[Cite as *Talley v. Coe Mfg., Co.*, 2003-Ohio-1395.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

JERRY TALLEY,	:	**O P I N I O N**
Appellee,	:	
		CASE NO. 2002-L-015
- vs -	:	
COE MANUFACTURING COMPANY,	:	
Defendant,	:	
DIRECTOR, OHIO JOB AND FAMILY SERVICES,	:	
Appellant.		

Administrative Appeal from the Court of Common Pleas, Case No. 01 CV 00314.

Judgment: Affirmed.

David J. Steiger, 1835 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115 (For Appellee).

Jim Petro, Attorney General, and *Betsey N. Friedman*, Assistant Attorney General, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, OH 44113-1899 (For Appellant).

JUDITH A. CHRISTLEY, J.

{¶1} This accelerated calendar case submitted on the briefs of the parties concerns an administrative appeal from the Lake County Court of Common Pleas. Appellant, the Ohio Department of Job and Family Services ("the ODJFS"), appeals

from the judgment of the trial court reversing the decision of the Ohio Unemployment Compensation Review Commission ("the review commission") as being unlawful, unreasonable and against the manifest weight of the evidence. According to the review commission, appellee, Jerry Talley, was disqualified from receiving unemployment compensation benefits because he was discharged for just cause in connection to his employment. For the reasons that follow, we affirm the reversal by the trial court.

{¶2} By way of background, appellee was employed with Coe Manufacturing Company ("Coe Manufacturing") in the foundry department as a sand mixer and a laborer since June 1984. However, on June 10, 2000, appellee was discharged for violating a provision of the labor-management contract relating to excessive garnishments. Specifically, Coe Manufacturing had a contract with the United Steelworkers of America, Local 12833, which provided that if an employee had more than two garnishments filed against him/her in a one-year period, then that employee was subject to discharge:

{¶3} "[Section] 17.09: If an employee has more than two (2) garnishments (the legal attachment of an employee's wages from the Company at the instigation of a third party) within any twelve (12) months period during the life of this Contract, he shall be subject to immediate discharge without recourse to the provisions of Article 4 - Grievance procedure."

{¶4} In implementing this garnishment rule, it was the practice of Coe Manufacturing to consider garnishments from the same creditor as constituting only one garnishment. However, such an application of the garnishment rule was not reflected in the labor-management contract.

{¶5} According to Louis Falk ("Mr. Falk"), the director of human resources for Coe Manufacturing, the purpose of the garnishment rule was to avoid hardship and inconvenience on the accounting department:

{¶6} "Q. [on cross-examination by appellee's counsel] Okay. Could you tell us what the purpose of the rule for garnishment is?

{¶7} "A. That contract provision has been in effect for more than the 27, 28 years I've been with Coe Manufacturing. So its initial placement in the contract, I can't comment on. I can't comment on some of the things because repeated garnishments and wage attachments and so on are a hardship, and inconvenience and a time consuming thing to the accounting people in payroll department. And I'm sure part of the reason is for that is to put a restriction on that and have no more than a certain limited number to avoid that sort of inconvenience and so on."

{¶8} Mr. Falk, however, was unable to provide the cost Coe Manufacturing incurred for processing the garnishment:

{¶9} "Q. Okay. What is the cost of the garnishment?

{¶10} "A. I couldn't tell you the cost. What do you mean, for processing?

{¶11} "Q. Yes.

{¶12} "A. I have no idea."

{¶13} During his period of employment, appellee suffered a back injury which kept him out of work for a significant amount of time and resulted in him accumulating many bills. Appellee subsequently incurred three garnishments from three different creditors during a twelve month period, to wit: January 31, 2000, May 8, 2000 and May 16, 2000.

{¶14} After the issuance of the second garnishment on May 8, 2000, appellant retained an attorney on May 10, 2000, for the purpose of filing for bankruptcy to protect himself from further garnishments. The attorney, however, failed to file the bankruptcy petition prior to the issuance of the third garnishment on May 16, 2000. As a result, appellee was terminated from his employment on June 10, 2000 for obtaining three garnishments. It was on the date of his termination that appellee's attorney filed the petition for bankruptcy.

{¶15} In October 2000, appellee applied for unemployment compensation benefits. On November 6, 2000, the ODJFS disallowed appellee's claim after determining that he was discharged for just cause in connection with his employment:

{¶16} "Claimant [appellee] was discharged from employment with COE MFG CO because his *** wages were subject to garnishment.

