

[Cite as *Gallagher v. Alliance Hospitality Mgt.*, 2010-Ohio-1882.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SEAN GALLAGHER	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
ALLIANCE HOSPITALITY	:	Case No. 2009CA00164
MANAGEMENT, ET AL.	:	
	:	
Defendants-Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2009CV00007

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 15, 2010

APPEARANCES:

For Plaintiff-Appellant

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Farmer, J.

{¶1} Appellant, Sean Gallagher, began working for appellee, Alliance Hospitality Management, in October of 2006. Appellant worked as an accounting and sales administrator for a Hilton Garden Inn. On October 19, 2007, appellant's employment with appellee ceased.

{¶2} On October 23, 2007, appellant filed an application for unemployment compensation. On November 9, 2007, appellee, the Director of the Ohio Department of Job and Family Services, determined appellant had quit his employment without just cause. Appellant filed an appeal. Upon redetermination, on December 17, 2007, appellee Director determined appellant had become separated from his employment due to a lack of work.

{¶3} Appellee Alliance Hospitality filed an appeal. The case was transferred to the Review Commission. A hearing was held on February 29, 2008. An additional hearing was scheduled for July 21, 2008. On August 1, 2008, the hearing officer determined appellant quit his employment without just cause.

{¶4} Appellant filed an appeal. A de novo hearing was held on November 4, 2008. On December 4, 2008, the Review Commission determined appellant quit his employment without just cause.

{¶5} Appellant filed an appeal with the Court of Common Pleas of Stark County, Ohio, pursuant to R.C. 4141.282. By judgment entry filed February 18, 2009, the trial court affirmed the Review Commission's determination, finding it was not unlawful, unreasonable or against the manifest weight of the evidence.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE LOWER COURT ERRED WHEN IT ALLOWED THE EMPLOYER, THE ODJFS, AND THE UCRC TO SUBMIT FALSE AND MISLEADING INFORMATION THAT CLEARLY INFLUENCED THE DECISION OF THE LOWER COURT AND IGNORED THE APPELLANT'S EVIDENCE THAT SUPPORTED THE ODJFS DIRECTOR'S REDETERMINATION OF UNEMPLOYMENT DUE TO 'LACK OF WORK' AS THIS IS A SITUATION OF A 'DISCHARGE' WITHOUT JUST CAUSE AND NOT A SITUATION OF A 'QUIT' WITHOUT JUST CAUSE AND THE DECISION OF THE LOWER COURT MUST BE REVERSED BECAUSE IT IS UNLAWFUL, UNREASONABLE, AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II

{¶8} "THE LOWER COURT ERRED BY FAILING TO APPLY THE PROPER STANDARD OF REVIEW IN RENDERING ITS DECISION AND COMMITTED PLAIN, PREJUDICIAL, MANIFEST, AND REVERSIBLE ERRORS THAT DENIED THE APPELLANT'S RIGHT TO A FAIR HEARING."

I, II

{¶9} Appellant's two assignments of error challenge the trial court's decision to uphold the Review Commission's determination that his termination was with just cause because he quit. Specifically, appellant claims the trial court received false and misleading information, and the evidence submitted to the Review Commission was not credible. We disagree with appellant's two claims.

{¶10} R.C. 4141.282 governs unemployment compensation appeals to the court of common pleas. Subsection (H) states the following:

{¶11} "The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission 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 commission. Otherwise, the court shall affirm the decision of the commission."

{¶12} Our role in reviewing the trial court's decision is to determine whether the trial court appropriately applied the standard of unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 1995-Ohio-206. While we are not permitted to make factual findings or determine the credibility of witnesses, we have the duty to determine whether the commission's decision is supported by the evidence in the record. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11; *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio. We are to review the commission's decision sub judice and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. 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.

{¶13} Unemployment compensation can be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just

cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. The *Irvine* court at 17 further stated "each case must be considered upon its particular merits." In reviewing such a determination, we are not permitted to reinterpret the facts or put our "spin" to the facts.

{¶14} Appellant argues the evidence presented at the November 4, 2008¹ de novo hearing does not substantiate the finding that he "quit"; therefore, he argues he was discharged without just cause. He bases this argument on the employee handbook, section "Open Door/Problem-Solving Procedure." His premise consists of a claim that he was merely requesting time off via his vacation/personal time in order to facilitate the complaint resolution process.

{¶15} Appellee argues a clear reading of the various e-mails authored by appellant establishes that he resigned. The hearing officer concluded the e-mails established appellant resigned from his employment without just cause.

{¶16} From our review, we find the basic facts are not in dispute. The question is, what logical conclusion can be drawn from the facts?

{¶17} A summary of the facts is included in the Review Commission's December 4, 2008 decision. We find these fact to have been established in the record, with our notations as to transcript references:

¹The transcript of the first hearing relative to appellee's appeal of the decision to award benefits was held on February 29, 2008, but the record was inadvertently lost. The result of the last hearing was a denial of benefits.

{¶18} "Claimant worked for Alliance Hospitality Management, dba Hilton Garden Inn, from October 16, 2006, through October 19, 2007.

