

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
SANDUSKY COUNTY

Thomas T. Thompson

Court of Appeals No. S-02-022

Appellee

Trial Court No. 02-CV-000024

v.

Aeroquip Inoac Company, et al.

**DECISION AND JUDGMENT ENTRY**

Appellants

Decided: April 11, 2003

\* \* \* \* \*

Jerry Arthur Jewett, for appellee.

Jim Petro, Ohio Attorney General, Yvonne Tertel Pollex, and Daniel Jones,  
for appellant Director, Ohio Department of Job and Family Services.

Beth A. Wilson and Janis E. Susalla Foley, for appellant Aeroquip Inoac  
Company.

\* \* \* \* \*

SINGER, J.

{¶1} This is an accelerated appeal from a judgment of the Sandusky County Court of  
Common Pleas, reversing an administrative denial of unemployment compensation benefits.

{¶2} Appellee, Thomas T. Thompson, worked for appellant Aeroquip Inoac Co.  
("Aeroquip") for 11 years. Most recently, Thompson was employed as a spray painter.

{¶3} According to Thompson, during his last two years at Aeroquip, he was the  
subject of harassment at the hands of a coworker. Thompson believed the coworker was

deliberately sabotaging his work and attempting to make trouble for him with his supervisor.

Thompson claims his complaints to management about this coworker fell on deaf ears.

{¶4} On February 7, 2001, Thompson says he saw the coworker at issue remove a lock from a box containing paint sprayer equipment for which Thompson was responsible. Upon observing this, Thompson became angry and went to his supervisor. To the supervisor, Thompson said, "[I]f someone doesn't do something to [the coworker], I will kill him. I'm going to kill the fucking son of a bitch \*\*\* stab him in the heart with a screwdriver." After this outburst, Thompson's supervisor had him escorted out of the plant and eventually terminated his employment.

{¶5} On May 11, 2001, Thompson applied for unemployment benefits with appellant Director, Ohio Department of Job and Family Services ("ODJFS"). His claim was initially allowed and affirmed on reconsideration. Aeroquip appealed this determination to the Unemployment Compensation Review Commission. There, following a telephone hearing, a review commission hearing officer issued findings and concluded that appellee's discharge was for just cause. When, on review, the Commission affirmed the hearing officer's determination, appellee pursued further appeal to the Sandusky County Court of Common Pleas.

{¶6} The common pleas court examined the Review Commission's determination, concluding that appellee's termination from employment was unreasonable. From this judgment, appellants, Aeroquip and the Director, ODJFS, bring this appeal.

{¶7} In separate briefs, each of these appellants assert that the common pleas court improperly substituted its judgment for that of the Review Commission and erroneously concluded that appellee's discharge was unreasonable.

{¶8} A terminated employee is entitled to receive unemployment benefits unless he or she was discharged for "just cause." R.C. 4141.29(D)(2)(a). "Just cause" is conduct, "\*\*\*\* which an ordinarily intelligent person would regard as a justifiable reason for discharging an employee." *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 162. Whether a reason for terminating a claimant's employment constitutes "just cause" is a question of law. *Lombardo v. Administrator, OBES* (1997), 119 Ohio App.3d 217, 221.

{¶9} Findings of fact and conclusions of law as to whether a discharged employee is entitled to unemployment compensation are initially made by the designee of the Director, ODJFS, R.C. 4141.28(B), subject to an appeal to the Unemployment Compensation Review Commission, R.C. 4141.281(C)(1), for a hearing de novo. 4141.281(C)(3).

{¶10} A party who is dissatisfied with the final determination of the Review Commission may appeal that decision to the appropriate court of common pleas, which shall hear the appeal on the record certified by the commission. R.C. 4141.282(H)(1). "If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence \*\*\*\*" it may reverse the determination. *Id.*

{¶11} On review of purely factual questions, the common pleas court is limited to determining whether the Review Commission hearing officer's determination is supported by the evidence in the record. *Angelkovski*, *supra*, at 161. Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be

affirmed. *Id.*, citing *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. However, the common pleas court has a duty to reverse the Review Commission's determination if it is contrary to law. *Lombardo* at 221, citing *Opara v. Carnegie Textile Co.* (1985), 26 Ohio App.3d 103, 106. A reviewing court applies the same standard of review as the common pleas court. *Tzangas Plakas v. Admin., OBES* (1995), 73 Ohio St.3d 694, 696.

{¶12} In this matter, the Review Commission hearing officer issued the following findings of fact:

{¶13} "FINDINGS OF FACT

{¶14} "\*\*\*

{¶15} "For approximately his last two years of work, claimant had been having conflicts with a co-worker, \*\*\*. The two had numerous disputes. Claimant complained several times about [the co-worker] but no misconduct was ever demonstrated so that the company could act. To the contrary, after an incident in December of 2000, claimant was warned for inappropriate behavior and language.

{¶16} "On February 7, 2001, claimant observed [the co-worker] taking a lock from paint spray box. When he saw [his supervisor], he complained. He told her that if [the co-worker] did not stop sabotaging claimant's work, he would: 'stab him in the heart.' [The supervisor] took claimant to the office where he repeated his threats. She then sent him home.