{¶17} "A review of the facts establishes that the discharge was based on claimant's act, omission, or course of conduct. There was sufficient fault on the claimant's part that an ordinary person would find the discharge justifiable."

{¶18} After appealing the initial determination, the ODJFS issued a redetermination on December 7, 2000, affirming the denial of unemployment compensation benefits. On December 11, 2000, appellee filed an appeal from the redetermination with the review commission. Upon doing so, the review commission conducted a hearing on January 9, 2001. After taking the matter under advisement, the hearing officer concluded that the facts did not support a change in the initial determination that appellee was discharged with just cause in connection to his

employment. Further review of the hearing officer's determination was disallowed by the review commission.

{¶19} As a result, on March 1, 2001, appellee filed a notice of appeal to the Lake County Court of Common Pleas. Upon review, the trial court issued a lengthy judgment entry on December 21, 2001, finding that the decision of the review commission to disallow appellee unemployment compensation benefits on the basis that he was discharged for just cause in connection with his employment was unlawful, unreasonable, and against the manifest weight of the evidence.

{¶20} From this judgment, appellant filed a notice of appeal advancing a single assignment of error for our consideration:

{¶21} "The common pleas court erred in reversing the Unemployment Compensation Review Commission's decision that claimant was discharged for just cause as there is competent, credible evidence in the record to support the finding that claimant was discharged for just cause for violation of company policy."

{¶22} Before we may consider appellant's argument, we must lay out the appropriate standard of review.

{¶23} In *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Services* (1995), 73 Ohio St.3d 694, 696-697, the Supreme Court of Ohio clarified that there is *no distinction* between the scope of review of common pleas and appellate courts regarding just cause determinations in unemployment compensation cases. As such, "[a]n appellate court may reverse the Unemployment Compensation Board of Review's 'just cause' determination only if it is unlawful, unreasonable or against the manifest weight of the

evidence." Id. at paragraph one of the syllabus. See, also, *Janovsky v. Ohio Bur. of Emp. Services* (1996), 108 Ohio App.3d 690, 692-693.

{¶24} Furthermore, we are mindful that the "[d]etermination of purely factual questions is primarily within the province of the referee and the board." *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. As such, a court serving in an appellate capacity has a limited power of review and is "not permitted to make factual findings or to determine the credibility of witnesses." Id. at 18.

{¶25} Rather, "[t]he duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record." Id. at 18. "This duty is shared by all reviewing courts, from the first level of review in the common pleas court through the final appeal [in the Supreme Court of Ohio]." *Tzangas* at 696. However, "[t]he fact that reasonable minds might reach a different conclusion is not a basis for the reversal of the board's decision. *** 'Where the board might reasonably decide either way, the courts have no authority to upset the board's decision.'" (Citations omitted.) *Irvine* at 18.

{¶26} It is axiomatic that Ohio's Unemployment Compensation Act prohibits the payment of benefits if an employee "has been discharged for just cause in connection with his [or her] work." R.C. 4141.29(D)(2)(a). "'[J]ust cause' in a 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, citing *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. Accordingly, just cause under R.C. 4141.29(D)(2)(a) is predicated upon employee fault:

{¶27} "When an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament. Fault on the

employee's part separates him from the [Unemployment Compensation] Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination." *Tzangas* at 697-698.

{¶28} Moreover, a just cause determination must be consistent with the purpose of the Unemployment Compensation Act. Id. at 697. "[W]hile a termination based upon an employer's economic necessity may be *justifiable*, it is not a just cause termination when viewed through the lens of the legislative purpose of the Act." Id.

{¶29} In *Irvine*, the Supreme Court of Ohio set forth the legislative purpose underlying the Act:

{¶30} "Essentially, the Act's purpose is 'to enable unfortunate employees, who become and remain *involuntarily* unemployed by adverse business and industrial conditions, to subsist on a reasonably decent level and is in keeping with the humanitarian and enlightened concepts of this modern day.' *** Likewise, '[t]he act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.'" (Citations omitted and emphasis sic.) Id. at 17.

{¶31} With the foregoing legal principles in mind, we consider appellant's sole assignment of error. Therein, appellant contends that the trial court erred in reversing the decision of the review commission as there is competent, credible evidence in the record to support its determination that appellee was not entitled to unemployment compensation benefits. To support its position, appellant submits that pursuant to *Brownlee v. Bd. of Review Bur. of Emp. Services* (June 26, 1975), 8th Dist. No. 34070, 1975 Ohio App. LEXIS 6942, appellee's discharge for violating the contract provision

against repeated garnishments is a discharge for just cause in connection with work, thus precluding the receipt of unemployment compensation benefits.

