

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

Keith A. Elliott, et al.

Court of Appeals No. L-11-1004

Appellee

Trial Court No. CI0201004153

v.

Bedsole Transportation, Inc.

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2011

* * * * *

Michael DeWine, Attorney General of Ohio, and
Eric A. Baum, Assistant Attorney General, for appellee.

Jason M. Van Dam, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas affirming a decision of the Ohio Unemployment Compensation Review Commission finding that appellee Keith Elliott was discharged without just cause and

that he was therefore entitled to unemployment benefits. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellant Bedsole Transportation, Inc. sets forth the following assignments of error:

{¶ 3} "First Assignment of Error: The UCRC erred in finding that Mr. Elliott was discharged without just cause because that decision is not supported by any competent evidence in the record.

{¶ 4} "Second Assignment of Error: The UCRC erred in finding that Mr. Elliott did not quit without just cause because the manifest weight of the evidence proves that he voluntarily chose not to perform a proper work assignment for no justifiable reason."

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. Appellee Keith Elliott was employed as a truck driver with Bedsole Transportation, Inc. from March 2009 until December 14, 2009. The trucking company asserts that Elliott voluntarily quit his job on December 15, 2009, after refusing, without just cause, to take a run offered to him after having only five hours of sleep. Elliott denies quitting his job and claims that he was fired without just cause.

{¶ 6} On December 17, 2009, Elliott applied with the Ohio Department of Job & Family Services ("ODJFS") for unemployment compensation benefits. On January 19, 2010, ODJFS denied Elliott's request for benefits, concluding that Bedsole Transportation, Inc. ("Bedsole") discharged Elliott with just cause for refusing a customary work assignment. On redetermination, ODJFS affirmed its decision. On

appeal, ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission ("Commission"). At a hearing held on March 22, 2010, a hearing officer heard both versions of the events surrounding Elliott's separation.

{¶ 7} Elliott testified that he was hired to work a 1:00 p.m. to 1:00 a.m. shift on Monday through Friday. On that schedule, Elliott's pattern was to sleep from approximately 4:30 a.m. until shortly before his next shift was to begin. Although Elliott's last day of work had been Friday, December 11, 2009, he kept himself on his usual sleep schedule so as to be prepared for his normal shift hours the following week. On December 14, Steve Bedsole, owner and president of Bedsole Transportation, Inc., called Elliott and told him he was being removed temporarily from his normal shift. On December 15, 2009, at 8:30 a.m., Bedsole called appellant, who was asleep, and told Elliott he needed him to report to work that day for an earlier shift. Elliott, who had only had five hours of sleep, told Bedsole that he was unprepared because the U.S. Department of Transportation ("DOT") regulations required at least a ten-hour break between shifts for truck drivers. Although Elliott had not worked for two days, he had kept to his normal schedule and as a result would have to report for work after only five hours sleep, which Elliott told Bedsole he believed to be contrary to the DOT safety regulations. Elliott testified that Bedsole hung up; Elliott did not make the requested run. Approximately one week later, Elliott approached Bedsole and was told he had quit and that his services were no longer needed.

{¶ 8} Steve Bedsole testified that he had called Elliott on Sunday, December 13, 2009, and informed him that he was going to work the day shift for one week. He stated that he then told Elliott he would call him the following day to tell him what time to report for work. Under cross-examination, when asked whether he called Elliott on Sunday, he replied, "I think I did, didn't I?" That response was followed by, "Well, I'm pretty sure." He further testified as to his belief that Elliott quit on December 15, 2009, without giving written notice because he did not want to take the daytime run that had been offered to him.

{¶ 9} On March 26, 2010, the Commission reversed the ODJFS and found that Bedsole discharged Elliott without just cause. The Commission denied Bedsole's request for further reviews and on May 25, 2010, Bedsole filed a notice of appeal in the trial court from the Commission's decision. On December 16, 2010, the trial court issued its opinion and judgment entry affirming the Commission's decision. In reaching its decision, the trial court noted that its review was "extremely limited" and that it was required to defer to the determinations of the Commission and its hearing officers with respect to factual matters, the credibility of witnesses and the weight of conflicting evidence. The trial court further noted, citing to this court, that only a decision that is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice" is deemed to be against the manifest weight of the evidence. *Phillips v. Ohio Bur. of Emp. Services* (Aug. 26, 1988), 6th Dist. No. S-88-8. Therefore, the trial court concluded, if some

competent, credible evidence going to all the essential elements of the case supported the Commission's decision, the decision would stand. Based on the record before it, the trial court found that the record contained ample competent, credible evidence to support the hearing officer's conclusions that Bedsole attempted to move Elliott from his regular run to another run because Bedsole believed that Elliott was "stressed out," that the record did not support Bedsole's belief, and that Elliott had just cause for refusing to take the alternative run offered to him on December 15, 2009.

{¶ 10} Bedsole then timely filed an appeal with this court.

{¶ 11} Appellant's two assignments of error are addressed together as they are interrelated. Appellant asserts that the hearing officer's judgment was against the weight of the evidence because Elliott was not terminated. Appellant asserts that it merely asked appellant to work a different schedule and that appellant declined the assignment and quit.

{¶ 12} We must apply a deferential standard of review in this matter and determine whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur of Emp. Serv.* (1995), 73 Ohio St.3d 694, 697. If it was not, the decision may not be disturbed. The Ohio Supreme Court has established that the review commission is vested with the sole province of making factual determinations. The trial court is not permitted to weigh the evidence or substitute its judgment upon lower court factual determinations. *Simon v.*

Lake Geauga Printing Co. (1982), 69 Ohio St.2d 41, 45. This court must apply the same standard of review as that used by the trial court. R.C. 4141.282(H).

{¶ 13} R.C. 4141.29(H) renders one ineligible for unemployment benefits if he quits his employment without cause. The term "quit" connotes a "voluntary act by an employee not controlled by the employer." *Heinze v. Giles* (1990), 69 Ohio App.3d 104, 111. While R.C. 4141.46 mandates that the Unemployment Compensation Act be liberally construed in favor of beneficiaries, *Abate v. Wheeling-Pittsburgh Steel Corp.* (1998), 126 Ohio App.3d 742, 748, we must keep in mind that the purpose of the act is to provide financial assistance to those who find themselves unemployed through no fault of their own.

{¶ 14} We have carefully reviewed the entire record of proceedings in order to determine the validity of the appeal. Appellant has based its appeal on a factual determination made by the Commission. As stated above, making factual determinations is within the sole province of the Commission. Neither the trial court nor the court of appeals is permitted to weigh the evidence or substitute its judgment upon reviewing the Commission's factual determinations.

{¶ 15} We find that the Commission's factual determination that Elliott was terminated from his employment without just cause was supported by competent, credible evidence and was not against the weight of the evidence. As such, the decision must be affirmed. Accordingly, we find appellant's first and second assignments of error not well-taken.

{¶ 16} The judgment of the Lucas County Court of Common Pleas is affirmed.

Costs of this appeal are assessed to appellant 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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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