{¶17} "Claimant returned the next morning. He stated that he wanted to stab [the co-worker] in the heart with a screw driver. When confronted by [the company's human resource manager], claimant defended himself by stating he had not threatened [the co-

worker] to his face. [The human resource manager] sent claimant home. She later dismissed him."

{¶18} On these findings, the hearing officer concluded that appellee's dismissal was for just cause, because, "\*\*\* no employer can tolerate an employee making threats of bodily harm to another. Regardless of any provocation, claimant's threats were gross misconduct."

{¶19} On review, the common pleas court reached a different conclusion. According to the court:

{¶20} "The action of the appellant that spawned his discharge was a statement that was made to his supervisor as to another employee with whom he had ongoing difficulties. The supervisor knew of problems between the individuals, and did not deal with them. The human resources [manager] knew of the problems, and did not deal with them. The appellant attempted to speak to the plant manager about the issues between he and the other employee and was unable to do so. That he would make an inappropriate statement as to his frustration regarding the other employee was predictable under a totality of the circumstances and to deny him unemployment benefits for an action for which management is not without reproach is unreasonable."

{¶21} Appellants insist that the common pleas court improperly substituted its judgment for that of the hearing officer on findings of fact. We disagree.

{¶22} Although there are some differences in emphasis and interpretation, the facts as recited by the hearing officer are in material conformity with those to which the common pleas court alludes in its judgment entry. Accordingly, the first assignment of error of

appellant Director, ODJFS, and part "A" of appellant Aeroquip's single assignment of error are not well-taken.

{¶23} At issue is the hearing officer's determination, as a matter of law, that these facts provide just cause for appellee's discharge and the common pleas court's contrary conclusion.

{¶24} Appellants insist that appellee's statement was a threat of violence to a fellow employee. The Review Commission hearing officer embraced this characterization. However, as the common pleas court properly observed, the statement was not to another employee, but to a supervisor about the possible consequences of the supervisor's continued inaction on appellee's repeated complaints about a coworker's behavior. There is no evidence in the record that appellee ever directly threatened any coworker with harm. The common pleas court recognized, as do we, that workplace frustrations can sometimes lead to intemperate remarks. In such circumstances, it is not unusual for a party to employ hyperbole to emphasize a point.

{¶25} The common pleas court also recognized the undisputed fact that appellee's frustration level with his co-employee and the apparently inactive management was high. The court concluded that, given the history of this dispute, management was or should have been aware of appellee's frustration level and have considered that in judging the appropriateness of its response. Consequently, the common pleas court determined that the employee's decision to discharge appellee and to deny him unemployment benefits was unreasonable. Given that management has conceded throughout these proceedings that appellee's statement to his supervisor on February 7, 2001, was the only reason that he lost

his job, we must conclude his discharge was without just cause. As a result we concur with the common pleas court that hearing officer's decision to deny benefits was unreasonable.

{¶26} Accordingly, both of appellants' remaining assignments of error are not well-taken.

{¶27} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. Costs to appellants.

JUDGMENT AFFIRMED.

PIETRYKOWSKI and SINGER, JJ., concur

Judith Ann Lanzinger, J., dissents.

LANZINGER, J.

{¶28} I respectfully dissent. The Unemployment Compensation Review Commission found that Thompson was discharged for just case and thus was ineligible for unemployment compensation because "\*\*\* no employer can tolerate an employee making threats of bodily harm to another. Regardless of any provocation, claimant's threats were gross misconduct." Because the Sandusky Court of Common Pleas created new facts and substituted its own judgment on the reasonableness of the discharge, I find appellants' assignments of error well-taken and would reverse.

{¶29} The Supreme Court of Ohio has held that common pleas courts and appellate courts are to apply the same standard in reviewing unemployment administrative decisions. This standard is not de novo review. See *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp.*

*Serv.* (1995), 73 Ohio St. 3d 694, 696-697, 653 N.E.2d 1207. A reviewing court may reverse the administrative determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. The Review Commission's role as a fact finder remains intact. *Id.*

{¶30} In two major areas the trial judge departed from facts found by the hearing officer: (1) the reason for Thompson's firing and (2) the company's knowledge of problems between the two co-workers. First, the trial court says that Thompson was discharged for "a statement that was made to his supervisor as to another employee with whom he had ongoing difficulties."

{¶31} Aeroquip's reason for Thompson's discharge is revealed during the cross-examination of its human resources manager.

{¶32} "Q. Well, what exactly is it that the company says was the reason why Mr. Thompson was discharged?

{¶33} "A. Exactly word for word?

{¶34} "Q. Yeah.

{¶35} "A. The letter that we sent him confirming his termination, 'We have taken this action as a result of our investigation of certain incidents involving your behavior. Specifically, our investigation indicated that you threatened a co-worker. This was confirmed by both you and others who witnessed the statement. This constitutes a clear violation of our workplace safety policy which has been presented to you and others in July of 2000.'"

