

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Garland R. Williams,	:	
Appellant-Appellant,	:	
v.	:	No. 09AP-471 (C.P.C. No. 08CVF-12037)
Ohio Department of Job & Family Services et al.,	:	(ACCELERATED CALENDAR)
Appellees-Appellees.	:	

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D E C I S I O N

Rendered on December 3, 2009

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*Artz, Dewhirst & Wheeler, LLP, and Terrence T. Wheeler, for appellant.*

*Richard Cordray, Attorney General, and David E. Lefton, for appellee Director, Ohio Department of Job & Family Services.*

*Charles K. Milless, for appellee Ohio Youth Advocate Program, Inc.*

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Appellant, Garland R. Williams, appeals from a judgment of the Franklin County Court of Common Pleas affirming the decision of the Unemployment Compensation Review Commission ("commission") denying his application for unemployment compensation benefits. The commission found appellant ineligible for

unemployment benefits because his employer, Ohio Youth Advocate Program, Inc. ("OYAP"), terminated his employment for just cause. Appellant contends that the commission's decision was unlawful, unreasonable or against the manifest weight of the evidence, and that the common pleas court erred in holding otherwise. Because we conclude that some competent, credible evidence supports the commission's decision, we disagree with appellant's contention. Accordingly, we affirm the common pleas court's judgment.

{¶2} Appellant began his employment with OYAP in April 1996. OYAP is a private, non-profit organization that provides programs for at-risk youth. Among the programs operated by OYAP is the Emergency Shelter Care ("ESC") program, consisting of four individual group homes. Appellant was the manager of one of the group homes and at all times pertinent to this appeal, reported to either Scott Timmerman or Twanna Roper.

{¶3} On October 5, 2007, Timmerman suspended appellant due to concerns regarding his work performance. Appellant returned to work on October 15, 2007. On October 19, 2007, Roper suspended appellant pending investigation into further allegations pertaining to his work performance. In response to this action, appellant, on October 24, 2007, filed a written grievance against both Timmerman and Roper. On October 26, 2007, Roper notified appellant that he would be on paid administrative leave pending resolution of the grievance. OYAP designated its general counsel, Charles Milless, to investigate the allegations in the grievance.

{¶4} Between October 26, 2007, and December 14, 2007, personnel from OYAP's Human Resources ("HR") department and ESC program made several

unsuccessful attempts to contact appellant in an effort to resolve the grievance. On December 14, 2007, an OYAP ESC program administrative assistant left two voicemail messages on appellant's home telephone, stating that Milless wished to meet with him at noon on December 15, 2007 to discuss the grievance. Appellant telephoned Tracie Fields, an OYAP HR employee, and asked if OYAP had issued a written decision regarding his grievance. Fields told appellant that no written decision had been issued and, in response to a question from appellant, answered that she was not aware that appellant was to meet with Milless.

{¶5} Appellant did not attend the meeting with Milless. In early January 2008, OYAP notified appellant that his health insurance benefits had been terminated. At the same time, appellant received a payout of his accrued personal leave. Appellant thereafter contacted OYAP and was told his employment had been terminated. OYAP subsequently informed appellant by letter dated January 15, 2008, that he had been terminated effective December 14, 2007 for abandoning his position, as he had failed to maintain contact with OYAP following his last day of work on October 19, 2007.

{¶6} Appellant subsequently filed an application for unemployment compensation benefits with the Ohio Department of Job and Family Services ("ODJFS"). ODJFS denied appellant's claim on the basis that OYAP terminated his employment for just cause, that is, that appellant's unexcused absenteeism demonstrated a disregard for OYAP's interests. Appellant appealed the ODJFS decision to the director of ODJFS, who affirmed the initial determination.

{¶7} Appellant appealed the director's redetermination and ODJFS transferred the matter to the commission. A commission hearing officer conducted a telephone

hearing on June 3, 2008, at which appellant and Timmerman testified. Following the hearing, the hearing officer issued a decision affirming the director's redetermination, concluding that appellant was discharged for just cause. The hearing officer reasoned as follows:

While claimant was informed on or about October 26, 2007, that he was not to have any contact with the employer until his grievance was resolved, the facts establish that claimant did not act reasonably under the circumstances as he failed to make reasonable efforts to contact the employer and learn about his employment situation, and further, did not attend a meeting that was requested by the employer on December 15, 2007, for the purpose of discussing his grievance. Claimant reasonably should have attended the meeting on December 15, 2007, as requested by the employer, or should have notified the employer that he wished to have that meeting rescheduled if he felt the nearly two months that he had off work did not adequately prepare him to address his grievance. The facts establish that claimant had an opportunity to preserve his employment by maintaining some sort of contact with the employer and claimant's actions were not reasonable under the circumstances.

