

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

REZA HAJJAFAR

Appellant

v.

SUMMA HEALTH SYSTEMS
HOSPITALS, et al.

Appellees

C. A. No. 24589

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2007-04-2948

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

Per Curiam.

{¶1} Claimant-Appellant, Reza Hajjafar, appeals from the judgment of the Summit County Court of Common Pleas, affirming the decision of the Unemployment Compensation Review Commission (“UCRC”). This Court reverses.

I

{¶2} Hajjafar began his employment as a PC Support Technician II for Summa Health System Hospitals, Inc. (“Summa”) in January 1999. He worked as a part-time employee who was scheduled to work four days a week from 8:00 a.m. to 4:30 p.m. In February 2006, Hajjafar received a letter from his department director indicating that Summa was eliminating its part-time PC Support Technician positions as of March 19, 2006. The letter indicated, however, that all part-time employees would be offered full-time positions. Additionally, the letter asked for cooperation from part-time employees as Summa transitioned into its new scheduling structure. Summa notified Hajjafar that as part of the scheduling transition he would be scheduled for three

work days a week, consisting of twelve-hour shifts from 7:00 a.m. to 7:00 p.m. Hajjafar's new schedule was set to begin on Tuesday, February 28, 2006.

{¶3} After Hajjafar received his new schedule from Summa, several incidents occurred. On February 23, 2006, Hajjafar received a written warning for disrupting work by engaging coworkers in discussions in which he expressed his disdain for the new scheduling structure and for threatening his department director, which Hajjafar disputed ever occurred. On Monday, February 27, 2006, Hajjafar reported to work and clocked in although he was not scheduled that day. Human Resources met with Hajjafar, issued him a final, written warning, took his badge, and had a security officer escort him off the premises. He was also told that he would receive his final termination papers in the mail. Hajjafar had a voicemail from Human Resources waiting for him when he arrived at home later that evening. The voicemail requested his presence at a meeting the following day during his scheduled shift. Hajjafar emailed Human Resources shortly after 10:00 p.m., indicating that he was unavailable for the meeting. Hajjafar's email indicated that "[i]f this is about my official dismissal, I do not need to be there, please be kind and mail the papers to my home address." When Hajjafar did not attend the meeting, Summa terminated Hajjafar and mailed the termination documentation to his home.

{¶4} Subsequent to his termination, Hajjafar filed for unemployment benefits. Summa contested the application, claiming that Hajjafar was ineligible because he was terminated for just cause. On March 23, 2006, the Office of Unemployment Compensation ("OUC") issued its determination and concluded that Hajjafar was eligible for unemployment benefits because he was terminated without just cause. Summa appealed the initial determination, but the OUC adhered to its initial determination. Thereafter, Summa appealed to the UCRC. The UCRC set the matter for a hearing on January 23, 2007. On January 26, 2007, the UCRC hearing officer

issued his decision. The hearing officer reversed the redetermination of the OUC and found that Hajjafar was not entitled to unemployment benefits because Summa had terminated him for just cause. Hajjafar requested a review of the hearing officer's decision. The UCRC disallowed Hajjafar's request for review on March 22, 2007.

{¶5} On April 19, 2007, Hajjafar filed an appeal in the Summit County Court of Common Pleas, challenging the UCRC's determination that he was terminated for just cause. Apart from arguing the merits of the underlying just cause determination, Hajjafar also argued that his UCRC hearing transcript was incomplete because numerous parts of it were labeled inaudible. On July 24, 2007, Hajjafar and the Ohio Department of Job and Family Services ("ODJFS") filed a joint motion to remand for a rehearing because of the incomplete transcripts. Summa opposed the remand, but the trial court granted Hajjafar and ODJFS's motion and remanded the matter to the UCRC. Upon remand, the UCRC set the matter for a telephone hearing. Hajjafar and his attorney appeared for the hearing, but Summa did not. After the November 9, 2007 hearing, the hearing officer once again determined that Hajjafar was terminated for just cause.

{¶6} On July 3, 2008, Hajjafar filed a notice of appeal in the Summit County Court of Common Pleas. On December 26, 2008, the trial court issued its decision, affirming the UCRC's determination that just cause for Hajjafar's termination existed. Hajjafar now appeals pro se from the trial court's order and raises two assignments of error for our review. For ease of analysis, we consolidate his assignments of error.

