing Officer, in her decision, also found that appellant's errors were not intentional, but rather were mistakes resulting from a lack of sufficient training. However, as noted by the trial court in its decision:

{¶70} "The hearing officer below notes that the 'employer was aware that the claimant needed additional training in order to do her job properly, yet presumed intentional acts when it was revealed that she had made mistakes.'

{¶71} "Dishonesty is not a mistake.

{¶72} "Doering intentionally falsified County documents. See Exhibits 45 and 46. Doering wasn't even at work on February 10, 2007 (a Saturday) as her documentation claims and the applicant signed the document of January 10, 2007 which matches the original date stamp. Doering intentionally screened a document that

was not within her job classification. Doering intentionally entered two applications for the same applicant and then intentionally asked her supervisor to disapprove the second one which Doering intentionally put into the claimant's file as complete in order to cover up her malfeasance. These are just some of the numerous intentional, dishonest acts Doering took in the course of her employment. These are not inadvertent mistakes due to lack of training."

{¶73} Moreover, "[u]nsuitability for a position constitutes fault sufficient to support a just cause termination. An employer may properly find an employee unsuitable for the required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change since the date of the original hiring for that particular position." *Tzangas*, supra, at 698-699.

{¶74} As is stated above, the Hearing Officer found that appellant had made errors. Appellant was an eligibility referral specialist II from the time of her initial hire to the time of her termination. A position description that was signed by appellant on August 10, 2006, states that the primary duty of such position is to determine applicants' eligibility for programs including Medicaid. There was evidence that the processing of a Medicaid application was a basic duty of the position of an eligibility referral specialist II. The testimony established that appellant was asked to process the same type of application for Medicaid services, only for nursing home residents as opposed to families and children. As noted by appellee, "[a]ppellant had been processing applications of this nature for nearly three years and had been fully trained…the cases

assigned did not involve complex resource assessment which was being addressed in the Work Improvement Plan." Appellant admitted at the March 28, 2008, hearing that she had received extensive training on various areas of her job during her employment and that there were reviewers on hand to answer her questions. In short, there was evidence that appellant was not suitable for her position.

{¶75} Based on the foregoing, we find that the trial court did not err in failing to affirm the decision of the Unemployment Compensation Board of Review. The Board's decision was unreasonable and against the manifest weight of the evidence. Appellant's two assignments of error are, therefore, overruled.

{¶76} Accordingly, the judgment of the Holmes County Court of Common Pleas is affirmed.

By: Edwards, J.

Farmer, P.J. and

Delaney, J. concur

s/Julie A. Edwards___________________

s/Sheila G. Farmer___________________

s/Patricia A. Delaney_________________

JUDGES

JAE/d0717

[Cite as *Doering v. Holmes Cty. Dept. of Job & Family Servs.*, 2009-Ohio-5719.]

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO

FIFTH APPELLATE DISTRICT

SHELLY DOERING	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
HOLMES COUNTY DEPT. OF JOB & FAMILY SERVICES	:	
Defendants-Appellees	:	CASE NO. 2008 CA 015

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Holmes County Court of Common Pleas is affirmed. Costs assessed to appellant.

s/Julie A. Edwards_________________

s/Sheila G. Farmer_________________

s/Patricia A. Delaney________________

JUDGES