{¶8} The commission thereafter denied appellant's request for further review. Appellant appealed the commission's decision to the common pleas court pursuant to R.C. 4141.282. The court issued a decision affirming the commission's decision, concluding that the commission's determination that OYAP terminated appellant's employment for just cause was not unlawful, unreasonable or against the manifest weight of the evidence. The court reasoned as follows:

[Appellant] was aware of the planned meeting by phone call of December 14 and chose to not pursue any steps to ascertain what it was to encompass. While the order to not contact staff was a reasonable basis to abstain from determining his status with the company through December 14th, [a]ppellant's decision to simply ignore the requested

meeting and then remain incommunicado for another month was not reasonable.

Appellant acted unreasonably by choosing not to meet with the employer's attorney and not making an attempt to find out his status. The Court finds that there was evidence sufficient to support the finding that Appellant abandoned his employment and was therefore discharged for just cause.

{¶9} Following denial of appellant's motion for reconsideration, the court issued a judgment entry journalizing its decision. Appellant timely appeals the common pleas court's order, assigning the following error:

The Franklin County Court of Common Pleas erred when it affirmed the decision of the Unemployment [Compensation] Review Commission because such decision was against the weight of the evidence.

{¶10} Appellant's assignment of error contends that the common pleas court erred in affirming the commission's decision that he was terminated from his employment for just cause. Before addressing the merits of appellant's assignment of error, we must first set forth the appropriate standard of review to be utilized in unemployment compensation benefit cases.

{¶11} Upon appeal of a commission's decision, the reviewing court, whether a common pleas court or court of appeals, must affirm the commission's decision unless the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206. Under this standard of review, a reviewing court must affirm the commission's finding if some competent, credible evidence in the record supports it. *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18. A reviewing court is not permitted to make factual findings or determine witness

credibility. *Id.* The fact that reasonable minds might come to different conclusions is not a basis for reversing the commission's decision. *Id.* On close questions, " 'where the [commission] might reasonably decide either way, the courts have no authority to upset the [commission's] decision.' " *Id.*, quoting *Charles Livingston & Sons, Inc. v. Constance* (1961), 115 Ohio App. 437-438.

{¶12} R.C. 4141.29 provides the statutory authority for an award of unemployment compensation benefits and provides that "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter." Under R.C. 4141.29(D)(2)(a), an employee who is discharged from employment for just cause is ineligible to receive unemployment benefits. The Supreme Court of Ohio has defined just cause as " 'that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.' " *Tzangas* at 697, quoting *Irvine* at 17. A just cause determination must be consistent with the purpose of the Unemployment Compensation Act, which is to provide financial assistance to individuals who become and remain involuntarily employed due to adverse business and industrial conditions. *Tzangas* at 697. The act protects those employees who have no control over the situation that leads to their separation from employment. *Id.*

{¶13} Consistent with the purpose of the act, the *Tzangas* court held that a discharge may be considered to be for just cause where the employee's conduct demonstrates some degree of fault. *Id.* at 698. Indeed, the court stated that "[f]ault on behalf of the employee is an essential component of a just cause termination." *Id.* at paragraph two of the syllabus. However, "a 'willful or heedless disregard of duty or

violation of [an employer's] instructions' " is not required to satisfy the fault requirement. *Id.* at 698.

{¶14} The Supreme Court of Ohio has also stated that the discharged employee bears the burden of proving his or her entitlement to unemployment compensation benefits. *Irvine* at 17. The employee must provide evidence that his or her discharge was without just cause by demonstrating that he or she was without fault in the incident that resulted in termination. *Id.* The determination of whether just cause exists to support discharge depends on the factual circumstances of each case and is primarily an issue for the hearing officer and the commission. *Id.*

{¶15} Appellant contends the common pleas court erred in affirming the commission's decision that OYAP terminated his employment for just cause, as such decision was against the manifest weight of the evidence. We note initially that this court's focus is on the decision of the commission rather than the decision of the common pleas court. *Brooks v. Ohio State Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-414, 2009-Ohio-817, ¶10, citing *Roberts v. Hayes*, 9th Dist. No. 21550, 2003-Ohio-5903, ¶11. Accordingly, our task is to review the commission's decision and determine whether it is supported by evidence in the certified record and is unlawful, unreasonable or against the manifest weight of the evidence.