II

Assignment of Error Number One

“THE TRIAL COURT ERRED BY FINDING THE DECISION MADE BY SUMMA HEALTH SYSTEM (SUMMA), THE DEFENDANT, JUSTIFIABLE REASON FOR DISCHARGING REZA HAJJAFAR.” (Sic.)

Assignment of Error Number Two

“THE TRIAL COURT ERRED BY AFFIRMING THE DECISION WAS MADE BY THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION (UCRC), MAILED JUNE 4, 2008 DENYING HAJJAFAR THE PLAINTIFF, BENEFIT RIGHTS PURSUANT TO O.R.C. 4141.281.” (Sic.)

{¶7} In both of his assignments of error, Hajjafar argues that the trial court erred in adopting the UCRC’s determination that he was terminated for just cause. Specifically, Hajjafar argues that the facts in the record do not support such a determination. We agree.

{¶8} “This [C]ourt is required to focus on the decision of the UCRC, rather than that of the common pleas court, in unemployment compensation cases.” *Ro-Mai Industries, Inc. v. Weinberg*, 9th Dist. No. 23792, 2008-Ohio-301, at ¶7. “[A]n appellate court may only reverse an unemployment compensation eligibility decision by the [UCRC] if the decision is unlawful, unreasonable, or against the manifest weight of the evidence.” *Moore v. Comparison Market, Inc.*, 9th Dist. No. 23255, 2006-Ohio-6382, at ¶7, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696. When reviewing a UCRC decision, “[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the UCRC].” *Upton v. Rapid Mailing Servs.*, 9th Dist. No. 21714, 2004-Ohio-966, at ¶11, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. “The resolution of factual questions is chiefly within the UCRC’s scope of review.” *Ro-Mai Industries, Inc.* at ¶8. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [UCRC’s] decision.” *Irvine v. State Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18.

{¶9} A party is entitled to unemployment benefits if he is terminated without just cause. R.C. 4141.29(D)(2)(a); *Upton v. Rapid Mailing Serv.*, 9th Dist. No. 21714, 2004-Ohio-966, at ¶13. “The claimant has the burden of proving her entitlement to unemployment compensation benefits under this statutory provision[.]” *Irvine*, 19 Ohio St.3d at 17. Traditionally, in the statutory sense, “just cause” has been defined as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine*, 19 Ohio St.3d at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. “The determination of whether an employer had just cause to terminate an employee is a factual question primarily within the province of UCRC, and one that reviewing courts are precluded from inquiring into during these administrative appeals.” *Ro-Mai Industries, Inc.* at ¶9.

{¶10} The hearing officer determined that Hajjafar was terminated for just cause because Summa had the authority to change its employees’ schedules in conformance with its business plan and Hajjafar had no right to refuse his new schedule. The hearing officer further determined that Hajjafar acted unreasonably by: (1) reporting to work and clocking in on a day that he was not scheduled; and (2) failing to attend the meeting that Summa scheduled the next day to discuss the incident. Accordingly, the hearing officer suspended Hajjafar’s benefits and ordered him to repay the benefits that he had already received.

{¶11} Hajjafar testified to the following during the November 9, 2007 telephone hearing with the hearing officer. His testimony is unrebutted in light of Summa’s failure to participate. After Hajjafar learned that Summa intended to eliminate its part-time PC Support Technician positions and to assign him twelve-hour shifts, he repeatedly told his department director about the difficulties he would have with such a shift. Hajjafar informed the director that a twelve-hour schedule would be unworkable because he was responsible for picking up his son from

school at a certain time. Nonetheless, Summa scheduled Hajjafar for twelve-hour shifts, which were to begin on February 28, 2006. Summa informed Hajjafar that he would be terminated unless he worked the exact schedule they set for him. According to Hajjafar, the written warning that he received on February 23, 2006 for disrupting work stemmed from a conversation that he had with the director. During the conversation, the director asked why Hajjafar could not work the new schedule. Hajjafar responded that he could not work the new schedule due to responsibilities associated with his son. Upon hearing this, the director yelled and screamed at him. The director was so loud that a vice president several offices away came and knocked on the door. Hajjafar stated that he never personally discussed his work schedule with anyone, but that other people learned of his scheduling issues by virtue of hearing the director scream at him about the schedule. According to Hajjafar, although he did nothing, he received a written warning.

