

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

Richard A. Calland

Court of Appeals No. OT-12-006

Appellant

Trial Court No. 11 CV 162F

v.

Firelands Mechanical, Inc., et al.

DECISION AND JUDGMENT

Appellees

Decided: November 9, 2012

* * * * *

Francis J. Landry, 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 appeals the judgment of the Ottawa County Court of Common Pleas, affirming the administrative denial of unemployment compensation benefits. Because there was competent credible evidence supporting an Unemployment

Compensation Review Commission hearing officer's conclusion that appellant quit work without just cause, we affirm.

{¶ 2} In the autumn of 2009, appellant, Richard Calland, was employed part-time as a heating ventilation and air conditioning technician with appellee Firelands Mechanical, Inc. According to appellant's testimony, he was to report to work at 8:00 a.m., Monday through Wednesday of each week to pick up work assignments.

{¶ 3} It is not clear the employer and employee are discussing the same event, but in his hearing testimony, appellant discusses taking three days off for physical therapy, following which his employer had no more work when he reported. After a few days, appellant advised his employer that he would no longer appear at 8:00 a.m. and that, if he was needed, the employer should call him at home.

{¶ 4} In a written response to appellant's application for unemployment benefits, the employer stated:

Richard informed me on 10/28/09 he was going on a non-scheduled vacation during our busiest season (Oct-Nov). We were short- handed & informed Richard of this. I protested his vacation he left anyway. I had to hire someone else. No vacations allowed in the busy season.

{¶ 5} In his hearing testimony, appellant denied having this exchange. When he applied for unemployment compensation benefits, appellee Director, Ohio Department of Job and Family Services, denied his claim. This decision was affirmed in a subsequent redetermination.

{¶ 6} In an appeal to the Unemployment Compensation Review Commission, following a hearing, a hearing officer concluded that appellant had quit his job without just cause. Appellant then filed an R.C. 4141.281 appeal to the trial court, which affirmed the decision of the review commission hearing officer. This appeal followed.

{¶ 7} Appellant sets forth two assignments of error:

I. The Unemployment Compensation Review Commission and the Trial Court committed reversible error in that the Unemployment Compensation Review Commission's determination was unlawful, unreasonable, and against the manifest weight of the evidence.

II. The Unemployment Compensation Review Commission and the Trial Court committed reversible error in that the Unemployment Compensation Review Commission's determination was improper because Appellant was terminated without just cause.

{¶ 8} Appellant's assignments of error will be discussed together.

{¶ 9} The purpose of unemployment compensation is to provide financial assistance to one who is able and willing to work, but, without fault or agreement, is temporarily without a job. *Tzangas, Plakas & Mannos v. Admr.* 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). One who has quit work without just cause, or has been discharged from employment for just cause, is not eligible for benefits. R.C. 4141.29(D)(2)(a). Just cause is that which an ordinarily intelligent person would find is a justifiable reason for doing or not doing a particular act. *Tzangas, supra.*

{¶ 10} An unemployment compensation claimant first applies to the Ohio Department of Job and Family Services, the Director of which makes initial findings and conclusions as to whether the claimant is eligible for benefits. R.C. 4141.28(B). The decision of the Director may be appealed to the Unemployment Compensation Review Commission for a hearing de novo. R.C. 4141.281(C)(3).

{¶ 11} If a claimant remains unsatisfied with his benefit determination, he or she may further appeal to an appropriate court of common pleas. The common pleas court hears the appeal on the record certified by the commission. R.C. 4141.281(H). The common pleas court may reverse, vacate or modify the commission's determination only if it finds that commission hearing officer's decision was "unlawful, unreasonable, or against the manifest weight of the evidence." *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, supra*, at 696. 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.

{¶ 12} Appellee employer's account, if credited, certainly provides just cause for termination. It is not unreasonable for an employer to demand the attendance of an employee during critical business times. Appellant's employer reported that it was the company's policy not to grant vacation during peak season and that appellant was expressly denied vacation on that basis when he requested it. According to the employer,

when appellee did not appear for work, the company hired someone who would. This is not an unreasonable response.

{¶ 13} Appellant's version of events is similarly unavailing. Appellant testified that he was hired on a part-time basis and that he was to appear at 8:00 a.m, on Monday through Wednesday for work assignments. At some point, for whatever reason, appellant unilaterally decided that he was no longer going to appear in person to accept assignments. This is a breach of the employment agreement as appellant reported it and constituted constructive resignation without just cause.

{¶ 14} Irrespective of the version of events before the hearing officer, there was evidence to support her finding that appellant had quit work without just cause. Accordingly, both of appellant's assignments of error are not well-taken.

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

Judgment affirmed.

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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, 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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