{¶19} "Claimant was originally hired as a Manager-in-training. After 3 months, he was told that his classification would be changed to Accounting and Sales Administrator. Claimant remained in that position until his date of separation.

{¶20} "On October 9, 2007, a guest called at approximately 5:15 p.m. to cancel 2 room reservations. Claimant took the call. The hotel has a 4:00 p.m. cancellation deadline. The guest was advised that it was hotel policy to charge for the rooms. The guest was upset and asked to speak to a manager. Claimant agreed to notify his Sales Manager that the customer wished to discuss the matter. Shortly after the conversation, claimant sent an e-mail to his Sales Manager notifying her of the customer issue.

{¶21} "On October 10, 2007, the Sales Manager, Robyn Ewing, responded to claimant's e-mail and said that she would 'handle it if he calls'. On October 11, 2007, the customer called the hotel and asked to speak with the Sales Manager. Apparently the customer was very upset that they had not received a return call. After Ms. Ewing spoke with the guest, she reprimanded claimant for the way that he handled the guest complaint.

{¶22} "Claimant sent an e-mail to the hotel General Manager because he was upset over the reprimand from Ms. Ewing. He defended his approach to the customer issue and believed that Ms. Ewing was at fault. Claimant sent along an excerpt from the employer's handbook on the proper way to handle guest complaints. [T. at 14.]

{¶23} "The hotel's General Manager, Jim Angelo, responded to claimant in an e-mail sent at approximately 1:00 p.m. on Friday, October 12, 2007. He noted that

claimant was obviously upset and scheduled a meeting with claimant on Monday morning at 9:00 a.m. Claimant was taken off the schedule for the week pending the discussion with Mr. Angelo on Monday.

{¶24} "Claimant responded to the message from the GM with another e-mail. He told Mr. Angelo that he had previously scheduled time off on Monday, but would be available on Tuesday. Mr. Angelo sent an e-mail on Monday afternoon advising claimant that he was out of the office and could not meet until Friday, October 19. [T. at 14-15.]

{¶25} "Claimant contacted the Director of Human Resources, Dick Burkett, on Tuesday, October 16, and voiced his concerns about being taken off the schedule. Later in the day, claimant received a voice mail message from Mr. Angelo who apologized for the 'miscommunication' regarding claimant's scheduling. He told claimant to work his normal schedule until they met on Friday, October 19. Mr. Angelo did not receive a return call from claimant so he sent a follow-up e-mail advising claimant that he should work his normal schedule beginning Wednesday, October 17. [T. at 17.]

{¶26} "Claimant did not return to work despite the message from the GM putting him back on the schedule. Instead he sent a lengthy e-mail to Mr. Burkett in Human Resources shortly after noon on October 17. In the e-mail he disputed Mr. Angelo's claim that there was a miscommunication regarding claimant's work schedule. He went on to list other grievances he had with the Hilton Garden Inn such as his lack of advancement. He then told Mr. Burkett that he was going to 'seek other opportunities'. He requested a letter of reference, severance pay, and unemployment compensation.

{¶27} "Mr. Burkett responded to claimant's e-mail. He assured claimant that he still had a job with the Hilton Garden Inn and encouraged claimant to meet with his GM on Friday to resolve the issues. Mr. Angelo left a voice mail message and sent an e-mail to claimant encouraging him to meet on Friday morning to resolve the issues. Claimant responded in an e-mail, 'You have lost my respect as a manager and have created a work environment that is intolerable'. He repeated his request for personal days, vacation pay, and unemployment compensation. [T. at 20.]

{¶28} "Claimant did not appear for the meeting with his General Manager on Friday morning, October 19, 2007. He filed for unemployment benefits on October 23, 2007, stating as the reason for separation: Quit."

{¶29} The gravamen of this appeal is, what is the meaning of appellant's October 17, 2007 e-mail to Mr. Burkett? The email stated the following:

{¶30} "I spoke with Jim today and expressed to him that I am still very upset about this situation. This incident that I have asked you to review was not a miscommunication. Unfortunately, similar situations have happened in the past. I was hired as Manager In Training with Alliance Hospitality at the Hilton Garden Inn Akron-Canton Airport and had great expectations of the program that was explained to me. Opportunities of advancement have not happened and under the current conditions I don't believe will. The relationship between my Team Members who have in the past come to me for advice and support has been jeopardized by this embarrassment. I have not done anything wrong to cause this but I feel I have been put in a situation where I have to seek other opportunities and I am asking that you help facilitate.

{¶31} "I am owed my personal days, vacation time, and this week that has been interrupted. I need your letter of reference and unemployment compensation until I can find other employment. Also, with my health conditions I will need severance pay equivalent to cover uninterrupted medical coverage until I am covered at my next employment.

{¶32} "This incident should have never happened and to blame it on miscommunication will only allow it to continue. My employment record with Alliance Hospitality shows that I have been a dedicated employee. I believe I have explained my situation adequately and hope we can come to an agreement regarding my requests without this going any further. Please let me know if you require additional information in considering my requests. Again, I thank you for your help with this situation."

