COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THEODORE L. TURNER,	)	**CASE NO. CV-13-914138**
	)	
Plaintiff-Appellant,	)	**JUDGE PAMELA A. BARKER**
	)	
v.	)	**DECISION AND JOURNAL ENTRY ON APPEAL FROM DENIAL OF UNEMPLOYMENT COMPENSATION**
	)	
OHIO UNEMPLOYMENT COMPENSATION	)	
	)	
Defendant-Appellee	)	
	)	

This matter is before the Court on Appellant's Brief In Support Of Appeal From Denial Of Unemployment Compensation, filed on 1/8/2014, the Brief Of Appellee Director, Ohio Department Of Job And Family Services, filed on January 31, 2014, and the Reply Brief Of Appellant Theodore L. Turner, filed on 2/20/2014.

The certified copy of the transcript of the record of the proceedings pertaining to the instant matter was filed on November 5, 2013 and was reviewed by this Court. The transcript demonstrates that Appellant's Application for Determination of Benefit Rights was allowed by the Director, and that the Director issued a Redetermination on April 9, 2013 that held that Appellant had quit work with Mac Installation & Consulting LLC (hereinafter "the employer") with just cause; and the employer filed an appeal from that Redetermination. On April 10, 2013 the Ohio Department of Job and Family Services ("ODJFS") transferred jurisdiction to the Unemployment Compensation Review Commission. On May 30, 2013 a hearing was held before Hearing Officer Leanne Colton (hereinafter "the hearing"), who issued a Decision reversing the Director's Redetermination, finding that Appellant had quit work without just cause, and suspending Appellant's benefits beginning March 17, 2013 and suspending his

benefit rights until he works in six weeks of covered unemployment and earns at least $1,380.00. On June 24, 2013 Appellant filed a Request For Review[1] which was disallowed by the Unemployment Compensation Review Commission by a decision mailed to Appellant on August 21, 2013. On September 20, 2013 Appellant filed a Notice Of Administrative Appeal From Denial Of Unemployment Benefits.

The Transcript of the hearing demonstrates the following. Neither party was represented by counsel. Hearing Officer Colton advised the parties that: she would ask questions of Kenneth McElrath, Jr. ("Mr. McElrath"), President of the employer, and then allow Arlana McElrath, the employer's representative, and Ron Higgins, Appellant's representative, to ask any questions of him; then she would ask questions of Appellant and afterward, allow Ms. McElrath and Mr. Higgins to ask questions of him; and then allow each representative to make a closing statement to summarize the parties' respective positions. After being duly sworn according to law, Mr. McElrath and Appellant testified in response to questions posed by

[1] Appellant's Reason for Filing Appeal was "I want to file an appeal because I had union representation that could notate the facts to support my case about lack of work." The record does not include any additional evidence or documents submitted by Appellant with his Request For Review which this Court could have reviewed and would have been required to review. With regard to a Request For Review, Ohio Adm.Code 4146-25-01 provides in relevant part: "If the appellant desires to submit additional evidence, the appellant should so state and set forth a brief statement thereof." Moreover, Ohio Adm.Code 4146-17-01(A) provides that: "In addition to the administrator's file the review commission shall maintain a file in each case before it. The review commission file shall consist of the appeal, request for review or an application for appeal, all exhibits introduced at the hearing, the transcript where it exists and any other documents pertaining to the case that are submitted or generated after an appeal, application for appeal or request for review has been filed." Read or interpreted together, these code provisions allow a party to supplement the record and/or submit additional evidence after a hearing has been held by the hearing officer, and after or at the time a request for review is filed and a common pleas court is required to consider it. *The Shepherd Color Co. v. Director, ODJFS, et al.*, 12th Dist. No. CA2012-11-244, 2013-Ohio-2392, 2013 Ohio App. LEXIS 2349 at ¶¶27-29.

Hearing Officer Colton; although being given the opportunity to do so, Ms. McElrath, and Ron Higgins, declined to pose any questions to Mr. McElrath or Appellant.[2]

Mr. McElrath testified that Appellant was employed by his company from April 12, 2011 until March 15, 2013 as a technician, installer. On March 18, 2013 when he was scheduled to work and the employer had work for him, Appellant came in and verbally advised Mr. McElrath that he wanted to quit but never submitted a written resignation. According to Mr. McElrath the reason given by Appellant was that he had felt disrespected by Mr. McElrath's disappointment in Appellant's management of an out-of-town job. Mr. McElrath testified that at no time had he ever told Appellant that his job was in jeopardy or that he was going to be fired; but he had told Appellant that work was slow and he was doing his best to manage his technicians, and that there would be some down time but he would inform his employees with enough notice about what week(s) they could expect to work; and that he had work lined up for Appellant during the upcoming weeks, so that absent Appellant quitting, there would have been work available for him.

Appellant testified that he quit for two reasons: 1.) he wanted to go back to the union hall because he felt as if he had been disrespected by Mr. McElrath concerning the out of town job; and 2.) because of "the off and on work", meaning that he would work two weeks, be off a week, work a week, be off two weeks, and he could not support his family by not working right.

The employer also submitted evidence for purposes of the hearing in the form of documentation to include the Separation Form indicating the "Reason for Separation" as "Quit

[2] When Hearing Officer Colton asked Mr. Higgins if he had any questions for Mr. Turner, he responded "Um comments but I believe that's for (inaudible)" and Hearing Officer Colton reiterated that he could make closing statements shortly and again asked if he had any questions for Mr. Turner, to which he responded "no".

