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CLERK OF COURTS COMMON PLEAS COURT
CLERMONT COUNTY, OH

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

GREGORY A. PIERCE	:	
Appellant	:	**CASE NO. 2015 CVF 00470**
vs.	:	**Judge McBride**
DIRECTOR OF OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, ET AL.	:	**DECISION/ENTRY**
Appellees	:	

Lundrigan Law Group Co., LPA, W. Kelly Lundrigan and Nicole M Lundrigan, counsel for appellant Gregory A. Pierce, Lundrigan Law Group Co., LPA, 1080 Nimitzview Drive, Suite 201, Cincinnati, Ohio 45230;

Michael DeWine, Attorney General of Ohio, Robin Jarvis, Assistant Attorney General, counsel for the appellee Director of Ohio Department of Job and Family Services, 441 Vine Street, Suite 1600, Cincinnati, Ohio 45202.

This cause is before the court for consideration of the merits of the appellant Gregory A. Pierce's appeal. The court held a hearing on this matter on September 18, 2015.

Upon consideration of the appeal, the record of the proceeding, the written and oral arguments of counsel, and the applicable law, the court renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The appellant Gregory A. Pierce was employed with Ohio Oklahoma Hearst Television Inc. (hereinafter referred to as "Hearst") beginning February 4, 2002.[1] The appellant worked his way from part time to full time.[2]

For the last eight years of his employment, the appellant worked as a fulltime sports producer.[3] Since 2006, the appellant worked under employment contracts.[4] In fact, all the employees in Hearst's sports department have employment contracts with Hearst.[5]

The appellant's most recent contract spanned from June 10, 2012 until June 9, 2014.[6] The appellant received $49,000 for the first year of the contract and $50,000 for the second.[7] The contract contained a provision entitled "Noncompetition."[8] The provision states that the appellant "acknowledge[s] that * * * you have and will continue to have, access to certain confidential information * * *" and prohibits the appellant from accepting work in a similar capacity in Cincinnati, or targeted towards Cincinnati, for one year after termination of the appellant's employment.[9]

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[1] State of Ohio Unemployment Compensation Review Commission Decision ("UCRC Decision"), pg. 1, dated December 17, 2014.
[2] UCRC Decision, pg. 1.
[3] Id.
[4] Id.
[5] Id.
[6] Id.
[7] Id.
[8] Id.
[9] Id. at pgs. 1-2.

In May 2014, before the expiration of his contract, Hearst provided the appellant a two-year extension contract.[10] The new contract spanned from June 11, 2014 until June 20, 2016.[11] It provided compensation of $53,000 for the first year and $55,000 for the second.[12] It also contained a substantially similar non-competition clause as in the appellant's prior contracts.[13] The appellant refused to sign the contract.[14]

Under the appellant's 2012 to 2014 contract, he was permitted to continue working after the expiration of his current contract on a month-by-month basis.[15] Hearst provided the appellant additional opportunities to sign the new contract, but he refused.[16] The appellant indicated to Hearst that he did not want to sign a new contract.[17]

In September 2014, Hearst received a letter from the appellant's counsel, indicating that the appellant was unhappy with the terms of his contract.[18] Specifically, he wanted compensation of $85,000 and did not want to agree to the non-competition clause.[19]

In response Hearst offered the appellant a one-year contract, from September 15, 2014 until September 13, 2015, and offered compensation of $53,000 for the contract term.[20] The offer still included the non-competition clause.[21] The appellant

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[10] Id. at pg. 2.
[11] UCRC Decision, pg. 2.
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] Id.
[18] Id.
[19] Id.
[20] Id.
[21] Id.

was presented with this contract on September 16, 2014.[22] Hearst notified the appellant that if he did not sign the contract, he would lose his job.[23]

On September 19, 2015 Hearst asked the appellant if he was going to sign the contract.[24] The appellant answered he would not.[25] Hearst notified the appellant that he needed to collect his belongings and was escorted out the door.[26] Effectively the appellant was discharged.[27]

On September 28, 2014 the appellant filed an Application for Determination of Benefit Rights.[28] The Office of Unemployment Compensation issued its determination that the appellant was ineligible for unemployment compensation benefits on October 16, 2014.[29]