{¶32} We take notice of the fact that several Ohio courts have been presented with a similar issue. For instance, appellant relies on *Brownlee*, wherein the claimant was discharged by his employer for violation of the company's rule relating to excessive garnishments. Specifically, the company rule provided for the immediate discharge of an employee who incurred wage attachments in excess of two within six months. During his employment, the claimant received three orders of attachment and notices of garnishment within a six-month period. Despite the fact that the claimant secured releases on two of the three garnishment notices, he was discharged and subsequently denied unemployment compensation benefits by the board of review. The trial court, however, determined that the board of review's decision was contrary to law. *Brownlee* at 1-4.

{¶33} Upon consideration, the Eighth Appellate District disagreed with the trial court's determination and upheld the board of review's denial of unemployment compensation benefits:

{¶34} "[The claimant] incurred more than two 'binding' wage attachments within a six month period and was therefore in violation of [the company's] work rule ***. We further hold that based upon our review of the entire record, including the transcript of testimony taken before the Board of Review that the evidence presented demonstrated that under the circumstances of [the claimant's] employment his discharge based on excessive garnishments was a discharge for just cause in connection with work,

pursuant to R.C. 4141.29 and therefore that [the claimant] was not entitled to unemployment benefits." *Brownlee* at 6-7.

{¶35} However, a more recent case found to the contrary. In *Eckels v. Giles* (Dec. 19, 1985), 5th Dist. No. CA-2336, 1985 Ohio App. LEXIS 9938, the claimant was discharged for receiving five garnishment notices in violation of the labor-management contract. Although the claimant made payment to the creditor, he did not inform his employer of this. The claimant was subsequently discharged, and he was denied unemployment compensation benefits. *Eckels* at 1-4.

{¶36} Upon review by the Fifth Appellate District, the court determined that the claimant's discharge was not for just cause in connection with his work and, as such, was entitled to unemployment compensation benefits:

{¶37} "'It seems unreasonable and against the manifest weight of the evidence to hold that an employee was discharged with just cause in connection with his work when in fact, he was discharged because he or the lending institution failed to notify the employer that the debt had been paid. The employee in this case was not fired because of notice of garnishment was received. He was fired because the employer had to withhold money from his check. It[']s important to this case that the discharge and deduction took place at the same time and that both occurred after the debt had been paid. The discharge and the deduction from the employee's pay took place not in connection with the employee's work, but because of a failure to notify of the payment of the debt." *Eckels* at 4-5. See, also, *Harp v. Admr., Bur. of Unemployment Comp.* (1967), 41 O.O.2d 25, 12 Ohio Misc. 34 (concluding that "to hold that service on an employer of two garnishment notices within a period of one year in violation of a

company rule to that effect, without more is a discharge for just cause in connection with work *would be unreasonable and not at all what was contemplated by the Legislature in enacting Section 4141.29, Revised Code*."); *Chester v. First Fed. Sav. & Loan Assoc.* (1959), 82 Ohio Law Abs. 182; (holding that if there is no deliberate violation of the employer's rule, no willful disregard of the employer's interest, and no suggestion of unsuitability for the work performed, then the claimant should be allowed unemployment benefits); *Chalker v. First Fed. Sav. & Loan* (1955), 71 Ohio Law Abs. 87.

{¶38} With the foregoing split in authority in mind, we consider the instant appeal. To recapitulate, the review commission found the existence of just cause for appellee's discharge based upon his receipt of three garnishments within a twelve-month period, in violation of the labor-management contract provision. The trial court, however, reversed the decision of the review commission and found it to be unlawful, unreasonable and against the manifest weight of the evidence.

{¶39} The determination of whether just cause exists for purposes of unemployment compensation law necessarily depends upon the unique facts and circumstances of each case. *Tzangas* at 698; *Irvine* at 17; *Chester*, supra. We are required to review the totality of the circumstances in deciding whether an employee's valid, contractual discharge for garnishments was also a discharge for just cause for purposes of unemployment compensation. Furthermore, "[w]hether, considering all circumstances, a reason for terminating a claimant's employment constitutes 'just cause' is a question of law." *Lombardo v. Ohio Bur. of Emp. Services* (1997), 119 Ohio App.3d 217, 221.

