

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOSEPH MYERS

C. A. No. 09CA0024

Appellee

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 08-CV-0505

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES

Appellant

DECISION AND JOURNAL ENTRY

Dated: November 16, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Director of the Ohio Department of Job and Family Services, appeals from the decision of the Wayne County Court of Common Pleas. This Court reverses the trial court and enters judgment affirming the decision of the Unemployment Compensation Review Commission.

I.

{¶2} On November 15, 2007, Myers was terminated by his employer, Korda Manufacturing, Inc. On November 20, 2007, Myers filed an application for unemployment benefits. The Director of the Ohio Department of Job and Family Services (“ODJFS”), determined that Korda terminated Myers without just cause. Korda appealed. On January 16, 2008, the Director of ODJFS, on redetermination, affirmed the initial determination. On January 31, 2008, Korda filed an appeal challenging the redetermination decision, and the Director of ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission.

{¶3} On March 17, 2008, a hearing was held before a Review Commission hearing officer, and in April, the officer held that Myers had been discharged for just cause, thus terminating his unemployment benefits and requiring him to pay back over \$3,000 in overpayment. Myers appealed the decision, but the Review Commission denied further review. Accordingly, on May 28, 2008, the Review Commission affirmed the hearing officer's decision. Myers appealed this decision to the Wayne County Court of Common Pleas. On March 17, 2009, the trial court reversed the Review Commission's decision. ODJFS timely appealed this decision and has raised one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

“THE COMMON PLEAS COURT ERRED IN REVERSING THE REVIEW COMMISSION’S DECISION THAT THE CLAIMANT WAS DISCHARGED FOR JUST CAUSE UNDER R.C. 4141.29(D)(2)(a) ON THE ERRONEOUS HOLDING THAT THE TESTIMONY OF THE CLAIMANT OUTWEIGHS ALL HEARSAY EVIDENCE PRESENTED BY THE EMPLOYER AS A MATTER OF LAW.”

{¶4} ODJFS contends that the trial court erred when it reversed the Review Commission's decision based on the erroneous conclusion that the testimony of the claimant outweighed all hearsay evidence presented by the employer. We agree.

{¶5} R.C. 4141.282(H) sets forth the scope of review in unemployment compensation cases. Pursuant to this section, the trial court may only reverse the Review Commission's decision if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Markovich v. Employers Unity, Inc.*, 9th Dist. No. 21826, 2004-Ohio-4193, at ¶10, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, (1995), 73 Ohio St.3d 694, 696. When we review the trial court's decision, we apply the same standard. *Id.* The Ohio Supreme Court has explained that the resolution of factual questions is chiefly within the Review Commission's

scope of review. *Tzangas*, 73 Ohio St.3d at 696; *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. If the reviewing court finds evidence in the record to support the findings, then the court cannot substitute its judgment for that of the Review Commission. *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, citing *Wilson v. Unemp. Comp. Bd. of Rev.* (1984), 14 Ohio App.3d 309, 310. Therefore, “we must uphold the hearing officer’s decision so long as it is not unlawful or unreasonable and some competent, credible evidence supports it.” *Brown v. SYSCO Food Servs. of Cincinnati, L.L.C.*, 4th Dist. No. 09CA2175, 09CA3276, 2009-Ohio-5536, at ¶22; see *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶24. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission’s] decision.” *Irvine*, 19 Ohio St.3d at 18.

{¶6} Essentially, ODJFS contends that the decision of the Review Commission should be affirmed, and thus, the decision of the trial court should be reversed. While the trial court’s legal conclusion appears to be in conflict with established precedent with regard to its standard of review, our focus is not on the trial court’s decision. Instead, this Court is “required to focus on the decision of Review Commission, rather than that of the common pleas court[.]” *Markovich* at ¶10, citing *Barilla v. Ohio Dept. of Job & Family Servs.*, 9th Dist. No. 02CA008012, 2002-Ohio-5425, at ¶6.

{¶7} In the instant case, the Review Commission determined that Myers was terminated for just cause and therefore not eligible for unemployment benefits. “An employee may not be eligible for benefits under certain circumstances. First, there are several statutory exceptions. An employee may be found ineligible for benefits if the employee has quit without just cause, or if the employer discharged the employee for just cause in connection with the employee’s work.” *Lorain Cty. Auditor v. Ohio Unemployment Comp. Rev. Comm.*, 113 Ohio

St.3d 124, 2007-Ohio-1247, at ¶15, citing R.C. 4141.29(D)(2)(a). 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.

{¶8} At the March 12, 2008 hearing before the Review Commission, Korda was represented by Rachel Pozworski from human resources. She stated that the reason for separation was for “wasting production time.” She explained that Myers “refused to [d]o his job duties[.]” She stated that Korda supervisors observed Myers reading books and documenting the actions of his co-workers during times he was supposed to be working. Finally, Pozworski explained that Myers repeatedly made adjustments to machines that his supervisor had just adjusted, causing the machine to produce defective parts. Pozworski stated that she called Myers into her office on October 18, 2007 to discuss his low production performance and the documenting of his co-workers. She explained that Myers refused to assemble parts while he was watching the machine run, which was a normal part of his job. During this discussion, Myers told Pozworski that he did not have time to assemble parts because he was afraid that if the machine was to malfunction, he would not be able to quickly fix it. Pozworski again stated that Myers was observed reading when he should have been assembling parts. She explained that Myers’ refusal to assemble parts was the main reason for his termination. Myers represented himself at the hearing, and denied the statements Pozworski made with regard to reading on the

job, refusing to assemble parts, and making adjustments to the machines. He explained that he had physical problems that kept him from assembling parts and that Korda knew that when hiring him.

{¶9} Because our standard of review in this case is limited to concluding that the decision of the Review Commission was not unlawful, unreasonable, and was based on competent, credible evidence, R.C. 4141.282(H); *Brown*, supra, at ¶22, we do not have the authority to make factual findings or determine the credibility of the witnesses. *Tzangas*, 73 Ohio St.3d at 696, citing *Irvine*, 19 Ohio St.3d at 18. Based on that standard, we conclude that the Review Commission's decision was not unlawful or unreasonable. Further, we must conclude that based upon Pozworski's testimony, the decision of the Review Commission was supported by competent, credible evidence. An ordinarily intelligent person could find that Korda's decision to terminate Myers was justified by his refusal to assemble parts, reading and documenting co-workers during work hours, and making unauthorized adjustments to the machine resulting in bad production. *Irvine*, 19 Ohio St .3d at 17, quoting *Peyton*, 44 Ohio App.2d at 12. Accordingly, the decision of the Review Commission must be affirmed. R.C. 4141.282(H). The decision of the trial court, reversing the decision of the Review Commission, is reversed.

{¶10} ODJFS's assignment of error is sustained.

III.

{¶11} ODJFS's sole assignment of error is sustained. We enter judgment, affirming the decision of the Review Commission. The judgment of the Wayne County Court of Common Pleas is reversed.

Judgment reversed.

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 Wayne, 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 Appellee.

CARLA MOORE
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

RICHARD CORDRAY, Attorney General, and LORI WEISMAN, Assistant Attorney General,
for Appellant.

JOSEPH MYERS, pro se, Appellee.