On October 24, 2014 the appellant appealed the determination.[30] On November 7, 2014 the director of the Office of Unemployment Compensation affirmed the determination to deny benefits to the appellant upon finding that he voluntarily quit his employment with Hearst without just cause.[31] On November 18, 2014 the appellant filed an appeal from the redetermination.[32]

On November 20, 2014 the Ohio Department of Job and Family Services (hereinafter referred to as "ODJFS") transferred jurisdiction to the Unemployment

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[22] Id.
[23] Id.
[24] UCRC Decision, pg. 2.
[25] Id.
[26] Id.
[27] Id.
[28] Id. at pg. 1.
[29] Office of Unemployment Compensation, dated Oct. 16, 2014.
[30] Appellant's letter to ODJFS, dated October 24, 2014.
[31] UCRC Decision, pg. 1.
[32] Id.

Compensation Review Board.[33] On December 9, 2014, a hearing was held before a hearing officer.[34] On December 17, 2015 the hearing officer issued a decision finding that the appellant was discharged for just cause and otherwise affirmed the director's redetermination denying unemployment benefits.[35]

The appellant filed a request with the Unemployment Compensation Review Commission to review the hearing officer's decision on January 2, 2015.[36] On March 11, 2015 the Commission affirmed the hearing officer's decision.[37] The appellant appealed to this court on April 9, 2015. The court heard oral argument on this matter on September 18, 2015.

STANDARD OF REVIEW

The standard of review in unemployment compensation benefits cases is "well-established."[38] R.C. 4141.282(H) sets forth a common pleas court's standard of review in appeals taken from a decision of the Unemployment Compensation Review Commission.[39] A reviewing court must reverse, modify, remand, or vacate the commission's decision when the decision is "unlawful, unreasonable, or against the manifest weight of the evidence."[40]

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[33] Id.
[34] Id.
[35] UCRC Decision, pg. 3.
[36] Decision on Request for Review Affirming Hearing Officer, pg. 1,dated March 11, 2015.
[37] Id.
[38] *Johnson v. Edgewood City School Dist. Bd. of Edn.*, Unempl. Ins. Rep. (CCH) P 10, 268, 2010-Ohio-3135, ¶ 9 (12th Dist.).
[39] *Warren County Auditor v. Sexton*, 12th Dist. Warren No. 05CV64632, 2007-Ohio-7081, ¶ 18.
[40] R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 1995-Ohio-206, 653 N.E.2d 1207, paragraph one of the syllabus.

In determining if the commission's decision is supported by the "manifest weight of the evidence," courts apply the "civil manifest weight of the evidence standard."[41] The standard requires the decision to be "supported by some competent, credible evidence going to all the essential elements of the case * * *."[42]

Reviewing courts, including trial courts, are not permitted to "make factual findings or to determine the credibility of witnesses."[43] Moreover, an appeal to a trial or appellate court cannot result in a *de novo* trial.[44] The Unemployment Compensation Review Board is the only fact finder.[45] When decisions are "close questions," reviewing courts leave the Board's decisions undisturbed.[46]

However, the reviewing court has the duty to determine "whether the board's decision is supported by evidence in the record."[47] The issue of "whether an employee was discharged with just cause is a question of law."[48] Notwithstanding, "[t]he fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision."[49] Hence, the reviewing court "must affirm the commission's findings if some competent, credible evidence in the records" supports the decision.[50]

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[41] *Mustafa v. St. Vincent Family Ctrs., Inc.*, Unempl.Ins.Rep. (CCH) P 10, 326, 2012-Ohio-5775, ¶ 6 (10th Dist.).
[42] *Mustafa*, 2012-Ohio-5775, ¶ 6, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.
[43] *Tzangas*, 73 Ohio St.3d at 696.
[44] Id. at 696-97.
[45] Id. at 697.
[46] *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587, 15 O.B.R. 12 (1985).
[47] *Tzangas*, 73 Ohio St.3d at 696.
[48] *Sexton*, 2007-Ohio-7081, ¶ 25, citing *Lombardo v. Ohio Bur. of Emp. Serv.*, 119 Ohio App.3d 217, 221 (6th Dist. 1997).
[49] *Tzangas*, 73 Ohio St.3d at 697, quoting *Irvine*, 19 Ohio St.3d 15.
[50] *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20.