{¶16} Appellant takes issue with the commission's conclusion that he voluntarily abandoned his employment and, thus, was terminated for just cause because he did not make reasonable efforts to contact the employer and ascertain the status of his employment after he filed his grievance and was placed on paid administrative leave. Appellant maintains that the evidence establishes he acted reasonably in that: (1) he was

told not to contact OYAP, (2) OYAP did not contact him until December 14, 2007, almost two months after he was placed on administrative leave, and (3) he did contact OYAP, via an HR employee following the December 14, 2007 communication, and the HR employee told him she was unaware of the December 15, 2007 meeting. Appellant contends that this evidence establishes that he did not voluntarily abandon his employment and that he was thus without fault in his termination. We disagree.

{¶17} As noted, Timmerman and appellant offered the only testimony at the hearing. As to appellant's contention that he was told not to contact OYAP, Timmerman testified that OYAP's October 26, 2007 letter informed appellant that he was being placed on administrative leave and that he was not to have any contact with any OYAP staff member until his grievance was resolved. Timmerman further testified that appellant was advised not to contact any ESC staff member, particularly the staff members he directly supervised. We construe Timmerman's testimony to suggest that OYAP intended that the no contact order pertained only to appellant's peers and subordinates and not to those OYAP administrative and/or managerial personnel who were essential to resolving the grievance.

{¶18} Further, appellant's testimony regarding the no contact order is somewhat confusing and contradictory. Appellant averred that Roper informed him via telephone on October 19, 2007 that he was being suspended and placed on administrative leave, that she would contact him the next week regarding the reason for the suspension, and that he was not to contact her until she contacted him. Roper's statement, to the extent it may be construed as a no contact order, appears to relate only to the reason for the suspension which precipitated appellant's grievance, not to the grievance itself. Appellant

further testified that he never received the October 26, 2007 letter which included the no contact order. Appellant also testified that he waited until January 2008 to contact OYAP because he was told OYAP would contact him; he did not state, however, that OYAP told him not to contact OYAP. In addition, when later asked why he did not contact OYAP about the status of his grievance, he testified that he did not have an answer. Had appellant been advised not to contact OYAP administrative/managerial personnel regarding the status of his grievance, he presumably would have stated as much.

{¶19} The commission's position on the no contact order is also less than clear. While the commission appears to concede that appellant was advised on October 26, 2007 not to have any contact with OYAP until his grievance was resolved, the commission goes on to state that the facts established that appellant failed to make reasonable efforts to contact OYAP and ascertain the status of his employment between October 26 and December 14, 2007. In our view, the commission's statement in this regard suggests that the commission was not wholly convinced that the no contact order imposed on October 26, 2007 was intended to preclude appellant from contacting those OYAP officials pertinent to resolution of the grievance. As noted, competent, credible evidence supports such a finding.

{¶20} As to appellant's contention that OYAP did not contact him until December 14, 2007, we note that the commission found otherwise, and such finding is supported by competent, credible evidence. The commission's finding that OYAP made several unsuccessful attempts to contact appellant via telephone between October 26 and December 14, 2007, is supported by Timmerman's testimony. Timmerman testified that, after October 26, 2007, HR and ESC personnel left several voicemail messages on

appellant's home telephone, his personal cell phone, and his work cell phone. Although appellant disputed this testimony, insisting that he did not receive any messages from OYAP before December 14, 2007, the commission was free to believe Timmerman and not appellant. As noted, in unemployment compensation cases, a reviewing court is not permitted to determine witness credibility. *Irvine* at 18.

