[Cite as *Gen. Die Casters, Inc. v. Ohio Dept. of Jobs & Family Servs.*, 2015-Ohio-4033.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
GENERAL DIE CASTERS, INC. Appellant v. DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES Appellees	C.A. No. 27701 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2014-08-3685

DECISION AND JOURNAL ENTRY

Dated: September 30, 2015

SCHAFER, Judge.

{¶1} Appellant, General Die Casters, Inc., appeals a judgment from the Summit County Court of Common Pleas in favor of appellee, Ohio Department of Job and Family Services, in an administrative appeal granting Jerome D. Ivery unemployment benefits. For the reasons that follow, we affirm.

I.

{¶2} General Die Casters, Inc. ("GDC") is an Ohio corporation that manufactures aluminum die castings. GDC has two facilities, with one located in Twinsburg, Ohio and the other in Peninsula, Ohio.

{¶3} Jerome Ivery started working for GDC in 1979 and worked at the Peninsula location as a job developer tasked with ensuring that the company's machines operate without incident. On January 14, 2014, a trainee at GDC witnessed Mr. Ivery removing stuck parts from a machine that was not first locked out, in violation of company policy. The trainee immediately

informed the shift manager on duty. The shift manager then personally observed Mr. Ivery as he continued to remove stuck parts from the machine while the machine was not locked out. The shift manager immediately informed the plant manager of Mr. Ivery's conduct. Because GDC has a zero tolerance policy for failing to lock out machines prior to entering them, GDC terminated Mr. Ivery on January 15, 2014 for violating company rules.

{¶4} Mr. Ivery applied for unemployment compensation, which GDC opposed on the basis that Mr. Ivery was discharged from his employment with just cause. The director of the Ohio Department of Job and Family Services denied Mr. Ivery's application. Mr. Ivery appealed the decision, but the director issued a redetermination affirming the original decision. Mr. Ivery then appealed to the Ohio Unemployment Compensation Review Commission ("UCRC"). A UCRC hearing officer conducted telephone hearings on April 3, 2014 and April 21, 2014. The hearing officer subsequently reversed the director's determination and found that GDC terminated Mr. Ivery without just cause. GDC filed a request for review with the UCRC and on July 9, 2014, the review commission disallowed the review. GDC appealed the decision to the trial court. The trial court affirmed the UCRC decision on January 30, 2015.

{¶5} GDC filed this timely appeal, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> THE UNDERLYING ADMINISTRATIVE DECISIONS [SIC] IS UNLAWFUL, UNREASONABLE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE THE RECORD EVIDENCE ESTABLISHES THAT CLAIMANT WAS DISHCHARGED FOR JUST CAUSE.

{¶6} In its first assignment of error, GDC argues that the UCRC erred when it found that GDC terminated Mr. Ivery without just cause. Specifically, GDC contends that the hearing

officer's decision is not supported by the evidence in the record and, as such, the hearing officer's decision is unreasonable and against the manifest weight of the evidence. We disagree.

{¶7} Courts review a decision of the Unemployment Compensation Review Commission under R.C. 4141.282. A party dissatisfied with the final determination of the UCRC may appeal to a court of common pleas, which shall hear the appeal on the record certified by the commission. R.C. 4141.282(H). "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." *Id.*

{¶8} The determination of purely factual questions is primarily within the province of the hearing officer and the UCRC. *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17 (1985). On review of purely factual questions, the common pleas court is limited to determining whether the hearing officer's determination is supported by evidence in the record. *Tzangas, Plakas & Mannos v. Ohio Bur. of Employment Servs.*, 73 Ohio St.3d 694, 697 (1995). We apply the same standard on appeal, focusing on the decision of the UCRC instead of the common pleas court's decision. *Univ. of Akron v. Ohio Dept. of Job & Family Servs.*, 9th Dist. Summit No. 24566, 2009-Ohio-3172, ¶ 9; *see Tzangas* at paragraph one of the syllabus. Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be affirmed. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus. Every reasonable presumption should be made in favor of the Commission's decision and findings of fact. *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988).