LEGAL ANALYSIS

(A) MERITS OF THE APPEAL

The eligibility requirements to receive unemployment compensation benefits are set forth in R.C. 4141.29(D) of the Unemployment Compensation Act, providing in pertinent part:

> "* * * [N]o individual may * * * be paid benefits under the following conditions * * * (2) For the duration of the individual's unemployment if the director finds that: (a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work * * *."

The claimant bears the burden of proving "entitlement to unemployment compensation benefits."[51] Courts must "bear in mind that the unemployment compensation statutes should be construed liberally in favor of the applicant."[52]

While there is no "slide-scale definition of just cause,"[53] the Ohio Supreme Court has construed "just cause" to mean "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act."[54] When an employer discharges an employee, whether just cause exists "depends upon the factual circumstances of each case."[55]

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[51] *Irvine*, 19 Ohio St.3d at 17.
[52] *Johnson v. SK Tech, Inc.*, 2d Dist. Montgomery No. 23522, 2010-Ohio-3449, ¶ 19, citing *Clark Cty. Bd. of Mental Retardation & Developmental Disabilities v. Griffin*, 2d Clark No. 2006-CA-32, 2007-Ohio-1674, ¶ 10.
[53] *Irvine*, 19 Ohio St.3d at 17.
[54] *Williams*, 2011-Ohio-2897 at ¶ 22, citing *Irvine*, 19 Ohio St.3d at 17.
[55] *Williams*, 2011-Ohio-2897 at ¶ 22, citing *Warrensville Hts. v. Jennings*, 58 Ohio St.3d 206, 569 N.E.2d 489 (1991).

An employer may have just cause to terminate an employee when the employee refuses to comply with the employer's "fair and reasonable" rules or regulations.[56] In terms of a just cause discharge that arises from a breach of the employer's policies, when "determining whether a policy is fair, a court should look to whether the employee received notice of the policy, whether the policy could be understood by the average person, whether there is a rational basis for the policy, and whether the policy instituted by the employer was applied to some individuals and not to others."[57]

Additionally, a just cause discharge must be consistent with the legislative purpose underlying the Unemployment Compensation Act.[58] The Act's driving philosophy is that "employment and not unemployment is the goal to be attained."[59] "The Act exists 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."[60] Furthermore, the Act was intended to benefit those who were "willing to work."[61]

Moreover, unemployment compensation benefits do "not exist to protect employees from themselves, but to protect them from economic forces over which they

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[56] (Citation omitted.) *Clagg v. Board of Review of Employment Services*, 4th Dist. Lawrence No. 1572, 1982 WL 3586, *4 (Nov. 16, 1982).
[57] *Mustafa*, 2012-Ohio-5775 at ¶ 6, citing *Harp v. Admr., Bur. of Unemployment Comp.*, 12 Ohio Misc. 34, 230 N.E.2d 376 (C.P. 1967).
[58] *Irvine*, 19 Ohio St.3d at 17.
[59] *Chambers v. Owens-Ames-Kimball Co.*, 146 Ohio St. 559, 570, 67 N.E.2d 439, 165 A.L.R. 1373, 33 O.O. 60 (1946).
[60] (Emphasis original. Citation omitted). *Tzangas*, 73 Ohio St.3d at 697. *See Nunamaker v. U.S. Steel Corp.*, 2 Ohio St.2d 55, 57, 206 N.E.2d 206, 31 O.O.2d 47 (1965) (holding same).
[61] *Williams*, 2011-Ohio-2897 at ¶ 26, citing *Salzl v. Gibson Greeting Cards, Inc.*, 61 Ohio St.2d 35, 39, 399 N.E.2d 76, 15 O.O.3d 49 (1980).

have no control."[62] By contrast, "[w]hen an employee is at fault, he is no longer the victim of fortune's whims, but is instead directly responsible for his own predicament."[63]

As such, "[f]ault on behalf of the employee is an essential component of a just cause determination."[64] Whether an employee is at fault is a question that "cannot be rigidly defined, but, rather, can only be evaluated upon consideration of the particular facts of each case."[65] The employer can terminate an employee with just cause when it "has been reasonable in finding fault on behalf of the employee."[66]

"Fault, however, is not limited to willful or heedless disregard of a duty or a violation of an employer's instructions."[67] Similarly, the reason for a just cause discharge "need not reach the level of misconduct but there must be some level of fault" by the employee."[68] Therefore, with fault, "the critical issue is not whether an employee has technically violated some company rule, but whether the employee, by his or her actions, demonstrated an unreasonable disregard for employer's best interest."[69]

