



Docket No: H-2012023080

State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

DECISION

In re claim of:

[REDACTED] - Appellant

Claimant Representative:

Dan Domozick, Atty. - Dan Domozick, Attorney at Law

Employer:

PSC Sleep Centers, Inc.
UCO No.: 1242091005-0000

CASE HISTORY

The claimant, [REDACTED], filed an Application for Determination of Benefit Rights for a benefit year beginning June 24, 2012.

On August 21, 2012, the Director issued a Redetermination disallowing claimant's application, based upon the finding that claimant was discharged from employment with PSC Sleep Centers, Inc. for just cause in connection with work. It was further held that no benefits will be paid until claimant obtains covered employment, works six weeks, earns wages of \$1,332.00 or more, and is otherwise eligible. Other matters may have been addressed by the Redetermination which are not relevant to this case.

On September 7, 2012, the claimant filed an appeal from the Redetermination.

On September 12, 2012, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

On October 4 and October 23, 2012, a hearing was held before Hearing Officer Emily Briscoe, by telephone. Claimant appeared and offered testimony at this hearing, and was represented by Dan Domozick, Attorney at Law. PSC Sleep Centers, Inc. was represented at the first hearing by Kendra Yates, Human Resource Manager. No representative of PSC Sleep Centers, Inc. appeared for the second hearing.

FINDINGS OF FACT

Claimant was employed by PSC Sleep Centers, Inc. from October 20, 2009, until June 26, 2012. He worked as a Sleep Technologist, and reported to Sophia Born, Area Manager. During claimant's employment, his duties changed to require him to float between two locations. Claimant was originally responsible for supervising two patients at a time. In mid-2011, he was required to begin supervising three patients at a time.

On September 23, 2011, claimant received a verbal warning after a patient complaint. On January 11, 2012, claimant received a warning for poor work quality. On April 30, 2012, claimant received a verbal warning after a patient complaint. On June 26, 2012, claimant was discharged because a patient made a complaint about him.

ISSUE

Was claimant discharged by PSC Sleep Centers, Inc. without just cause in connection with work?

LAW

An individual is not disqualified for benefits if the individual was discharged without just cause in connection with work. *Section 4141.29 (D) (2) (a) O.R.C.* For applications filed on and after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application. *Section 4141.01 (R) (2) O.R.C.*

REASONING

Claimant was discharged from his employment with PSC Sleep Centers, Inc. on June 26, 2012. The employer's sole witness, Kendra Yates, Human Resource Manager, explained that claimant was discharged for poor work performance and patient complaints. Ms. Yates admits that she did not personally speak with the patient who made the final complaint, and the patient was not presented as a witness at the hearing. Written evidence of the complaint was submitted. As such, the employer's evidence regarding this complaint is hearsay under the rules of evidence. While hearsay evidence is admissible in administrative proceedings before the Unemployment Compensation Review Commission, it is given less weight by the Hearing Officer than the sworn testimony of a credible witness.

Claimant appeared at the hearing and presented credible, sworn testimony that he was not rude to the patient who had complained, and did not remember any problems. The Hearing Officer finds claimant's testimony on the matter to be more credible than the hearsay testimony offered by the employer.

Furthermore, as to claimant's overall work performance, Ms. Yates admits that during claimant's employment, his duties changed to require him to float between two locations, and to begin supervising three patients at a time instead of two. In *Tzangas, Plakas and Mannos, Attorneys v. Administrator Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, the court held that unsuitability for a position constitutes fault sufficient to support a just cause termination, provided: (1) the employee does not perform the required work; (2) the employer made known its expectations of the employee at the time of hiring; (3) the expectations were reasonable, and; (4) the requirements of the job did not change since the date of the original hiring for that particular position.

Not all of the requirements of the *Tzangas* decision have been met in the instant case. Specifically, the requirements of the job changed since the date of claimant's original hiring for that particular position. In light of the evidence presented in this case, the Hearing Officer finds that claimant was discharged from his employment with PSC Sleep Centers, Inc. without just cause in connection with work.

DECISION

The Director's Redetermination, issued August 21, 2012, is reversed with respect to claimant's separation from PSC Sleep Centers, Inc.

Claimant was discharged by PSC Sleep Centers, Inc. without just cause in connection with work.

Claimant's Application for Determination of Benefit Rights is no longer disallowed based upon a disqualifying separation from employment. This case is remanded to the Ohio Department of Job and Family Services to determine claimant's monetary entitlement and any charges to the base period employers.

This decision rules only on the issue set forth above.

Emily Briscoe, Hearing Officer

/EB

OJI Determination #: 224837141

[RCX Temp: DWC-R-Y-DUDA]