{¶9} 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 at 17, quoting *Peyton v. Sun T.V. & Appliances*, 44 Ohio App.2d 10, 12 (10th Dist.1975). "Whether just cause for termination of employment exists depends on the unique facts of the case." *Univ. of Toledo Chapter of Am. Assn. of Univ. Professors v. Erard*, 6th Dist. Lucas No. L-14-1185, 2015-Ohio-2675, ¶ 7. The determination of what constitutes just cause must be analyzed in conjunction with the legislative purpose underlying the Unemployment Compensation Act. Essentially, "'the act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment *through no fault * * * of his own.*'" (Emphasis added.) *Irvine* at 17, quoting *Salzi v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39 (1980).

{¶10} In finding that GDC terminated Mr. Ivery without just cause, the hearing officer determined that GDC's witnesses, Terry Betz and Justin Schrantz, provided testimony that was inconsistent, unreliable, and not credible. Specifically, the hearing officer reasoned that Mr. Betz's testimony was inconsistent regarding his location and the series of events at the time that he allegedly observed Mr. Ivery working on a machine that was not properly locked out. The hearing officer also reasoned that Mr. Schrantz failed to offer reasonable explanations as to why he felt the need to ask Mr. Betz about the proper lock out procedures instead of asking Mr. Ivery directly. Lastly, the hearing officer determined that both of GDC's witnesses failed to offer any reasonable explanation for failing to stop Mr. Ivery from continuing to work in an unsafe machine and failing to speak with Mr. Ivery about this incident instead of reporting the incident directly to management. These findings, according to the hearing officer, made Mr. Betz's and Mr. Schrantz's respective testimony less credible. Moreover, the hearing officer concluded that Mr. Ivery's past NLRB complaints against GDC, Mr. Ivery's history with union organizing in

the workplace, and Mr. Ivery's termination in conjunction with the decertification of the union, when viewed in the aggregate, cut against GDC's credibility in this case.

{¶11} On the other hand, the hearing officer determined that Mr. Ivery provided credible testimony demonstrating that he locked out the machine prior to working on it. According to the hearing officer, Tom Llewellyn, a maintenance technician who worked on the machine immediately after Mr. Ivery, corroborated Mr. Ivery's testimony that the machined had been properly locked out.

{¶12} GDC argues that the hearing officer's determination was against the manifest weight of the evidence because Mr. Ivery "has consistently fabricated his testimony while under oath and has been discredited" for doing so, because witnesses saw Mr. Ivery violate the company's lockout policy, and because a video exists showing Mr. Ivery working on a machine that was not properly locked out. However, GDC's arguments are misplaced. First, whether Mr. Ivery fabricated testimony under oath is a question of credibility that is reserved solely for the trier of fact. Here, the hearing officer explicitly found Mr. Ivery's testimony to be credible and GDC's eyewitnesses to be not credible. It is not within the province of this Court to second guess a UCRC hearing officer's determinations regarding the credibility of witnesses. Secondly, the hearing officer viewed and discounted the video footage offered by GDC because GDC failed to establish that the five-second video was in fact of Mr. Ivery, was taken on the time and day in question, or was of the same machine in which Mr. Ivery was working. However, even assuming arguendo that the video footage does show Mr. Ivery violating GDC's lockout policy, we would still be constrained by the well-established standard of review for unemployment benefit cases to affirm the UCRC's decision in this matter as other credible evidence exists in the record to support the hearing officer's determination.

{¶13} Because we find some competent, credible evidence in the record to support the hearing officer's determination, we cannot conclude that the UCRC's determination, which was affirmed by the trial court, was unlawful, unreasonable, or against the manifest weight of the evidence.

{¶14} GDC's assignment of error is overruled.

III.

{¶15} GDC's sole assignment of error is overruled and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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(C). 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 Appellant.

JULIE A. SCHAFER
FOR THE COURT

WHITMORE, J.
CONCURS.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶16} While I concur in the judgment, I would analyze the weight of the evidence under the standard set forth in *Eastley v. Volkman*, 132 Ohio St. 3d 328, 2012-Ohio-2179. *See Wright v. Ohio Dept. of Job & Family Servs.*, 9th Dist. Lorain No. 12CA010264, 2013-Ohio-2260; *Rodriguez v. S. Star Corp.*, 9th Dist. Medina No. 12CA0049-M, 2013-Ohio-2377.

APPEARANCES:

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MICHAEL DEWINE, Attorney General, and LAURENCE R. SNYDER, Assistant Attorney General, for Appellee.