The Twelfth District Court of Appeals has observed that there exists "significant case law suggesting that 'just cause' under the Unemployment Compensation Act is a more stringent standard than the standard necessary to terminate an employee for a disciplinary violation."[70] In a similar sense, although "a termination based upon an employer's economic necessity may be *justifiable*, it is not a *just cause* termination

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[62] *Tzangas*, 73 Ohio St.3d at 697.
[63] Id. at 698.
[64] Id. at paragraph one of the syllabus.
[65] Id. at 698.
[66] Id.
[67] *Williams*, 2011-Ohio-2897 at ¶ 24, citing *Tzangas*, 73 Ohio St.3d at 698.
[68] *Johnson*, 2010-Ohio-3135 at ¶ 11.
[69] Id. at ¶ 13.
[70] Id. at ¶ 18.

when viewed through the lens of the legislative purpose of the Act."[71] For example, "an employer who has insufficient work to keep an employee may have 'just cause' for discharge from the employer's perspective, but the employer does not have 'just cause' under R.C. 4141.29(D)."[72]

Phrased differently, the "issue is not whether the discharge itself is wrongful or justified from an employment-contract viewpoint. Rather, there is a distinct difference between a wrongful discharge and 'just cause for discharge,' pursuant to R.C. 4141.29."[73] "[A]n employee is considered to have been discharged for just cause when the employee, by her actions, has demonstrated an unreasonable disregard for her employer's best interests."[74] Ultimately, the discharge must be justified with "conduct by the employee for which the employee is responsible."[75]

In the instant case, the ultimate question of whether the appellant is entitled to unemployment compensation turns upon whether Hearst's discharge of the appellant was for "just cause" within the meaning of R.C. 4141.29(D). The appellant bears the burden of showing that he is entitled to receive unemployment compensation benefits.[76]

To meet his burden, the appellant cites to multiple administrative decisions in support. Although none of the cases that the appellant highlights are identical, they are still helpful in illustrating the parameters for a just cause discharge based on an

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[71] (Emphasis original.) *Tzangas*, 73 Ohio St.3d at 697. *See Mustafa*, 2012-Ohio-5775 at ¶ 17, citing *Scarnati v. Ohio Dept. Bur. of Emp. Servs.*, 10th Dist. No. 94APl01-102 (Aug. 11, 1994) ("the test of 'just cause' for unemployment compensation purposes is different from that required for the tort of constructive discharge.").
[72] *Morris v. Ohio Bur. of Emp. Serv.*, 90 Ohio App.3d 295, 299, 629 N.E.2d 35 (10th Dist. 1993).
[73] Id. at 300.
[74] *Greer v. Dir. Of Job & Family Servs.*, 171 Ohio App.3d 197, 2007-Ohio-1668, 870 N.E.2d 207, ¶ 21 (2d Dist.), citing *Kikka v. Ohio Bur. of Emp. Servs.*, Ohio App.3d 168, 485 N.E.2d 1233, 21 OBR 178 (1st Dist. 1985).
[75] *Morris*, 90 Ohio App.3d at 299.
[76] *Irvine*, 19 Ohio St.3d at 17.

employee's failure to sign an employment agreement or policy. The most thorough and compelling case is *Johnson v. SK Tech, Inc.*, 2d Dist. Montgomery No. 23522, 2010-Ohio-3449. In *Johnson* the claimant had been presented with a company handbook, which he was instructed to read and sign.[77] He neglected to sign it for nearly a year and a half.[78] When the employer changed some of the policies, it presented him with a new handbook, which he refused to sign.[79] The employee would not sign because the employer's policies prohibited discrimination on the basis of sexual orientation, which violated his religious beliefs, and thus he was subsequently discharged.[80]

Although the court held that the claimant was lawfully discharged for his refusal, it concluded that the claimant was not terminated through "'fault' of his own, at least within the meaning of Ohio's unemployment compensation laws."[81] The court expanded that the claimant was not at fault because there was no evidence that he was "motivated by insubordination, bad faith, or a desire to become voluntarily unemployed."[82] By contrast, his termination was unconnected to his job performance, his employer wanted him to continue working, and the claimant enjoyed his job and wanted to continue employment.