{¶12} Hajjafar admitted that he received his new schedule, but still reported to work on February 27, 2006, a day that he was not scheduled. According to Hajjafar, he reported to work that day because he wanted to speak with Human Resources about being given a twelve-hour shift despite still having a part-time employee status. When he went to Human Resources, the person that Hajjafar needed to speak to, Jessica Fischer, was not there, but Hajjafar received a page from the department director. Hajjafar reported to the director's office where he found both the director and Fischer. Fischer gave Hajjafar a discipline notice, took his badge, told him he was being suspended, and told him security would escort him off the property. She also informed Hajjafar, that she was "not the proper person to officially discharge [him], but [he] w[ould] receive the official document by mail." Hajjafar then left the premises without incident.

{¶13} When Hajjafar arrived home later that evening, he had a voicemail from Fischer. According to Hajjafar, the voicemail indicated that he was being asked to attend a meeting the following day so that he could “be[] officially discharged by the proper people.” Hajjafar sent Summa an email, indicating that he was unavailable for the meeting and that he would prefer not to attend “if this [was] regarding [his] official discharge.” Hajjafar asked that his discharge papers be sent by mail so that he would not be “humiliated” by having security escort him out again. Hajjafar never received a response from Summa. He got his official termination papers in the mail several days later.

{¶14} Summa’s termination letter indicates that Hajjafar was terminated, in large part, based on his “unwillingness to cooperate with management” by failing to attend the meeting Summa arranged on February 28, 2006. As previously noted, however, Hajjafar believed that Summa had already terminated him on February 27, 2006 based on the comments that Fischer made to him, the voicemail she left for him, and the fact that his badge was taken before security escorted him off the premises. Hajjafar also testified that he never engaged in disruptive behavior at Summa, never refused to work or to leave the premises, and that his warnings were the result of the director’s yelling at him and his own misunderstanding that a part-time employee could be required to work a twelve-hour shift. Hajjafar also testified that he was aware that other employees were told that if the new schedule did not work out, they would be able to revert to the old schedule. Yet, Hajjafar was not given this option. Hajjafar stated he believed that his termination was in reality due to Summa’s desire to downsize.

{¶15} As previously stated, Summa did not attend the telephone hearing before the hearing officer, so Summa did not present any contrary evidence or rebut Hajjafar’s testimony in any way. Although we are confined by an extremely narrow standard of review in UCRC

appeals, in this particular case, we are similarly confined by Summa's failure to appear on its own behalf so as to controvert Hajjafar's testimony. Based on the uncontroverted evidence properly before the hearing officer at the November 9, 2007 telephone hearing, we can only conclude that the UCRC's determination that Hajjafar was terminated for just cause is against the manifest weight of the evidence. *Moore* at ¶7.

{¶16} Significantly, Hajjafar was not terminated because of the written warning or because he clocked in to work on an unscheduled day so that he could further discuss his schedule. Instead, the coup de grace resulting in termination was that Hajjafar failed to attend the early morning meeting scheduled on the day after his badge was taken and he was escorted out of the building. Given the events that transpired on the last date of his employment at Summa, Hajjafar had every reason to believe that he had been effectively terminated when his badge was removed and he was escorted off the premises of the hospital and advised that termination by the proper authorities would follow. Even when he emailed Human Resources, indicating his understanding that the purpose of the meeting was to formalize his termination, and requesting to be spared the indignity he had experienced before, the officials involved did nothing to disabuse him of his misapprehension. Summa had every right to adjust its schedule and to require employees to comply with the new schedule based on its business decisions. The decision, however, to terminate an employee for failure to attend a meeting when the objective circumstances suggest that only the "official discharge" was yet to be concluded is not supported by the manifest weight of the evidence that is properly before this Court. Consequently, Hajjafar's assignments of error have merit.