{¶21} With regard to appellant's final contention that his calling HR in response to the December 14, 2007 telephone messages constituted a reasonable effort to ascertain the status of his employment, we disagree. Appellant acknowledged that, on December 14, 2007, an OYAP ESC staff member left two voicemail messages at his home instructing him to contact Milless regarding a meeting on December 15, 2007. Appellant admitted that he neither contacted Milless nor attended the meeting; however, he asserted several explanations for his failure to do so. Appellant testified that the HR representative informed him that she was unaware of the meeting. At this point, appellant had been on paid administrative leave for nearly two months; he clearly should have been concerned about the status of his grievance and employment. As such, he reasonably should have taken further steps to ascertain whether there was such a meeting scheduled, such as asking the HR representative for Milless's contact information or requesting that she investigate the matter and get back to him. Appellant also testified that he did not call Milless directly because neither of the voicemail messages included Milless's telephone number. However, appellant admitted that he was aware that Milless was the person designated to investigate and resolve the grievance; as such, he reasonably should have made some effort to ascertain Milless's telephone number or other contact information, such as his email address. Appellant further testified that he

called the HR department rather than Milless because he believed that was the proper procedure pursuant to OYAP's grievance policy. He also averred that he did not contact Milless because he felt OYAP failed to comply with their own grievance policy since they did not resolve his grievance within 14 days. However, appellant failed to provide a copy of the grievance policy and, as such, appellant's assertions are unsupported by the record. Finally, appellant testified that he did not feel compelled to attend the meeting because he believed he was entitled to more than 24 hours notice in order to properly prepare for the meeting. Again, we note that, as of December 14, 2007, appellant had been on paid administrative leave for almost two months. Further, appellant admitted that he could have, but did not, request that the meeting be rescheduled so that he could have more time to prepare. For the foregoing reasons, we agree with the commission that appellant had ample opportunity to preserve his employment by maintaining contact with OYAP after he filed his grievance; however, he did not do so.

{¶22} Finally, we note that appellant misconstrues the common pleas court's analysis. Appellant contends that the court concluded that he did nothing when contacted by OYAP on December 14, 2007. Contrary to appellant's contention, the court did not so conclude. As appellant acknowledges, the court noted that appellant contacted OYAP's HR department. The court merely stated that appellant took no steps beyond contacting HR to ascertain the nature of the December 15, 2007 meeting. The court's statement in this regard is supported by appellant's own testimony. Appellant admitted that he neither asked the HR representative for Milless's contact information nor made any effort to independently obtain that information. Moreover, even if the court had erroneously stated that appellant did nothing when contacted by OYAP on December 14, 2007, we reiterate

that our focus is on the decision of the commission, not the decision of the common pleas court. In its findings of fact, the commission averred that appellant contacted HR in response to the voicemail messages.

{¶23} Bearing in mind that appellant bore the burden of proving his entitlement to unemployment compensation benefits, and after a thorough review of the record, this court concludes that the commission's decision that appellant was terminated for just cause is not unlawful, unreasonable or against the manifest weight of the evidence. The record contains some competent, credible evidence to support the commission's decision to deny appellant unemployment benefits. Accordingly, we overrule appellant's sole assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

SADLER J., concurs.  
CONNOR, J., dissents.

CONNOR, J., dissenting.

{¶24} Being unable to agree with the majority, I respectfully dissent. Under the circumstances, I do not believe appellant's actions were unreasonable or that he demonstrated a disregard for OYAP's interest and voluntarily abandoned his employment. Because I find appellant was not terminated for just cause in connection with his employment, I believe he is entitled to unemployment compensation benefits.

{¶25} Timmerman suspended appellant due to concerns regarding staffing and appellant's failure to take corrective action against an employee under his supervision. As a result, appellant filed a written grievance, which in turn caused appellant to be

placed on paid administrative leave pending resolution of the grievance. However, it is clear from the record that Timmerman, according to his own testimony, was mistaken with respect to part of the disciplinary action taken and his understanding of the circumstances and policy of the agency. Thus, it appears appellant's suspension, at least in part, may have been unwarranted.

{¶26} OYAP's written policy regarding the grievance process was not read into or made a part of the record, despite appellant's efforts to do so, which were refused by the hearing officer, who mistakenly believed the grievance policy had already been read into the record. As a result, the court does not have the official policy before it to consider. I find this to be very problematic in considering whether appellant was terminated for just cause for purposes of determining unemployment compensation benefits.