Next, in *Newhouse v. Philadelphia Carpet Co.*, Unemployment Comp. Bd. Rev. No. B98-00905-0000, an employee refused to sign an employer's policy statement regarding purchasing of company merchandise.[83] The board explained that the

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[77] *Johnson*, 2010-Ohio-3449, ¶ 6.
[78] Id. at ¶ 8.
[79] Id. at ¶¶ 9-10.
[80] Id. at ¶ 10.
[81] Id. at ¶¶ 35, 48.
[82] Id. at ¶ 56.
[83] *Johnson*, 2010-Ohio-3449 at ¶¶ 40-42, citing *Newhouse v. Philadelphia Carpet Co.*, Unemployment Comp. Bd. Rev. No. B98-00905-0000.

employer was free to implement the policy and implement discipline against the claimant for refusing to follow it.[84] However, because the claimant had legitimate reasons to refuse signing the policy, his refusal was not "misconduct or neglect of duty" such as to warrant a just cause termination.[85]

Similarly, in *NTA Graphics, Inc. v. Lonchyna*, 6th District Lucas No. L-90-271, 1991 WL 110367 (June 21, 1991), the Sixth District Court of Appeals affirmed a decision in which employees were fired for refusing to sign an acknowledgement form in a new handbook. The employees believed they could be discharged only for just cause, and the handbook instead stated that they were employed on an at-will basis.[86] Believing that the nature of their employment relationship was being changed by the handbook, the employees refused to sign the form and were discharged.[87] The court held that the employees' failure to sign "'cannot be found to constitute, in any way, insubordination or refusal of a reasonable order of a supervisor.'"[88]

Very much like *Johnson*, the record reflects that the appellant was willing to continue working for Hearst, and Hearst believed that the appellant performed well and was a good long-term employee.[89] Hearst required all its sports department employees to be under contract and assent to a covenant not to compete.[90] As in the above cases,

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[84] Id.
[85] Id.
[86] *NTA Graphics, Inc. v. Lonchyna*, 6th District Lucas No. L-90-271, 1991 WL 110367, *1 (June 21, 1991).
[87] Id. at *2.
[88] Id. at *4. *See Roseman v. Tom Harrigan Olds Nissan*, 2nd Dist. Montgomery No. 11130, 1988 WL 134863, *1 (holding that there was no just cause for termination when an employee was fired for not signing a letter that he disagreed with, where there was no showing that he did "any willful or wrongful act against the best interest of the employer.").
[89] Hearing Transcript, 18:3-11, 29:6-7, 32:4.
[90] UCRC Decision, pg. 1.

Hearst did not violate the law by creating such a requirement, and it had the right to discharge the appellant when he refused to comply with its requirement.

However, there "is a distinct difference between a wrongful discharge and 'just cause for discharge,' pursuant to R.C. 4141.29."[91] It is undisputed that Hearst terminated the appellant because he refused to sign the new contract. From Hearst's perspective, it was justified in discharging the appellant because it gave him months to consider the contract, it compromised by shortening the contract's duration, and it could not meet the appellant's request for a $35,000 raise. Although Hearst had the right to discharge the appellant and was justified in doing so, those justifications are not necessarily tantamount to being justified under the Unemployment Compensation Act. The appellant still must be at fault to be discharged with "just cause" within the meaning of R.C. 4141.29 because the Ohio Supreme Court considers fault an "essential component."[92]

Hearst agrees that the appellant was a good employee, and the appellant desired to continue working for Hearst. However, as the cases above illustrate, the appellant's actions do not demonstrate "an unreasonable disregard" for Hearst's best interest by refusing to sign a contract.[93] It cannot be said that the appellant's disagreement on contract terms was "motivated by insubordination, bad faith, or a desire to become voluntarily unemployed."[94] To the contrary, the facts illustrate that the appellant wanted to continue working for Hearst and desired opportunities to advance.

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[91] *Morris*, 90 Ohio App.3d at 300.
[92] *Tzangas*, 73 Ohio St.3d 694 at paragraph one of the syllabus. *Johnson*, 2010-Ohio-3449 at ¶ 18.
[93] *Johnson*, 2010-Ohio-3449 at ¶ 13.
[94] Id. at ¶ 56.

Without fault on the appellant's part, Hearst's discharge of the appellant cannot be characterized as "for just cause" for purposes of unemployment compensation.