{¶33} Mr. Burkett's response was as follows:

{¶34} "In receipt of your note I want to clarify that in no way has Jim Angelo severed your employment or given you any indication that your employment was in jeopardy. However, he did indicate that perhaps there was miscommunication, and therefore attempted to reach out to you by phone on Tuesday to discuss this matter. He also indicated that he wanted you to visit with him this Friday so you could discuss the issues. Jim also mentioned that the last few days that you have been off the schedule was at your request, and not a suspension.

{¶35} "Sean, the way your note is written, it appears to be a 'Letter of Resignation' the way you have positioned your requests for unemployment and other pay outs? Sean, I would encourage you to read the Employee Handbook and know that Employment is 'At Will'. Please also know that the company does not pay out unused

Personal/Sick Days, and Severance. As for Vacation Time, the company will pay out unused/earned Vacation Time as long as an employee has given and worked through a (2) week notice of resignation (or) those who are discharged for misconduct will not receive payment of unused vacation time.

{¶36} "Sean, I would encourage you to contact Jim and arrange for a one on one meeting with him to discuss and resolve this matter at your earliest convenience."

{¶37} Appellant responded as follows:

{¶38} "I have asked through my representative that you address my complaints of the violations of the Handbook you refer to. You have not responded in any matter that makes sense. Continuous intimidation, harassment, and threats against me have not been addressed. The only remedy you have suggested is to talk to the managers that have violated these policies. Your handbook addresses abusive treatment and threats to employees as serious violations but when those conditions come from the management staff then I must move this to a higher level. I thought I was doing this by contacting you but you seem to have a problem with speaking with my representative. You have not given me any legitimate answer as to why my work hours for the week in question were removed from an approved and posted schedule. The note you refer to in your email response on October 17 was not a 'Letter of Resignation' but an attempt to resolve this at your level. Clearly, the 'Open Door / Problem Solving Procedure' that is in your Handbook allows for this. The problems as I see it is that you are not taking steps to resolve the most pressing issues with my complaint but you are content in believing that this was just merely a lack of communication. The email I sent you on October 16 clearly shows the manager's intent to remove me from the schedule in

retaliation for the email I sent asking for instruction on a certain issue. Your immediate resolve to this problem was to try to place me back into a workplace that violates the company's code of conduct. After these violations have occurred and have been left unchecked your suggestion of a two week notice is ludicrous and should not apply in this situation. If you are not able to control your managers misconduct then please refer me to someone who can solve this problem. If this matter can not be resolved I will seek unemployment compensation. I am owed my personal days and vacation time as you agreed when you spoke with my representative. In regards to my health benefits I am contacting the EEOC regarding possible violations. Other actions may follow. I will ask my representative to speak with you again in an attempt to resolve this issue."

{¶39} On Thursday, October 18, 2007, the general manager, Jim Angelo, emailed appellant the following in pertinent part:

{¶40} "As I mentioned in my voicemail I would like to confirm our meeting time of 11 am tomorrow with yourself, Lindsey and I. At this time I hope that we can resolve the ongoing issue that you raised last week and move forward.

{¶41} "Also as we discussed previously we will honor your request to me for Paid Time Off for Wednesday the 17th and Thursday the 18th. I will also be happy to discuss the time you feel that you lost on Tuesday the 16th due to the misunderstanding with you (sic) schedule when our meeting changed from Monday the 15th to tomorrow as you had requested Monday off as a paid day off any (sic) my travel out of town.

{¶42} "Per our conversation and your consent you are scheduled to work tomorrow after our meeting until 7 pm and scheduled to work Saturday and Sunday at

11 am also. I am not sure of your scheduled days beyond that at this time accept that I know you are scheduled to work a full week."

{¶43} On Friday morning, appellant sent Mr. Angelo the following email:

{¶44} "You have lost my respect as a manager and have created a work environment that is intolerable. I am working at the corporate level to get this resolved as you are part of the problem and not the solution. This latest incident is an example of how conflicts have been created by you and other managers who take retaliation against me without knowing the full situation. Based on what has been accomplished from meetings in the past, that have involved similar situations, the meeting today at 11A would be pointless. In all fairness, what needs to be resolved is that you contact Dick Burkett and make arrangements that I receive my owed personal days, vacation pay, and approve my unemployment compensation. I would be satisfied with this and suggest that you handle this matter without it going any further, as I have records and documents to support my position. I will contact the corporate office to make arrangements for my medical coverage."

{¶45} From the cited e-mail correspondence and appellant's failure to attend the scheduled meeting on Friday, we find the Review Commission's decision to be supported by the evidence. The very language of appellant's e-mails requesting unemployment compensation and a letter of reference would lead any reader to believe appellant wished to sever his employment.

{¶46} Upon review, we find the trial court's decision was based upon facts and exhibits in evidence, and was not against the manifest weight of the evidence. We further find the decision was not unlawful or unreasonable.

{¶47} Assignments of Error I and II are denied.

{¶48} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/sg 0219

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SEAN GALLAGHER	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ALLIANCE HOSPITALITY	:	
MANAGEMENT, ET AL.	:	
	:	
Defendants-Appellees	:	CASE NO. 2009CA00164

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES