

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

C & W Tank Cleaning Company, Inc.

Court of Appeals No. L-11-1194

Appellant

Trial Court No. CI0201005700

v.

Paul Bagrowski, et al.

DECISION AND JUDGMENT

Appellees

Decided: September 14, 2012

* * * * *

Barry E. Savage, for appellant.

Mike DeWine, Attorney General of Ohio, and Eric A. Baum,
Managing Attorney, for appellee Director, Ohio Department
of Job and Family Services.

* * * * *

SINGER, P.J.

{¶ 1} Appellant employer appeals the judgment of the Lucas County Court of
Common Pleas, affirming the award of unemployment benefits to appellee Paul
Bagrowski by appellee Director, Ohio Department of Job and Family Services

(“Director”) and affirmed by the Unemployment Compensation Review Commission. Because we conclude the order was not unlawful, unreasonable or against the manifest weight of the evidence, we affirm.

{¶ 2} For ten years appellee Bagrowski was employed as a laborer for appellant C & W Tank Cleaning Company, Inc. On November 3, 2009, appellee Bagrowski was completing his shift at the BP refinery in Oregon, Ohio. While there is some dispute as to whether the encounter was planned, it is agreed that, as appellee Bagrowski was leaving the plant, he saw and confronted another employee who was reporting for the next shift.

{¶ 3} According to appellee Bagrowski, he was irritated with the other employee whom he believed had spread untruthful accusations with co-workers that appellee Bagrowski was a “snitch” to management. At a subsequent review hearing, appellee Bagrowski testified that he told the other employee, “I am tired of you telling mother-fucking lies about me. Keep my god damn name off your lips. I will sue you for slander if you keep it up.”

{¶ 4} Appellant’s human resources manager investigated the incident, later reporting that witnesses had said that appellee Bagrowski had told the other employee that he was going to “kick his ass” and “get him.” Appellant company decided to terminate appellee Bagrowski’s employment.

{¶ 5} Appellee Bagrowski applied for unemployment compensation benefits. Appellant contested and appellee Director initially denied benefits, but subsequently

issued a redetermination of appellee Bagrowski's claim, concluding that the employer had discharged the employee without just cause. On this finding, appellee Director allowed benefits.

{¶ 6} Appellant appealed the redetermination to the Unemployment Compensation Review Commission. There a hearing officer conducted a telephonic hearing at which appellee Bagrowski testified to the underlying events, adding that profanity at his workplace is common. Appellee Bagrowski denied ever touching or physically threatening the other employee. The human relations manager testified as to what she was told by the target of appellee Bagrowski's remarks and several witnesses to the event.

{¶ 7} Following the hearing, the hearing officer issued a written decision, affirming the appellee Director's determination to provide benefits. The hearing officer explained her reasoning:

The employer presents hearsay testimony and evidence in support of its contention that claimant was properly discharged for fighting with or threatening another employee. Claimant offered the more credible testimony in which he admits that he verbalized his displeasure with a co-worker about things he was saying about him in the workplace. He used profanity which is common in this workplace. While claimant did threaten to sue the co-worker, there is insufficient credible evidence in the record to establish that claimant fought with this co-worker, or that he threatened him

with physical harm. It is held that claimant was discharged by C & W Tank Cleaning Inc. without just cause in connection with work.

{¶ 8} Appellant sought review from the full Unemployment Compensation Review Commission, but was denied. Appellant then pursued an administrative appeal to the common pleas court pursuant to R.C. 4141.282. On review of the administrative record, the court affirmed the decision of the Unemployment Compensation Review Commission. From this judgment, appellant now brings this appeal. Appellant sets forth the following single assignment of error:

The decision of the Hearing Officer as affirmed by the Lucas County Court of Appeals [sic] is both Unreasonable and Against the Manifest Weight of the Evidence.

{¶ 9} A party dissatisfied with the final determination of the Unemployment Compensation Review Commission 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 was unlawful, unreasonable, or against the manifest weight of the evidence * * *” it may reverse the determination. *Id.* On review of purely factual questions, the common pleas court is limited to determining whether the hearing officer’s determination is supported by the evidence in the record. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Services*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). Factual findings supported by some competent, credible evidence going to the essential elements

of the controversy must be affirmed. *C.E. Morris v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 10} The appellate court's standard of review for just-cause determinations by the Unemployment Compensation Review Commission is identical to the trial court's. *Tzangas* at 696. The appeals court may reverse only if the commission's conclusion was unlawful, unreasonable, or against the manifest weight of the evidence. *Id.* We must focus on the commission's decision rather than the common pleas court's and keep in mind that the Unemployment Compensation Act is to be liberally construed in favor of beneficiaries. R.C. 4141.46, *McNeil Chevrolet, Inc. v. Unemploy. Comp. Review Bd.*, 187 Ohio App.3d 584, 2010-Ohio-2376, 932 N.E.2d 986, ¶ 17 (6th Dist.).

{¶ 11} Appellant's argument with respect to the commission's factual findings is unavailing. The hearing officer expressly found appellee Bagrowski's testimony credible. Specifically, the hearing officer found that there was no physical violence, no threat of physical violence; only one employee verbalizing his displeasure to another. There is competent credible evidence of this version of events in appellee Bagrowski's testimony. Consequently, the hearing officer's findings may not be disturbed.

{¶ 12} As to whether the events as found by the hearing officer constitute just cause for termination of employment,

Just cause is conduct that would lead a person of ordinary intelligence to conclude the surrounding circumstances justified the employee's discharge. In determining an application for unemployment

compensation, the commission considers whether an award of benefits will further the underlying purpose of unemployment compensation: to provide financial assistance to those who become unemployed through no fault of their own. (Citations omitted.) *Carter v. Univ. of Toledo*, 6th Dist. No. L-07-1260, 2008-Ohio-1958, ¶ 10.

{¶ 13} Appellant argues that because the hearing officer failed to afford what it considers due deference to the hearsay evidence presented by the human relations manager, the scale should tip in favor of a just cause finding. This is merely a reinvention of appellant's manifest weight argument. The hearing officer did not exclude appellant's hearsay evidence; she found it less credible than appellee Bagrowski's testimony. Crediting appellee Bagrowski's testimony, the hearing officer concluded that his termination for a common interpersonal dispute in the common language of the workplace was not for just cause. On review, we cannot say that this was an unlawful or unreasonable conclusion. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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