ODJFS counters this conclusion with multiple arguments. ODJFS first argues that the appellant was fired for just cause because he was unreasonably dissatisfied with his compensation and work duties. ODJFS highlights that an employee's disagreement with the pay rate is not just cause for termination. Indeed, disagreements regarding compensation do not give rise to just cause to quit employment.[95] Similarly, ODJFS posits that there was not just cause merely because the appellant did not want to undertake additional work duties. ODJFS is also correct that occasional, incidental work duties are not "just cause" for an employee to quit.[96]

While ODJFS's two legal points are correct, they do not apply in this particular case because they do not give an employer just cause to discharge an employee. They instead stand for the proposition that dissatisfaction with duties and compensation are insufficient justifications for an employee to quit with just cause. The logic in finding that an employee is without just cause to quit when dissatisfied with duties and compensation does not extend to mean that, therefore, an employer has just cause to terminate a dissatisfied employee.

The cases ODJFS cites for these propositions all involve claimants who quit, not claimants who were discharged. If the hearing officer in this case had found that the appellant quit his employment, then these facts would weigh against the appellant. However, the hearing officer determined that the appellant was discharged, and thus

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[95] *Fabian v. Administrator, Ohio Bureau of Employment Services*, 7th Dist. Jefferson No. 87-J-5, 1987 WL 20362, *2-3 (Nov. 24, 1987).
[96] *Beljan v. Board of Review, Ohio Bureau Employment Services*, 7th Dist. Mahoning No. 85 C.A. 105, 1986 WL 8925, *2 (Aug. 19, 1986).

the question before the court is whether Hearst had just cause to discharge the appellant, not whether the appellant would have had just cause to quit.

The hearing officer made a similar error. Throughout the written decision, the hearing officer examines the case from the perspective of whether the appellant acted reasonably.[97] As discussed, whether the appellant acted reasonably is an issue more specific to "just cause" for quitting, not discharge. For example, the hearing officer finds that the "claimant's repeated refusal to comply with a term of employment – signing an employment agreement – was unreasonable."[98] The hearing officer then concludes: "This constituted fault on his [appellant's] part sufficient to reasonably justify his discharge."[99] However, the above cases illustrate that, contrary to the hearing officer's determination, an employee's refusal to sign an agreement is not, in and of itself, "fault" sufficient to establish just cause for discharge.

In its next argument, ODJFS posits that Hearst discharged the appellant for just cause because the appellant failed to meet a condition of employment, i.e. signing a contract. It is well recognized that, under certain conditions, a failure to meet an employer's condition or policy is grounds for a just cause termination.[100] However, as *Johnson* demonstrates, that does not alleviate the requirement that the claimant bear fault for the discharge.

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[97] UCRC Decision, pgs. 2-3. For example, the determination finds the claimant "has not adequately demonstrated that his expectation was reasonable. * * * The claimant failed to demonstrate that he (1) attempted to reasonably negotiate a contract providing that he would be employed as a sports anchor; or (2) that not receiving a promotion to sports anchor was reasonable grounds for refusing to sign a reasonable employment contract for continuing employment in his current position."

[98] UCRC Decision, pg. 3.

[99] Id.

[100] *Clagg*, 1982 WL 3586, *4.

Johnson serves as a prime example of the interplay between an employee's failure to meet a condition of employment and an employee's "fault" for failing to meet the condition. In *Johnson* the employee was fired for failing to meet a condition of employment, namely failing to agree to abide by the employer's non-discrimination policy. Nevertheless, because the employee could not be considered at fault for disagreeing with and refusing to sign the policy, the discharge was without just cause.

Similarly, in the case at bar the appellant failed to meet a condition of employment by refusing to sign the new contract. As in *Johnson*, the record reflects that the appellant is without fault within the meaning of R.C. 4141.29 because he was willing to continue working for Hearst, and Hearst believed that the appellant performed well and was a good long-term employee.[101] In light of the appellant's lack of fault, and bearing in mind that the Unemployment Compensation Act "should be construed liberally in favor of the applicant," the court finds that ODFJS's decision to deny the appellant unemployment benefits is unlawful, unreasonable, and against the manifest weight of the evidence under R.C. 4141.282. Pursuant to R.C. 4141.282 the court reverses the Unemployment Compensation Review's decision.[102]

(B) DUE PROCESS

All administrative hearings conducted by the Commission apply "due process."[103] Further, the hearing officers have "an affirmative duty to question parties and witnesses"

[101] Hearing Transcript, 18:3-11, 29:6-7, 32:4.
[102] *Johnson*, 2010-Ohio-3449 at ¶ 19 citing *Griffin*, 2007-Ohio-1674 at ¶ 10.
[103] R.C. 4141.281(C)(2).

to develop the "relevant facts and to fully and fairly develop the record."[104] The main goal of hearings is to "ascertain the facts that may or may not entitle the claimant to unemployment benefits."[105] Moreover, hearing officers are not bound by "technical or formal rules of procedure."[106]

"The key factor in deciding whether a hearing satisfies procedural due process is whether the claimant had the opportunity to present the facts that demonstrate he was entitled to unemployment benefits."[107] The hearing officer has broad discretion in this capacity and such discretion "is tempered only to the extent that he must afford each party an opportunity to present evidence that provides insight into the very subject of the dispute."[108] If a party is denied a fair hearing and there is insufficient evidence in the record to support the commission's decision, then the trial court will remand the case for another hearing.[109]

In the instant case the appellant claims that he was denied due process. He highlights that the notice he received stated that the hearing would determine whether the appellant quit with just cause – not whether Hearst discharged the appellant with just cause. Even so, the appellant received due process.

First, the notice itself stated "[a]dditional issues may be considered which fall within the purview of Ohio Administrative Rule 4146-5-03." Furthermore, Ohio

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[104] Id.
[105] *Hertelendy v. Great Lakes Architectural Serv. Sys., Inc.*, 976 N.E.2d 950, 2012-Ohio-4157, ¶ 18 (8th Dist.).
[106] R.C. 4141.281(C)(2).
[107] *Hertelendy*, 2012-Ohio-4157 at ¶ 18. *See Howard*, 2011-Ohio-6059, ¶ 15 ("The key factor in deciding whether a hearing satisfies procedural due process is whether the claimant had the opportunity to present the facts which demonstrate that she was entitled to unemployment benefits.").
[108] *Hertelendy*, 2012-Ohio-4157 at ¶ 19 citing *Howard*, 2011-Ohio-6059, ¶ 16.
[109] *See Hertelendy*, 2012-Ohio-4157 at ¶¶ 27-28.

Administrative Rule 4146-5-03(B) provides that a hearing officer may consider issues that are not "specifically considered or referred to by the director in the director's determination, reconsidered decision or redetermination, referred to specifically in the appeal, or raised by an interested party."

In addition, the appellant's main argument at the hearing was that he did not voluntarily quit but was instead discharged. The appellant should have reasonably anticipated that, if he was successful in showing that he did not quit but was discharged, he would need to prove he was discharged without just cause to receive unemployment benefits. It is the appellant's burden to show that he is entitled to unemployment compensation. There were two avenues for the appellant to meet this burden under R.C. 4141.29(D): (1) show he quit with just cause or (2) show he was discharged without just cause. It was not the appellant's position that he quit with just cause. Therefore, the only other avenue available for the appellant to meet his burden required him to show that he was discharged and that the discharge lacked just cause.

In fact, multiple lines of questioning to the appellant and to Hearst's general manager during the hearing inquired about whether the appellant had been terminated and the reasons for his termination. As mentioned, the primary goal of a hearing is to "ascertain the facts that may or may not entitle the claimant to unemployment benefits."[110] The hearing in the instant case did just that. The testimony from the hearing establishes that Hearst discharged the appellant because he refused to sign a new contract. Indeed, the appellant states in his briefing that "the factual evidence in the record is unrefuted and the issue is interpretation of the law as it applies to the

[110] *Hertelendy*, 2012-Ohio-4157 as ¶ 18.

unrefuted facts."[111] Accordingly, the court finds that the appellant did not suffer a violation of due process.

CONCLUSION

For the foregoing reasons, the court holds that (1) the appellant's assignment of error that the Unemployment Compensation Review Decision was unlawful, unreasonable, or against the manifest weight of the evidence is well-taken and the decision is hereby reversed and (2) the appellant's assignment of error that he was denied due process is not well-taken.

IT IS SO ORDERED.

DATED: 3-12-16

Judge Jerry R. McBride

[111] Appellant's Brief, pg. 7.