

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

TRISHA M. HOLZER,	:	OPINION
Appellant,	:	
- VS -	:	CASE NO. 2011-P-0011
STATE OF OHIO	:	
UNEMPLOYMENT COMPENSATION	:	
REVIEW COMMISSION, et al.,	:	
Appellees.	:	

Administrative Appeal from the Portage County Court of Common Pleas, Case No. 2010 CV 1211.

Judgment: Affirmed.

Douglas C. Bond, Morello & Bond, Ltd., 700 Courtyard Centre, 116 Cleveland Avenue, N.W., Canton, OH 44702 (For Appellant).

Mike DeWine, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215; and *Susan M. Sheffield*, Assistant Attorney General, 20 West Federal Street, Third Floor, Youngstown, OH 44503; and *Lori Weisman*, Assistant Attorney General, 615 West Superior Avenue, Cleveland, OH 44113-1899 (For Appellee-State of Ohio Unemployment Compensation Review Commission).

Christopher J. Newman, Henderson, Covington, Messenger, Newman & Thomas, 34 Federal Plaza Central, Suite 1300, Youngstown, OH 44503 (For Appellees-M & A Distributing Co., Inc., Superior Beverage, and M & A Distributing Co., Ltd.).

MARY JANE TRAPP, J.

{¶1} Trisha M. Holzer appeals from a judgment of the Portage County Court of Common Pleas, which affirmed the Unemployment Compensation Review

Commission's denial of her unemployment benefits. The Review Commission found Ms. Holzer to have been discharged for just cause for her conduct of a promotional raffle, and therefore ineligible for the benefits. Having reviewed the record and pertinent law, we agree, and affirm the judgment of the trial court.

{¶2} Substantive Facts and Procedural History

{¶3} Ms. Holzer was a sales representative for M & A Distributing Co., Inc. ("M & A"), a wine and beer distributor, since November 2007. Her job involved setting up displays, obtaining orders, and handling special promotions in various stores under her account. In September 2009, she was discharged from M & A for the way she handled an M & A-sponsored raffle at a Giant Eagle store. The Labor Day weekend promotional raffle for a "Margaritaville" blender was a simple one. Giant Eagle agreed to have a Margaritaville display in its liquor department through the Labor Day weekend, in exchange for a Margaritaville blender to be given to the winner of a raffle. The raffle was to be held in the store on the Friday before the long weekend. Ms. Holzer helped set up the display. The store was provided with ad materials, a blender, and a box in which customers could place their completed entry forms. The winning entry was to be picked from the box on the Friday before the long weekend, but the drawing did not happen.

{¶4} According to M & A, Ms. Holzer was supposed to draw the name of the winner from the raffle box. However, she did not show up for the scheduled drawing on Friday, and, when Ms. Holzer went to work at the store on Labor Day, the store's liquor manager asked her why the raffle had not been held. Ms. Holzer stated that it was held and gave him a piece of paper with a person's name and address on it. The liquor manager discovered the name had not been drawn from the raffle box, when he went to the back room and learned that the box, which had been sealed at the end of Friday,

had remained unopened. The name given by Ms. Holzer turned out to be a wine steward from an Acme store in her account.

{¶5} Ms. Holzer was discharged because of this incident. M & A alleged her conduct violated two company rules: misappropriating company property and engaging in behavior which reflects poorly on the company and its representatives.

{¶6} Ms. Holzer filed an application for unemployment compensation benefits. Ohio Department of Job and Family Services (“ODJFS”) denied her the benefits, on the ground that she was discharged by her employer for just cause. She appealed this initial determination, which ODJFS affirmed in a redetermination. Ms. Holzer then appealed to the Review Commission. The Review Commission held a hearing, at which Ms. Holzer and a representative from M & A testified. After the hearing, the hearing officer issued a decision affirming Ms. Holzer’s ineligibility for benefits. After her request for further review was denied by the Review Commission, Ms. Holzer appealed the decision to the trial court.¹ The trial court affirmed the Review Commission, and she now seeks our review. Her sole assignment of error states:

{¶7} “The trial court committed prejudicial error in affirming the determination of the unemployment compensation review board and used an improper standard in determining that Trisha Holzer was discharged from her employment for ‘just cause.’ The underlying determination is unlawful, unreasonable, and against the manifest weight of the evidence.”