{¶36} The policy referred to was also a part of record and explicitly states:

{¶37} "These rules generally result in immediate discharge:

{¶38} "Engaging in horseplay, running, throwing things, scuffling, fighting *or other activity which may provoke violence on Company premises, etc.*" (Emphasis added).

{¶39} Aeroquip terminated Thompson for a violation of its company policy rather than for a mere statement. The statement itself was a threat of serious harm to a co-worker which an ordinarily intelligent person would understand might lead to discharge from employment. Thompson threatened to harm a fellow employee by "stabbing him in the heart." It does not matter whether this threat was contingent or was made to the co-worker directly. This statement made, repeated, and admitted to, is more than the profane or abusive language that an employer can tolerate. See *Lombardo v. Ohio Bur. of Emp. Serv.* (1997), 119 Ohio App.3d 217. It is more than a matter of frustration.

{¶40} Contrary to the trial court's interpretation, such threats are not "predictable" in the workplace. Thompson had other recourse if he were dissatisfied with the inaction of his supervisors over his complaints about a co-worker. He could have sued, if as he claimed, he was being harassed at work. To threaten to stab someone in the heart with a screwdriver is gross misconduct, capable of leading to termination. There was adequate evidence in the record to support the review commission's findings.

{¶41} The second departure from the review commission's findings was the common pleas court's conclusion that the supervisor knew of problems between the individuals and did not deal with them. To the contrary, the review commission's findings indicate that, while Thompson may have complained several times about his co-worker, no misconduct by that co-worker was ever demonstrated, so there was nothing for the company to act upon. Furthermore, the trial court's conclusion is not supported by the record; Thompson's

immediate supervisor did not testify. Thompson himself testified that he never spoke to the plant manager although he tried to "about 15 or 16 times" and that on several occasions he left a note saying he "very much needed to see him over the situation with [a co-worker]."

{¶42} Whether the human resources manager knew of the problems and did not deal with them also was disputed. The manager testified about one conversation she had with Thompson:

{¶43} "Q. Okay. Did you ever have any conversations with Mr. Thompson where he complained about behavior or actions taken toward him by this [co-worker]?"

{¶44} "A. Yes, I did.

{¶45} "Q. And what did Mr. Thompson tell you about [a co-worker]?"

{¶46} "A. He told me that he was, I'm trying to remember the phrase, gosh, a punk, a young punk.

{¶47} "Q. Did he indicate that...that [this co-worker] was sexually harassing him?"

{¶48} "A. He did not, that I remember, indicate sexual harassment. They had issues in the work environment with, I'd say tools, but one thing that comes to mind is over a rag. There was a little set to between he and [this co-worker] that was handled separately, an investigation.

{¶49} "\*\*\*\*

{¶50} "Q. As a result of that investigation, was any action taken against either Mr. Thompson or [his co-worker]?"

{¶51} "A. Yes. On December 7th, Mr. Thompson received a written notice for inappropriate behavior towards a co-worker using abusive language that's not acceptable."

{¶52} After the human resources manager denied that Thompson complained to her on more than one occasion about [his co-worker], the record shows counsel asked:

{¶53} "Q. If Mr. Thompson were to testify that he had repeatedly complained to you that he was being harassed in various ways by [his co-worker], you would have no reason to believe that his testimony was untrue?"

{¶54} "A. If that were the case, we would have investigated, and we may very well have, I know we have because of the rag incident. He must have... Someone must have come forward with a complaint for us to investigate the rag incident. So if he complained and let us know that he was being harassed, we would have followed it up with an investigation."

{¶55} In reversing the administrative decision, the trial court reinterpreted the disputed facts in favor of Thompson and concluded: "That [Thompson] would make an inappropriate statement as to his frustration regarding the other employee was predictable under a totality of the circumstances and to deny him unemployment benefits for an action for which management is not without reproach is unreasonable."

{¶56} The trial court's conclusion conflicts with the hearing officer's determination that "Even if claimant had been harassed by [his co-worker] for two years, *and the evidence does not support that allegation*, that would not excuse his threats. \*\*\* [N]o employer can tolerate an employee making threats of bodily harm to another. Regardless of any provocation, claimant's threats were gross misconduct. The employer cannot be exposed to potential liability that would accrue if such threats were ignored." (Emphasis added.)

{¶57} The hearing officer clearly did not give much weight to Thompson's allegations of harassment, and therefore, the trial court's finding that Thompson's frustration level

reached the point that threatening a co-worker reasonable is contrary to the determination made by the review commission.

{¶58} As the Ohio Supreme Court has stated, factual determinations are the exclusive province of the review commission. See *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St. 2d 11, 14, 233 N.E. 2d 582. The common pleas court may not weigh the evidence or substitute its judgment for an administrative officer in factual determinations. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St. 2d 41, 45, 430 N.E. 2d 468.

{¶59} Because the Unemployment Compensation Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence, I would find appellants' assignments of error to be well-taken and would reverse the judgment of the Sandusky County Court of Common Pleas.