III

{¶17} Hajjafar's assignments of error are sustained. The judgment of the Summit County Court of Common Pleas is reversed, and the cause is remanded for proceedings consistent with the foregoing opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

WHITMORE, J.
DISSENTS, SAYING:

{¶18} I respectfully dissent and would affirm the UCRC's determination that Hajjafar was terminated for just cause.

{¶19} The majority correctly notes that Summa did not appear on its own behalf at the November 9, 2007 telephone hearing. Even without testimony from Summa, however, the record contains evidence in support of Summa's position. Summa's written warnings to Hajjafar are part of the record. The February 23, 2006 warning specifies that it was issued because Hajjafar made threats towards his department director and disrupted the work flow by engaging other PC technicians in discussions about his new work schedule. The February 27, 2006 final warning specifies that it was issued because Hajjafar came into work on an unscheduled day and refused to leave when Summa told him that he was not scheduled. Finally, the February 28, 2006 termination form specifies that it was issued because Hajjafar threatened the director, disrupted Summa's work environment, reported to work on an unscheduled day, refused to leave the premises when asked to do so, and refused to attend the meeting that Summa scheduled on February 28, 2006 to discuss his continued employment.

{¶20} Summa's and Hajjafar's exhibits are part of the record. A termination letter from Hajjafar's department director dated February 28, 2006 reiterates Hajjafar's policy offenses, including that he made threatening comments after being told that he was being disciplined. Two separate emails from 2005, one from Hajjafar's department director and the other from human resources, indicate that Hajjafar was publicly discussing a grievance that he was pursuing against Summa with other employees and that Hajjafar had to be told that such disruptions in work performance would lead to a formal written warning being issued. Finally, Hajjafar's own email from the night of February 27, 2006 in response to Summa's voicemail request that he

attend a meeting the next morning is telling. In the email, Hajjafar indicated that he would not be attending the meeting because “Tuesday is my day off and I have prior arrangements,” not because he thought he had already been terminated or was somehow confused.

{¶21} Lastly, Hajjafar’s own testimony at the November 9, 2006 hearing is part of the record. Hajjafar admitted at the hearing that he had received written warnings for his conduct and that he reported to work on an unscheduled day. According to Hajjafar, he reported to work on an unscheduled day “[b]ecause [he] was still *** under the status of a part-time employee [a]nd [his] schedule was Monday, Tuesday, Wednesday, Thursday.” Hajjafar agreed, however, that he had received a new schedule the week before and was only posted to work Tuesday, Wednesday, and Thursday that week for three twelve-hour shifts. The fact that Hajjafar complained to his coworkers about his new schedule the week before and admitted at the hearing that he was scheduled to work Tuesday, Wednesday, and Thursday of the week he was discharged shows that Hajjafar was aware of his new schedule, but chose not to follow it. Moreover, Hajjafar’s statement in his email that “Tuesday is my day off” does not comport with his personal assertion during the hearing that “[his] schedule was Monday, Tuesday, Wednesday, Thursday.”

{¶22} At the very least, the record contains factual disputes. “The resolution of factual questions is chiefly within the UCRC’s scope of review.” *Ro-Mai Industries, Inc. v. Weinberg*, 9th Dist. No. 23792, 2008-Ohio-301, at ¶8. Further, this Court has specifically held that “[t]he determination of whether an employer had just cause to terminate an employee is a factual question primarily within the province of UCRC, and one that reviewing courts are precluded from inquiring into during these administrative appeals.” *Id.* at ¶9. Although the majority cites the correct standard of review in this case, it has not in fact applied it. Because the record

contains evidence in support of both Summa and Hajjafar, this Court should not upset the UCRC's decision that Hajjafar was terminated for just cause. *Id.* I would affirm the decision of the UCRC, which was in the best position to receive the evidence, including Hajjafar's testimony, and to determine whether or not Hajjafar met his burden of proof in this case. As such, I respectfully dissent.

APPEARANCES:

REZA HAJJAFAR, pro se, Appellant.

RICHARD CORDRAY, Attorney General of Ohio, and LAUREL BLUM MAZOROW, Assistant Attorney General, for Appellee.

CHRISTOPHER G. KUHN, and JAMES G. KUREK, Attorneys at Law, for Appellee.