{¶27} Nevertheless, according to the testimony, OYAP's normal policy was to have the supervisor's supervisor bring the parties together within 14 days, or as close to 14 days as possible, depending upon whose recollection of the policy is correct. Additionally, the person who filed the grievance would then be placed on paid administrative leave for this short period of time as dictated by the policy. In this case, Charles Milless, the general counsel for the agency, was designated by the chief executive officer of the program to arbitrate the grievance, rather than appellant's supervisor's supervisor. However, the grievance was never arbitrated, presumably because appellant did not attend the purported meeting scheduled for December 15, 2007.

{¶28} The commission found that OYAP made several attempts to contact appellant. However, it should be noted that all of the letters sent to appellant between

October 26 and December 14, 2007, were returned by the post office marked NSN (no such number) and were never delivered to appellant, so the agency actually had no contact with appellant until December 14, 2007. I believe the trial court properly found that the evidence refutes any contact by the employer between the filing of the grievance and December 14; that the appellant was told not to contact the employer during that time, and therefore the failure of the appellant to contact the employer during that time period was not unreasonable. The record clearly supports the trial court's conclusion.

{¶29} The first verified contact that the agency was able to make with appellant was on December 14, 2007, when someone from OYAP left a phone message that appellant was to meet with Milless on December 15, 2007. Yet, no return phone number was given. And when appellant contacted the HR department to ask what it was about, HR informed him there was nothing in the file to indicate a meeting was to take place. Thus, appellant did not attend the meeting. Under these circumstances, I believe OYAP's efforts at contacting appellant were insufficient. Appellant was not unreasonable in failing to attend the December 15, 2007 meeting or in failing to make further contact with OYAP to learn about his employment situation, given that he was informed he was to have no contact with OYAP, and given that little information and no return phone number was provided. Consequently, I do not find appellant's actions were unreasonable or that he abandoned his employment, and therefore, I do not find that appellant was terminated for just cause in connection with his employment.

{¶30} The Supreme Court of Ohio has defined just cause as " 'that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.' " *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995-

Ohio-206, quoting *Irvine v. State Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. The unemployment compensation act protects those employees who have no control over the situation that leads to their separation from employment. *Id.*

{¶31} 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. 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.*

{¶32} "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 ordinary intelligent person would regard as a justifiable reason for discharging an employee. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, paragraph four of the syllabus (overruled on other grounds). In *Irvine*, the Supreme Court of Ohio found that 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.

{¶33} In this case, reviewing the record in its entirety, and considering the unique factual considerations of this particular case, I find that the evidence in the record or lack thereof does not support the determination of the commission hearing officer and that its determination does not apply the correct standard of law.

{¶34} Furthermore, 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[.]" *Id.* at 155. The court cited to the review board's decision, which found that " '[a]lthough the employer has the right to discharge claimant, [the] action was excessive and that claimant was discharged without just cause in connection with work within the meaning of the above referred to section [4141.29(D)(2)(a)] of the Revised Code of Ohio.' " (Emphasis sic.) *Id.* at 155-56.

{¶35} 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 Law 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), 2d Dist. No. CA 10391, 1988 Ohio App. LEXIS 590, at \*12, 1988 WL 25874, at \*5 ("[t]he '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"); and *James v. Ohio State Unemployment Review Comm.*, 10th Dist. No. 08AP-976, 2009-Ohio-5120 (the employee was not discharged for just cause for purposes of collecting unemployment compensation benefits because the employer's basis for termination was unreasonable and completely unrelated to the employee's job and/or job performance and there was no evidence the employee was unsuitable for the work he was actually required to do).

{¶36} In the case at bar, the issue is whether appellant has the right to unemployment compensation benefits. Thus, the question is whether appellant did something that should deprive him of unemployment benefits. I believe he did not.

{¶37} To put this case in proper perspective, the issue here is not a matter of poor performance on the part of the appellant. Appellant had been an employee of OYAP since 1996, and while he had two recent short term suspensions due to staffing issues, it is clear from the record, based upon Timmerman's own testimony (R. 22-25), his supervisor was mistaken as to at least one of the suspensions. The appellant filed a grievance which should have, according to policy, resulted in a hearing between Timmerman and appellant, with Timmerman's supervisor conducting the hearing. It is also clear from the record that appellant was to have no contact with the agency until he was notified about the hearing. Appellant abided by this no contact order. Additionally, I disagree with the conclusion that appellant chose not to pursue any steps to ascertain the purpose behind the planned meeting of December 14, 2007, as appellant did in fact contact HR regarding the meeting.

