

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Jeremy R. James,	:	
Appellant-Appellee,	:	
v.	:	No. 08AP-976 (C.P.C. No. 08CVF03-3703)
Ohio State Unemployment Review Commission et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees,	:	
(Director, Ohio Department of Job & Family Services,	:	
Appellee-Appellant).	:	

D E C I S I O N

Rendered on September 29, 2009

Jeremy R. James, pro se.

*Richard Cordray, Attorney General, and Patria V. Hoskins, for
appellee-appellant.*

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Appellee-appellant, Director, Ohio Department of Job and Family Services ("ODJFS"), appeals from a decision of the Franklin County Court of Common Pleas reversing an adjudication order issued by the Unemployment Compensation Review Commission ("UCRC"), which denied appellant-appellee, Jeremy R. James' ("appellee"), request for unemployment compensation, based upon a finding that appellee was

discharged for just cause in connection with his work. For the reasons that follow, we affirm the decision of the common pleas court.

{¶2} Appellee was employed by Pitney-Bowes, Inc. as a customer service representative ("CSR"), for a period of six months between February 5, and August 5, 2007. At the time claimant was offered the CSR position, he was informed he would be required to obtain A+ computer certification within six months of his employment.¹ The certification was a requirement for all CSRs, even though it was possible to do the job of a CSR without the certification. Appellee was also informed that failure to obtain the computer certification within the stated timeframe would result in a discharge from employment. Appellee signed the offer of employment and agreed to its terms and conditions, which included the A+ certification requirement. Despite taking the test twice, appellee was unable to pass the test and obtain his certification within six months.² As a result, he was terminated from employment at Pitney-Bowes, Inc.

{¶3} On August 9, 2007, appellee applied for unemployment compensation. His application was allowed by ODJFS on September 12, 2007, on the ground that he had been discharged without just cause. Pitney-Bowes, Inc. appealed that determination, which was affirmed by ODJFS. On appeal of the redetermination, ODJFS transferred jurisdiction to UCRC.

{¶4} A hearing officer for the UCRC conducted a hearing via telephone on January 2, 2008. Both appellee and a representative from Pitney-Bowes, Inc. made

¹ A+ certification measures competency levels for entry-level information technology ("IT") professionals and tests knowledge of computer hardware and operating systems.

² Appellee testified at the January 2, 2008 hearing that when he took the test the second time, the test had changed. He was unaware of the change and therefore had studied for the wrong test. The Pitney-Bowes, Inc. representative testified he was also unaware of the testing change.

appearances. Following the hearing, the hearing officer reversed the redetermination by ODJFS and held that appellee had been discharged for just cause in connection with his work. As a result, appellee's application for benefit rights was disallowed and he was ordered to immediately repay the benefits that had previously been disbursed. Further appeal by appellee to the UCRC was disallowed. Appellee then filed an appeal with the Franklin County Court of Common Pleas, which reversed the determination of the UCRC hearing officer.

{¶5} ODJFS now appeals to this court, and assigns the following error:

THE FRANKLIN COUNTY COURT OF COMMON PLEAS ERRED IN FINDING THAT THE DECISION OF THE REVIEW COMMISSION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, WHEN THE EVIDENCE SUPPORTED THE CONCLUSION THAT CLAIMANT HAD BEEN DISCH[A]RGED FROM HIS EMPLOYMENT FOR JUST CAUSE IN CONNECTION WITH WORK.

{¶6} In its single assignment of error, ODJFS asserts that the common pleas court erred in reversing the determination of the UCRC because the evidence supported its determination that appellee had been discharged from his employment for just cause in connection with his work, and that determination was not unlawful, unreasonable or against the manifest weight of the evidence. ODJFS brings this appeal pursuant to R.C. 4141.282.

{¶7} R.C. 4141.282(H), which governs review of unemployment compensation benefits by the court, provides as follows:

The court shall hear the appeal on the certified record provided by the commission. 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.