{¶40} In the instant matter, there was no claim that appellee's work performance was affected by his garnishments. Further, appellee presented no specific evidence of any detrimental or adverse impact on itself. In other words, appellee was not discharged as a result of his work performance; rather, he was discharged for breaching the labor-management contract provision against repeated garnishments.

{¶41} "A mere violation of a company work rule does *not* always rise to the level of fault required on the part of the employee to justify the denial of unemployment benefits. *** In determining whether [the] employee has been discharged for 'just cause' for unemployment compensation purposes, *the critical issue is not whether* [*the*] *employee has technically violated some company rule, but whether* [*the*] *employee by his or her actions demonstrated unreasonable disregard for* [the] *employer's best interest*." (Emphasis added.) *Apex Paper Box Co. v. Ohio Bur. of Emp. Services* (May 11, 2000) 8th Dist. No. 77423, 2000 WL 573174, at 2. See, also, *Fredon Corp v. Zelenak* (1997), 124 Ohio App.3d 103, 109; *Janovsky* at 694; *Piazza v. Ohio Bur. of Emp. Services* (1991), 72 Ohio App.3d 353, 357. "The conduct need not rise to the level of misconduct, but the employer must demonstrate some showing of fault on the part of the employee." *Fredon* at 109.

{¶42} Of course, Coe Manufacturing had cause to discharge appellee for breaching the provision of the labor-management contract relating to excessive garnishments. However, the mere fact that Coe Manufacturing had cause to discharge appellee does not mean that appellee was discharged for just cause for purposes of unemployment compensation law. The point being that there is a distinction between the existence of "just cause" for discharge and "cause" for discharge. Accordingly, the

issue in this case is whether appellee was discharged for just cause, thereby precluding him from receiving unemployment compensation benefits.

{¶43} Let us assume, arguendo, that the labor-management contract provision against repeated garnishments was reasonable and administered in a fair manner. Under the totality of the circumstances, appellee's discharge for obtaining three garnishments within a one-year period does not constitute a discharge for just cause in connection with his work.

{¶44} Here, appellee testified that during his employment with Coe Manufacturing, he sustained a back injury which kept him out of work for a significant period of time and resulted in the accumulation of many bills. Although the ODJFS found "sufficient fault," the review commission *never* made a finding that appellee deliberately violated the garnishment rule, or that appellee unreasonably disregarded the employer's best interest, or that appellee was unsuitable for his employment. See, generally, *Fredon* at 109; *Janovsky* at 694; *Piazza* at 357; *Apex* at 2; *Chester*, supra.

{¶45} In fact, the evidence showed that two days after receiving the second garnishment, appellee retained an attorney for the purpose of filing for bankruptcy to protect himself from further garnishments. Despite his efforts, the bankruptcy petition was filed after the receipt of the third garnishment.[1] "Without evidence of a deliberate and willful violation of a specific order, or established rule, there is not sufficient evidence to support a finding of just cause for [an employee's] termination." *Sindel v. EBCO Mfg. Co., Inc.* (1991), 71 Ohio App.3d 426, 429. Accordingly, there was evidence that appellee's garnishment resulted from the expenses of an injury and that he attempted to comply with the garnishment provision contained in the labor-

management contract by retaining an attorney for purposes of filing for bankruptcy prior to the issuance of the third garnishment.

{¶46} Therefore, under these particular facts, we hold that appellee's discharge for cause did not constitute a discharge for just cause for purposes of unemployment compensation. As such, appellee is entitled to unemployment compensation benefits.

{¶47} Based on the foregoing analysis, appellant's single assignment of error is without merit, and the judgment of the trial court is affirmed.

DONALD R. FORD, J., concurs.

DIANE V. GRNENDELL, J., dissents with dissenting opinion.

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DIANE V. GRENDELL, J., dissenting.

{¶48} For the reasons stated below, I respectfully dissent.

{¶49} "Just cause" has been defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd.* (1985), 19 Ohio St.2d 15, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. Just cause must be determined on a case-by-case basis upon the particular merits of each situation. *Irvine*, supra.

{¶50} With respect to unemployment benefits eligibility, an employee is considered to have been discharged for just cause when "the employee, by his actions, demonstrated an unreasonable disregard for this claimant's best interests." *Kiikka v. Ohio Bur. Of Emp. Serv.* (1985), 21 Ohio App.3d 168. The conduct need not constitute misconduct, but there must be a showing of some fault on the part of the employee.