{¶38} Furthermore, given that appellant was under the no contact order and had been informed that the agency would contact him, it was not unreasonable for appellant not to make further inquiry between the December 14, 2007 phone call and mid-January 2008, when he discovered his benefits had been terminated and, upon inquiring, was informed he had been terminated effective December 14, 2007. It is interesting to note that written notification of the termination was not sent to appellant until January 15, 2008, and it was primarily based upon OYAP's assertion that "[w]e made several attempts to contact you both through certified mail and through voice messages left on your home phone and cell phone numbers, however, we did not receive a return phone call from you. *The final decision was that you voluntarily abandoned your job.*" (Emphasis added.) Jan. 15, 2008 letter, claimant's Exhibit 2 before the commission.

{¶39} The record in this case and the findings of the trial court clearly support the conclusion that appellant was told not to contact OYAP until he was contacted and that there was no reliable evidence that contact was made by the employer until December 14, 2007. The record also demonstrates that appellant acted reasonably during the period between October 2007 when his grievance was filed and December 14, 2007. While the trial court found that appellant should have done more than simply call HR following the December 14, 2007 phone call, the record demonstrates, and counsel for OYAP conceded in oral argument, that no return phone number was left, nor was there a clear understanding as to the purpose of the meeting. In fact, Timmerman had not been told of the meeting and if there was to be an arbitration of the grievance, he was certainly a necessary party, according to the testimony concerning the grievance policy procedures. The record is void of any testimony that appellant knew that Milless, rather

than Timmerman's supervisor, was going to arbitrate his grievance. The only thing the December 14, 2007 phone call indicated was that appellant should meet with Milless the next day. The phone call only provided appellant with about 12 hours notice. Appellant took the next best and most reasonable action, by calling HR to find out more information about the meeting. Because HR knew nothing about it and no follow-up contact was made by the employer or Milless, one could reasonably assume that appellant was still under the same restrictions as before concerning the no contact order.

{¶40} I have reviewed the complete record in this case and the policy concerning grievances was never read into the record by the employer. Bits and pieces were referred to in testimony and Milless, who was not a witness, volunteered bits and pieces, and some assumptions or recollections concerning parts of it, but the entire written policy was never introduced. Therefore, any finding that appellant was terminated for "just cause" or that he did not act reasonably within established policies of the employer concerning the arbitration process is completely unsupported by the record.

{¶41} Finally, the conclusion that somehow the appellant voluntarily abandoned his job is completely drawn out of whole cloth. If one is to be discharged for voluntarily abandoning his position, the record must show that the employee violated a work rule that: (1) clearly defined the prohibited conduct; (2) has been identified by the employer as a dischargeable offense; and (3) was known to the employee. *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St.3d 401, 1995-Ohio-153.<sup>1</sup>

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<sup>1</sup> Although these factors are set forth in the context of a workers' compensation case, I believe them to be equally applicable here.

{¶42} Moreover, in the case of *State ex rel. Galligan v. Indus. Comm.*, 10th Dist.

No. 08AP-36, 2008-Ohio-6426, ¶23, this court opined:

Galligan may not have been a model employee, but none of her conduct was of the kind which has been considered a voluntary abandonment of employment absent a written policy which advised her the conduct would result in automatic termination. The various write ups strongly indicate that the written employee handbook had no such provision, because each time she was advised that future discipline would come. The one instance where she was advised a repeat of her conduct would result in automatic termination, she did not repeat the conduct.

{¶43} Based upon the foregoing and the conduct and circumstances involved here, I believe that a written policy is necessary in order to find that appellant's conduct constituted voluntary abandonment. In the case at hand, there was no such written policy. The appellant was a long time employee of OYAP and the record shows there was some explanation for the conduct which resulted in short term disciplinary suspensions, and that possibly Timmerman had misjudged the facts. This certainly deserved a timely arbitration of appellant's grievance. Appellant's performance was not an issue and the hearing officer so indicated in the record. Further, there is a total absence of any evidence in the record that the appellant indicated in any way that he was voluntarily resigning from or leaving his employment.

{¶44} Therefore, I would find the determination of the commission denying the appellant unemployment benefits was unlawful, unreasonable or against the manifest weight of the evidence, and the decision of the trial court was also unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, I would reverse the judgment

of the Franklin County Court of Common Pleas. Since the majority does not, I respectfully dissent.

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