{¶8} A reviewing court, which includes both a common pleas court as well as a court of appeals, may reverse a "just cause" determination of the UCRC only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 1995-Ohio-206, paragraph one of the syllabus. Reviewing courts should defer to the UCRC's findings regarding the determination of factual issues and the credibility of witnesses. *Irvine v. Ohio Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18. A court cannot substitute its judgment for that of the review commission. Where the review commission might reasonably decide either way, courts have no authority to upset the review commission's decision. *Charles Livingston & Sons, Inc. v. Constance* (1961), 115 Ohio App. 437, 438. The duty of the courts is to determine whether the evidence in the record supports the decision of the hearing officer and whether that determination applies the correct legal standard. *City of Dublin v. Clark*, 10th Dist. No. 05AP-431, 2005-Ohio-5926, ¶20.

{¶9} Here, we find that the evidence in the record does not support the determination of the UCRC hearing officer and that its determination does not apply the correct standard of law.

{¶10} The purpose of the Unemployment Compensation Act is to provide financial assistance to persons without employment through no fault of their own. *Salzl v. Gibson Greeting Cards, Inc.* (1980), 61 Ohio St.2d 35, 39. R.C. 4141.29 establishes the criteria for eligibility for unemployment compensation benefits. Pursuant to R.C. 4141.46, this

provision must be liberally construed. Under R.C. 4141.29(D)(2)(a), no individual may be paid benefits if the individual has been discharged for just cause in connection with the individual's work.

{¶11} "Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine* at 17. Therefore, "just cause" is the type of conduct that an ordinarily intelligent person would regard as a justifiable reason for discharging an employee. *Angelkovski v. Buckeye Potato Chips Co., Inc.* (1983), 11 Ohio App.3d 159, paragraph four of the syllabus (overruled on other grounds). In *Irvine*, the Supreme Court of Ohio found the determination of whether "just cause" exists depends upon the unique considerations of each particular case and each case must be considered on its particular merits. *Irvine* at 17.

{¶12} There is a distinction between the violation of a company rule or policy, which may warrant discharge of an employee, and "the further degree of misconduct or fault required on the part of the employee to justify a denial of unemployment benefits." *Adams v. Harding Machine Co., Inc.*, (1989), 56 Ohio App.3d 150, 155. In *Adams*, the court recognized the distinction made by the review board between the "'cause' necessary for discharge of the plaintiff under the (implied) employment contract in the case * * * and the 'just cause' necessary to determine eligibility for unemployment compensation benefits[.]" The court cited to the review board's decision, which found that, although the employer had the right to discharge the claimant, the action was excessive and the claimant was "discharged without just cause in connection with work within the meaning of * * * [R.C. 4141.29(D)(2)(a)]." *Id.* at 155-56. (Emphasis in the sic.)

{¶13} This distinction has been recognized by various courts. See *Coey v. Burwell Nurseries* (1965), 2 Ohio App.2d 102, 105 (the court determined the employer had the right to discharge the claimant, but also determined the claimant did nothing to deprive himself of the benefits of unemployment compensation, and thus, there was no "just cause" within the meaning of the law to deny unemployment compensation benefits); *Knowles v. Roberts* (App. 1952), 117 N.E.2d 173, 66 Ohio L.Abs. 345 ("[t]he discharge was justifiable under the contract. But this fact does not prevent the employee from receiving the benefits to which he is entitled under the [unemployment compensation] law and which must be liberally construed."); *Dean v. Miami Valley Hosp.* (Feb. 22, 1988), 2nd Dist. No. CA 10391, at *12 ("the 'just cause' sufficient to justify the discharge of an employee need not be as grave as the 'just cause' required to disqualify a discharged employee from receiving unemployment compensation under R.C. 4141.29.").

{¶14} Fault on behalf of the employee is an essential component of a just cause termination. If an employer has been reasonable in finding fault on the part of an employee, the employer may terminate the employee with just cause. *Tzangas*, supra.

{¶15} Unsuitability for a position constitutes fault sufficient to support a just cause termination. In *Tzangas*, the Supreme Court of Ohio set forth a four-part test for determining whether an employee's unsuitability to perform the required work constitutes fault. An employer may properly find an employee unsuitable and therefore at fault when: (1) the employee does not perform the required work; (2) the employer made its expectations known at the time of hiring; (3) the expectations were reasonable; and (4) the requirements of the job did not change since the date of the original hiring for that position. *Tzangas* at 698.

{¶16} In the case at bar, the issue is not whether appellee has the right to continue to work at Pitney-Bowes, Inc. or whether he was wrongfully terminated. Instead, the issue is whether appellee has the right to unemployment compensation benefits. The question is whether appellee did something that should also deprive him of unemployment compensation benefits. *Adams* at 155.

