

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

GINA L. WATSON,	:	APPEAL NO. C-180699
Plaintiff-Appellant,	:	TRIAL NO. A-1801640
vs.	:	<i>JUDGMENT ENTRY.</i>
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	
OHIO MEDICAL TRANSPORTS, LLC,	:	
AND	:	
OMNI TRANSPORTS, LLC,	:	
Defendants-Appellees.		

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Gina L. Watson appeals the judgment of the Hamilton County Court of Common Pleas affirming the decision of the State of Ohio Unemployment Compensation Review Commission (the “Commission”) to disallow her application for unemployment compensation. The Commission disallowed Watson’s application after determining that she was discharged by her former employer, Ohio Medical Transport, LLC, a private ambulance service, for just cause in connection with her employment. In two assignment of error, Watson argues that the trial court erred in affirming the Commission’s decision.

R.C. 4141.282(H) governs the standard of review to be applied by the court of common pleas and subsequent reviewing courts in unemployment-compensation cases. The statute states, in relevant part: “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.” R.C. 4141.282(H); see *Tzangas, Plakas and Mannos v. Adm., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995). That is, the court of appeals is “required to focus on the decision of the Commission, rather than that of the trial court.” *Huth v. Dir., Ohio Dept. of Job and Family Services*, 2014-Ohio-5408, 26 N.E.3d 250, ¶ 19 (5th Dist.).

“Appellate courts are not permitted to make factual findings or to determine the credibility of the witnesses; but the reviewing court does have the duty to determine whether the Commission’s decision is supported by the evidence in the record.” *Id.*, citing *Tzangas* at 696. “[W]here the Commission might reasonably decide either way, this court has no authority to upset the Commission’s decision.” *Bonanno v. Ohio Dept. of Job and Family Services*, 5th Dist. Tuscarawas No. 2012 AP 02 0011, 2012-Ohio-5167. Every reasonable presumption must be made in favor of the Commission’s decision and findings of facts. *Id.* at ¶ 15.

In her two assignment of error, which we will treat as one since they are nearly identical and allege the same error, Watson argues that the trial court erred in finding that the Commission’s decision was not against the manifest weight of the evidence. Watson claims that she was fired from Ohio Medical Transport, LLC, because of discrimination by her coworkers, against whom she filed formal complaints prior to her termination. She claims that her coworkers fabricated allegations against her to get her fired, in part, to retaliate for complaints filed against them. Watson argues that her coworkers’

allegations—that she was rude and hostile towards them and violated company policies—are unsupported by the record, and therefore her termination was without just cause and she was entitled to unemployment compensation.

In order to qualify for unemployment compensation benefits, a claimant must satisfy the criteria set forth in R.C. 4141.29(D)(2)(a). The section provides, in relevant part, that “no individual may serve a waiting period or be paid benefits * * * [f]or the duration of the individual’s unemployment if the director finds that [t]he individual 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). Accordingly, a claimant is ineligible for unemployment benefits if the claimant is discharged for “just cause.”

R.C. Chapter 4141 does not define “just cause,” but the Ohio Supreme Court has defined “just cause” as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” (Internal quotations omitted.) *Irvine v. Unemp. Bd. of Review*, 19 Ohio St.3d 15, 17, 482 N.E.2d 587 (1985). “The determination of whether just cause exists for an employee’s dismissal under R.C. 4141.29 is based upon whether there was some fault on the part of the employee that led to the dismissal.” *Tzangas*, 73 Ohio St.3d 694, 653 N.E.2d 1207, paragraph two of the syllabus. “[W]here an employee demonstrates unreasonable disregard for [the] employer’s best interests, just cause for the employee’s termination is said to exist.” (Internal quotations omitted.) *Kiikka v. Ohio Bur. of Emp. Servs.*, 21 Ohio App.3d 168, 169, 486 N.E.2d 1233 (8th Dist.1985).

In this case, the Commission conducted two evidentiary hearings, with a Commission hearing officer taking testimony from Watson and her coworkers: Jennifer Young, Erica Showalter, and Keondre McCartney. Testimony was also taken from C.J. Keene, Watson’s immediate supervisor, and Sue McKormick, a representative of Watson’s

employer, Ohio Medical Transport, LLC. In the hearings, it was alleged that Watson was belligerent towards her coworkers and violated company policies on two occasions. Showalter and McCartney alleged that during one shift when Watson was driving the ambulance, Watson repeatedly drove the ambulance erratically and dangerously by making hard stops and speeding, and texted while driving. While stopped at a gas station during this same shift, Watson was alleged to have argued with and yelled at Showalter and McCartney in public view. A cell-phone video recorded by Showalter and included in the record captured part of this confrontation and corroborated her testimony. Showalter called Keene to end her shift early because she did not feel safe continuing to work with Watson. Keene then tried to contact Watson several times via phone to mediate the situation, but Watson refused to speak with him. Upon returning to the station, Watson was sent home for the day.

As a result of this incident, Watson was formally noticed that she violated company policies for erratic driving, not remaining professional, participating in workplace hostility, and insubordination. The disciplinary notice, issued to Watson on September 14, 2017, stated that the “next offense will result in termination.” Then, on September 29, 2017, Watson sideswiped the mirror of a passing car while driving the ambulance and began yelling at Young, who was her passenger at the time, denying that she had hit anything. As a result of this incident, Watson was suspended that same day and terminated on October 24, 2017.

The Commission found, and we concur, that Watson was discharged with just cause for failing to follow company policies. An ordinary intelligent person would know not to act belligerently towards coworkers, drive erratically, or text while driving—particularly while driving an ambulance. *See Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587. Watson argues that the Commission’s decision was against the manifest weight of the

evidence because there was no definitive proof of her erratic driving or arguments with her coworkers—via GPS reports or other investigation—but such concrete evidence is not required. “Weight of the evidence concerns ‘the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. * * * Weight is not a question of mathematics, but depends on its effect in inducing belief.’ ” *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). In this instance, the testimony of Watson’s coworkers, which the Commission found credible and which was corroborated by a partial video recording, was enough. Furthermore, Watson was warned that her behavior violated company policies but continued to demonstrate the same.

While Watson could have legitimate claims for discrimination, that issue is not before this court.

Based on the foregoing, we find that the trial court did not err in affirming the decision of the Commission. The Commission’s decision was not unlawful, unreasonable or against the manifest weight of the evidence. Watson’s two assignments of error are therefore overruled. Accordingly, the judgment of the Hamilton County Court of Common Pleas is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on November 22, 2019
per order of the court _____.
Presiding Judge