{¶8} Just Cause and Judicial Review of Just Cause Determination

1. Ms. Holzer initially filed the appeal from the Review Commission’s decision in the Stark County Court of Common Pleas, which transferred the venue to the Portage County Court of Common Pleas, because of her residence in Kent, Ohio.

{¶9} A claimant is not eligible for unemployment compensation benefits if the director of ODJFS finds that the claimant “quit work without just cause or has been discharged for just cause in connection with the individual’s work.” R.C. 4141.29(D)(2)(a).

{¶10} The Supreme Court of Ohio, in *Irvine v. State, Unemployment Compensation Bd. of Review* (1985), 19 Ohio St.3d 15, discussed the notion of “just cause” in the unemployment compensation context. “The term ‘just cause’ has not been clearly defined in our case law. *** Essentially, each case must be considered upon its particular merits. 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.” *Id.* at 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. The Unemployment Compensation 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.” *Id.* quoting *Salzl v. Gibson Greeting Cards* (1980), 61 Ohio St.2d 35, 39.

{¶11} Moreover, the Supreme Court of Ohio stressed that the issue of whether an employee is discharged for “just cause” is a factual issue, and, as such, is primarily within the province of the Review Commission. “The determination of whether just cause exists necessarily depends upon the unique factual considerations of the particular case. Determination of purely factual questions is primarily within the province of the referee and the board.^[2] Upon appeal, a court of law may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the

2. The Unemployment Compensation Review Commission was previously called the Unemployment Compensation Board of Review. The Review Commission often continues to be referred to as “the board.”

evidence. Like other courts serving in an appellate capacity, we sit on a court with limited power of review. Such courts are not permitted to make factual findings or to determine the credibility of witnesses. The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. Moreover, '[o]ur statutes on appeals from such decisions [of the board] are so designed and worded as to leave undisturbed the board's decisions on close questions. Where the board might reasonably decide either way, the courts have no authority to upset the board's decision.'" *Id.* at 18 (footnote added).

{¶12} In a seminal case in unemployment compensation matters, *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, the Supreme Court of Ohio reiterated the principle that while a reviewing court is not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record. *Id.* at 696, citing *Irving* 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]." *Id.* However, "[t]he board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Id.* at 697. As this court also stated in *Reddick v. Sheet Metal Prods. Co.*, 11th Dist. No. 2009-L-092, 2010-Ohio-1160, when reviewing the Review Commission's decision, every reasonable presumption must be made in favor of the decision and the findings of facts of the Review Commission. *Id.* at ¶17.

{¶13} The highly deferential judicial standard of review in unemployment compensation decisions is codified in R.C. 4141.282 (“Review by a Court of Common Pleas), enacted in 2001. Section (H) of the statute states:

{¶14} “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.”

{¶15} Finally, we note that a claimant has the burden of proving his or her entitlement to unemployment compensation benefits, including the issue of just cause. *Irvine* at 17.

{¶16} Was the Just Cause Determination Unlawful, Unreasonable, and Against the Manifest Weight of the Evidence?

{¶17} With these principles in mind, we now turn to Ms. Holzer’s claim that the trial court erred in affirming the Review Commission’s just cause determination because the determination was unlawful, unreasonable, and against the manifest weight of the evidence.

{¶18} Ms. Holzer provided her own account of the incident at the hearing before the hearing officer. She testified she was aware there was a raffle on the Friday before Labor Day at the store, but she was not told that her presence was required, nor that she was the one responsible for drawing the winner’s name. She claimed she had never conducted raffles before, and her supervisor never trained her for it. On Labor Day, she went to the store to work, and was asked by the liquor manager for the name of the winner. At the hearing, she described the discussion:

{¶19} “***I was dusting the wine bottles and the liquor manager approached me and told me that the drawing had not been completed yet. Uh he then requested a name from me. I was caught by surprise and I gave him a name. It was just a business relationship and so I gave them a name on a scratch piece of paper uh but it was not an official drawing slip that had the name and the phone number on it to even qualify to be in the drawing.”