{¶17} Appellee argues his termination was without "just cause" because the A+ certification requirement is an unreasonable condition of his employment and is not justifiable in connection with his work. Appellee argues that the skills he needed and utilized to perform his job as a CSR, which included performing mechanical adjustments, repairs, and preventive maintenance to mail insertion machines, are completely unrelated to the skills one masters in obtaining A+ certification, which is a certification for entry-level IT positions involving computer software and hardware issues. We agree.

{¶18} A CSR at Pitney-Bowes, Inc. performs mechanical and preventive maintenance on mail insertion machines. While appellee concedes he did come into contact with computers, as virtually everyone does in their daily jobs, his position as a CSR did not require him to work with computers to perform his duties. In fact, he and other CSRs are not even permitted to make any adjustments to computer hardware or software operating systems, as such duties are addressed only by a senior engineer or someone of higher authority.

{¶19} Furthermore, a Pitney-Bowes, Inc. representative testified at the hearing that, despite the fact it is possible to do the customer service job without having the A+ certification, it is an across the board requirement that all CSRs have the certification within six months. (Tr. 8.) That representative also testified that if appellee had passed

the test, there would not have been any reason to discharge him and he would have been able to remain an employee. (Tr. 9.) Additionally, appellee testified that the A+ certification is simply a marketing tool used only to sell the services of Pitney-Bowes, Inc. (Tr. 15.) This was not disputed by his employer.

{¶20} Furthermore, we note that ODJFS and Pitney-Bowes, Inc. have conceded the job of a CSR can be done without A+ certification. Therefore, with respect to the issue of unemployment compensation benefits, which is the only issue before this court, we find that the requirement for A+ certification is unreasonable and is completely unconnected in any way to performing the job of a CSR.

{¶21} The common pleas court recognized the flaws in the hearing officer's findings, noting that the A+ certification requirement was not demonstrated to be "indicative of [claimant's] job performance in the slightest." (Oct. 6, 2008 decision and judgment of reversal, at 3.) The common pleas court determined "there was no demonstrated relationship between the required certification and [claimant's] actual job or his job performance[.]" (Oct. 6, 2008 decision and judgment of reversal, at 4.)

{¶22} The common pleas court further found the evidence established the certification requirement was only a marketing strategy used to attract customers and that the CSR job functions could be performed without the certification. Citing to *Tzangas*, the common pleas court found that "while a termination based upon an employer's economic necessity [such as a marketing strategy] may be justifiable, it is not a just cause termination when viewed through the lens of the legislative purpose of the Act." (Decision and judgment of reversal dated Oct. 6, 2008, at 4.)

{¶23} We have reached the same conclusion and are in agreement with these findings of the common pleas court, based upon the evidence in the record and the applicable legal standard.

{¶24} The hearing officer for the UCRC found unsuitability constituted fault sufficient to support a just cause determination. However, the hearing officer mistakenly found "[i]t was reasonable to expect that someone working with computers would have that particular certification." (Jan. 3, 2008 UCRC decision, at 2.) The hearing officer either misunderstood or overlooked appellee's description of his job duties, which did not require him to work with computers, but instead required him to service large mechanical letter-insertion machines. Additionally, the hearing officer failed to recognize that the job requirements of a CSR have absolutely nothing to do with the skills one acquires through A+ certification and that there is no evidence in the record demonstrating that appellee was unsuitable for the work he was actually required to do.

{¶25} In applying the four-part test set forth in *Tzangas*, we find there is no evidence that appellee failed to perform the required work. We further find the employer's expectations were not reasonable in that the A+ certification requirement is completely unrelated to appellee's job and/or his job performance. We also find there is evidence that the requirements of the job changed after the original hiring date, in that the certification test changed from the time of appellee's original hire. Therefore, appellee is neither unsuitable nor at fault and was not discharged for just cause in connection with his work.

{¶26} The determination of the UCRC was unlawful, unreasonable or against the manifest weight of the evidence, and the trial court was correct in reversing the

determination of the UCRC. Therefore, we affirm the judgment of the trial court and overrule ODJFS' assignment of error.

Judgment affirmed.

KLATT and TYACK, JJ., concur.