1. These facts were mentioned in the hearing officer's determination of January 12, 2001.

Sellers v. Bd. of Review (1981), 1 Ohio App.3d 161; *Schienda v. Transp. Research Ctr.* (1984), 17 Ohio App.3d 119. If an employer has been reasonable in finding fault on behalf of an employee, the employer may terminate the employee with just cause. *Tzangas*, *Plakas & Manos v. Admr., Ohio Bur. Emp. Services*, 73 Ohio St.3d 694, 1995-Ohio-206, at 698. Violation of a company rule may constitute just cause for discharge. *Shaffer v. Am. Sickle Cell Anemia Assoc.* (June 12, 1986), 8th Dist. No. 50127, 1986 Ohio App. LEXIS 7116. A discharge for violation of a company rule relating to excessive garnishments can constitute a discharge for just cause in connection with work that precludes the receipt of unemployment compensation. *Brownlee v. Bd. of Rev.* (June 26, 1975), 8th Dist. No. 34070, 1975 Ohio App. LEXIS 6942.

{¶51} In the present case, claimant's discharge for violation of a provision in his union contract regarding garnishment of an employee's wages is a discharge for just cause in connection with work and thus precludes his receipt of benefits. The facts in this case are not in dispute. Claimant received three garnishments on three separate debts within a twelve-month period. Claimant's employer has a labor-management agreement between the company and claimant's union which provides that if an employee has more than two garnishments within any twelve-month period, the employee would be subject to immediate discharge. In spite of the written provision in the labor contract, the employer's past practice is to consider any garnishments from the same debtor as only one garnishment. Claimant's garnishments were from three separate debtors, so he did not come under that exception.

{¶52} Violation of company policy can be just cause for discharge. The policy must be fair and fairly applied. Fairness of a policy concerns whether the employee

received notice of the policy, whether it could be understood by the average person and whether there was a rational basis for the policy. *Shaffer*, supra, at 5. The employer provided copies of the contract to all the employees. It is apparent that the garnishment provision could be easily understood. There is a rational basis for the policy – repeated garnishments are an inconvenience and time consuming to accounting personnel. As for whether the policy was fairly applied, there was no evidence presented that other employees were treated differently. Every employee with three separate creditor attachments was terminated.

{¶53} In *Brownlee*, the Eighth District Court of Appeals held that an employee's discharge from his employment based upon excessive garnishments in violation of a company rule constitutes a discharge for just cause in connection with work, pursuant to R.C. 4141.29. In that case, the employer had a rule that provided for immediate discharge of an employee who had wage attachments in excess of two in six months. This was a stricter policy than in the instant case which provided for discharge for more than two attachments in twelve months. In that case, the appeals court affirmed the denial of benefits for the discharge.

{¶54} In this case, the lower court ruled that the employer's garnishment policy was "irrational and unfair" and that appellant's violation could not be for just cause in connection with work. That ruling is incorrect. The policy was a bargained-for provision in the labor-management contract and had a legitimate and rational business purpose. The fact that the employer benefited the employees by relaxing the stated garnishment rule and allowing multiple garnishments from one creditor to be treated as one did not

cause the policy to be “unfairly” applied to claimant when it was applied as written in the contract. All employees with same creditor garnishments were treated fairly.

{¶55} The lower court, citing *Harp v. Admr., Bur. Of Unemployment Comp.* (1967), 41 O.O.2d 25, 12 Ohio Misc. 34, also stated that claimant’s garnishments were not the result of his “irresponsibility” and thus, the termination was not for just cause. In *Harp*, the two garnishments for which the employee was terminated were not valid, one had been filed after the employee had paid the bill and the other was for another individual. In the instant case, all three garnishments were legally valid.

{¶56} Finally, misconduct is not required in Ohio to find a just cause discharge. *Sellers*, supra. Only an element of fault is needed. As the Eighth District Court of Appeals found in *Brownlee*, supra, a discharge based on excessive garnishments in violation of a company rule is a discharge for just cause in connection with work and causes the employee to be ineligible for unemployment compensation. *Irvine*, supra. There is sufficient evidence here of the type of fault necessary to find just cause for discharge for unemployment compensation purposes and to hold that appellant’s termination was justified. Appellant was given notice of the company policy, which was a reasonable policy, and even warned after the second garnishment.

{¶57} Since there is competent, credible evidence to support the Review Commission’s decision that appellant was discharged for just cause, the decision of the court below should be reversed and the decision of the Review Commission should be reinstated.