

925 Euclid Avenue
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Cleveland, OH 44115-1496

Farmer, J.

{¶1} Appellant, Michele Rokosky, was employed with Aultman Hospital as a registered nurse for approximately thirteen years. On April 14, 2003, appellant was terminated for unauthorized access of confidential medical information regarding a patient, Michael Windle, and failure to cooperate with the investigation.

{¶2} Appellant filed a claim for unemployment compensation with the Ohio Department of Job and Family Services (hereinafter "ODJFS"). On May 1, 2003, ODJFS found no just cause for appellant's termination. Aultman appealed the decision. On June 12, 2003, the director on redetermination affirmed ODJFS's decision. Aultman appealed this decision. The matter was transferred to the Unemployment Compensation Review Commission (hereinafter "Commission"). A hearing was held on September 10, 2003. On September 12, 2003, the Commission reversed the ODJFS decision, finding appellant was on disciplinary layoff for misconduct.

{¶3} Appellant appealed this decision to the Court of Common Pleas of Stark County. By judgment entry filed June 3, 2004, the court affirmed the Commission's decision, finding just cause.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

{¶5} "THE TRIAL COURT ERRED BY AFFIRMING THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION'S DENIAL OF BENEFITS TO APPELLANT MICHELE ROKOSKY."

I

{¶6} Appellant claims the trial court erred in finding the Commission's decision was supported by the law and the facts. We disagree.

{¶7} Our role in reviewing the trial court's decision is to determine whether the trial court appropriately applied the standard of unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 1995-Ohio-206; *Republic Engineered Steels, Inc. v. Strege* (1993), 84 Ohio App.3d 782. While we are not permitted to make factual findings or determine the credibility of witnesses, we have the duty to determine whether the commission's decision is supported by the evidence in the record. This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio. We are to review the commission's decision sub judice and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279.

{¶8} Unemployment compensation can be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable reason

for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. The *Irvine* court at 17 further stated "each case must be considered upon its particular merits." In reviewing such a determination, we are not permitted to reinterpret the facts or put our "spin" to the facts.

{¶9} Appellant challenges the trial court's decision in four different respects: she did not violate Aultman's policies and procedures, Aultman deviated from their policies and procedures on disciplining a long term employee, proof was not presented that her actions disregarded Aultman's best interests, and the Commission relied on hearsay evidence.

{¶10} Aultman terminated appellant for breaching the Employee Handbook specifically, Group I, No. 10, "Discussion or disclosure of confidential information not authorized in the performance of duty." See, Aultman Health Foundation Employee Handbook, attached to Appellee Aultman Health Foundation's Brief as Exhibit D. Said action "may result in **immediate discharge**." *Id.*

{¶11} Upon questioning by her supervisor, Christopher Schoelles, Director of Orthopedic and Neurosurgery, appellant admitted to accessing Mr. Windle's medical records, but claimed she did so with his permission. Commission Hearing T. at 11, 29. When questioned about whether she had written permission and whether she discussed the retrieved information with anyone, appellant declined to answer without counsel. T. at 13. During his investigation, Mr. Schoelles contacted the Windles. T. at 15. Mrs. Windle told Mr. Schoelles they had never given appellant permission to access the records, and appellant had shared the information with her father, a physician, in order

to obtain his input. T. at 15-16.¹ The Windles also told Mr. Schoelles that appellant had attempted to gain their permission after the start of the investigation. T. at 17. The Windles claimed appellant's conduct caused conflict between them and Mr. Windle's treating physicians, and "was causing severe distress to the family." T. at 16.

{¶12} Appellant was a surgical nurse in the orthopedic, maxillo facial, neuro and plastic unit. T. at 18, 29. Mr. Windle was not in appellant's direct care, nor was he even in her area. T. at 30. Appellant's retrieval of Mr. Windle's lab results was outside the scope of her employment. T. at 23, 30, 36. Appellant claimed she shared the information with Mr. Windle only and no one else. T. at 32-33.

{¶13} Appellant argues the Commission gave equal weight to hearsay evidence and direct evidence. Specifically, appellant argues Mr. Schoelles did not fully investigate the matter as he spoke only to the Windles and the Windles did not testify during the hearing. Appellant argues Mr. Schoelles did not speak with appellant's father to determine whether or not she shared the confidential information with him, and did not speak with others regarding an allegation that appellant had impersonated Mrs. Windel. T. at 25-27.

{¶14} R.C. 4141.281(C)(2) governs the conduct of hearings in administrative appeals and states, "Hearing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure." In reviewing this language, found in former R.C. 4141.28(J), the Supreme Court of Ohio held the following:

{¶15} "This court previously has not analyzed this specific segment of R.C. 4141.28(J), however, its meaning is apparent: the Board of Review and the referee

¹Appellant objects to this testimony as hearsay.

need not apply stringent rules in determining the admissibility of evidence into the record. The logical corollary is such evidence placed in the record is not only admissible but also must be weighed and considered when making a decision. If evidence which is inadmissible in a court of law is to be disregarded when and if reviewed, there is no reason to admit such evidence at the administrative level or for purposes of subdivision (J) of R.C. 4141.28." *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 43.

{¶16} The undeniable fact is that appellant accessed private and confidential information on a patient and said access was beyond her duties as a surgical nurse. T. at 29-30, 36. Appellant's own testimony established Mr. Windle did not grant appellant permission to access his records as he refused to sign a permission slip after the fact. T. at 30-31, 38. The evidence supports a violation of Aultman's Group I policy. Further, based upon the complaint initiated by the Windles regarding appellant's conduct and the disruption it caused (T. at 15-16), the evidence supports the fact that appellant's actions were contrary to the best interests of Aultman.

{¶17} Appellant argues despite the violation of a Group I rule, termination was too harsh a remedy. Decisions by the Commission are based on "just cause" and not the degree of punishment. The Group I policy clearly states a violation of said policy "may result in ***immediate discharge.***"

{¶18} Upon review, we conclude the trial court was correct in finding the Commission's decision was not unlawful, unreasonable or against the manifest weight of the evidence.

{¶19} The sole assignment of error is denied.

{¶20} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Edwards, J. concur.

JUDGES

SGF/jp 0114