{¶20} In ODJFS’s Fact Finding questionnaire, however, she gave a slightly different account of the discussion:

{¶21} “Few weeks prior to my discharge, me and my supervisor put up a display and gave the store a blender to raffle off. The cashier at the store said we need a name of someone to pick the ticket out of the box to pick the winner. I gave the cashier a name. Then the manager of that store, came to me, and told me I was not allowed to pick the name of the person who would draw the ticket. I told the manager to go ahead and pick the name himself, because they still had the blender. Then that store manger spoke to my manager, and he was very upset. My company never had anything in writing or they never told me what I was suppose[d] to do regarding raffles, and this was the first one I had ever done.”

{¶22} In that same document, Ms. Holzer defended her action as simply “letting a client win.” She stated M & A’s general manager, Larry Marino, “is always giving stuff away to clients to try and get more sales/orders, and more displays in the stores. I thought I was doing the same thing. Letting a client win, so we could get more orders.”

{¶23} The record before the Review Commission also contained an internal memo from Mr. Marino to M & A’s Human Resource Department, in which Mr. Marino stated: “Trish admitted that she forgot to pull a winner on that Friday. She went to the

store on Monday to write an order and the liquor store manger asked when the drawing was going to be held. Trish stated that she gave him a name for a winner with the address and no phone number, the name on the paper was [] the wine steward from an Acme store. *** Trish told me [] she got nervous and tried to cover it up and told [the liquor manager] to pull the name himself.”

{¶24} The decision by the hearing officer after the hearing stated: “It is clear that claimant attempted to misappropriate company property and was dishonest in her representation of who won the raffle. Public knowledge that a raffle was ‘fixed’ would seriously [affect] the employer’s public reputation within the beer and wine industry. This situation occurred solely because the claimant decided not to be truthful and state to the store manager she had no knowledge of the raffle and work out with the store manager and her supervisor a solution in order to conduct a proper raffle.”

{¶25} After reviewing the record, we find the evidence before the Review Commission amply supports its determination that Ms. Holzer was discharged for just cause. When asked to provide the name of the raffle winner, Ms. Holzer acted dishonestly and gave a name of her own client, presenting it as the winner. Not only was this an attempt to misappropriate company property, she unquestionably engaged in a behavior that reflected poorly on her employer; both are in clear violation of the company rules.

{¶26} Ms. Holzer’s explanation for her conduct, that she was never trained to handle a raffle, defies common sense, since conducting a raffle involves no more than drawing a winner from the raffle box. Her allegation that the store’s liquor manger “entrapped” her by asking her for the winner’s name knowing she had not drawn a name from the box -- “[i]t was a test of Appellant and it was impossible to pass” -- is

purely speculative. The assertion that “[t]his scenario was a set-up because the department manager obviously had issues with the Appellant and wanted her terminated” is not substantiated by any evidence from the record. Finally, Ms. Holzer attempts to justify her actions by arguing that the liquor manager did not actually ask for the name she picked from the raffle box, rather, he just requested “a name” from her for the raffle winner. She argues, therefore, her supplying a name not drawn from the raffle box is, technically, not dishonest and was excusable because she was simply “answering a question under a stressful situation.” This account of the event is rather implausible, and, in any event, it conflicts with the employer’s account of the event, the resolution of which is for the Review Commission.

{¶27} Unemployment benefits exist to help those who find themselves unemployed through no fault of their own. The evidence in this case shows Ms. Holzer is solely responsible for her predicament. Manifest weight of the evidence supports the Review Commission’s determination that Ms. Holzer was discharged for just cause. Its decision was neither unlawful nor unreasonable. The assignment of error lacks merit.

{¶28} The judgment of the Portage County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.