ELIGIBLE for Re-hire" and Work Orders, Certified Payroll Registers, Payroll Schedules, Job Detail Reports and Invoices in support of its position that Appellant had quit his employment and that it had work available for him. Hearing Officer Colton verified that this documentary evidence had been provided to Appellant prior to the hearing and then entered these documents together into the record as Employer's Exhibit A.

Closing statements were made by Ms. McElrath and Mr. Higgins. It was during his closing statement that Mr. Higgins explained that from January 1, 2013 to the date of his separation there were 520 man-hours available for work, the consequences associated with Appellant having less than 300 hours during a three-month period, specifically loss of health and welfare plan benefits, and that Appellant was going to be short of that; and that he had work at the union hall available for Appellant. However, Hearing Officer Colton stopped him to advise that since he was Appellant's representative he could not testify or have the opportunity to add any new information.[3]

The testimonies provided by Mr. McElrath and Mr. Higgins and the documentary evidence submitted at the hearing did not include any information or evidence regarding a change in Appellant's employment terms between January 1, 2013 and his separation date of March 13, 2013 and as compared to his employment prior to that time period, to include any reduction in Appellant's wages, hours or benefits, much less a substantial reduction thereof. Indeed, even the information concerning the required number of hours needed within a three month period to continue health and welfare benefits provided by Mr. Higgins during his

[3] Like her advisement to Mr. Higgins, Hearing Officer Colton also informed Ms. McElrath that as the employer's representative, she could not testify but could only ask questions and make a Closing Statement. Again, both Mr. Higgins and Ms. McElrath declined to ask any questions. Mr. Higgins did not offer or submit any documents or other evidentiary materials.

closing statement does not demonstrate a **change** of employment terms such as a **reduction** of wages, hours, or benefits during the time frame of January 1, 2013 to March 18, 2013, as compared to his employment with the employer prior to that time frame. However, whether or not Mr. Higgins would have provided information bearing on the issue of any change of employment terms to include a reduction of wages, hours or benefits but for being precluded from offering any new information, or being advised by Hearing Officer Colton that she would reopen the testimonial portion of the hearing so that Mr. Higgins could and should ask Appellant and Mr. McElrath questions that could serve to develop evidence on these issues, is a question that cannot be answered now.

From the evidence presented, Hearing Officer Colton set forth her "**FINDINGS OF FACT**" as: 1.) Appellant told Mr. McElrath that he was quitting because he felt as though he had been disrespected by Mr. McElrath; 2.) Appellant had not given any prior indication that he was thinking about quitting;[4] 3.) Appellant's job was not in jeopardy for any reason when he quit; and, 4.) the employer had continuing work available for him. Absent from Hearing Officer Colton's "FINDINGS OF FACT" was a finding that the Appellant's schedule of working one or two weeks and then being off the next one or two weeks was a factor in Appellant's decision to quit as he had testified. This can be construed to mean that Hearing Officer Colton, as the trier of fact, did not find his testimony concerning a second reason for quitting credible.

In the words of Hearing Officer Colton, the "**ISSUE**" presented was "Did [Appellant] quit work with [the employer] without just cause." The applicable "**LAW**" cited by Officer Colton

[4] This Court could not locate in the transcript of the hearing any testimony or evidence to support this specific finding of fact.

reads in relevant part: "An individual is not eligible for benefits if the individual quits work without just cause. ***" *Sections 4141.29(D)(2)(a) and 4141.29(G) O.R.C."*

In the "**REASONING**" section of her Decision, Hearing Officer Colton stated, in relevant part, as follows:

> The facts establish that claimant quit work. The question, therefore, before the Hearing Officer is whether claimant quit work with or without just cause. ***
>
> There is not a slide-rule definition to determine if just cause exists. Rather, each case must be judged and considered upon its own particular merits. In order to support a finding that claimant quit work with just cause, claimant's decision to resign must be reasonable and consistent with what an ordinarily prudent person would do under the same or similar circumstances.[5] Further, an individual is generally expected to pursue all other available or reasonable options before deciding to quit employment. This includes, but is not limited to, reporting the issue(s) or problem(s) to the employer when practical and then allowing the employer a reasonable opportunity to correct, address, or change the problem before electing to quit employment.[6]

---

[5] In *Irvine v. Unemploy. Comp. Bd. Of Review*, 19 Ohio St.2d 15, 17 (1985), quoting *Peyton v. Sun T.V.*, 44 Ohio App.2d 10 (1975), quoted and relied upon by Appellant and Appellee, the Ohio Supreme Court stated: "The term 'just cause' has not been clearly defined in our case law. We are in agreement with one of our appellate courts that '[t]here is, of course, not a slide-rule definition of just cause. Essentially, each case must be considered upon its particular merits. 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.'" This part of the second paragraph contained in the "**REASONING**" section of Hearing Officer Colton's Decision incorporates this ordinarily prudent or reasonable person standard.

[6] In *Shephard v. Director, ODJFS, et al.*, 166 Ohio App.3d 747, 754, 2006-Ohio-2313, 853 N.E.2d 335, 340, at ¶26, the Eighth District Court of Appeals quoted from and relied upon *DiGiannantoni v. Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300, 307, 671 N.E.2d 1378, for the following proposition: "***[G]enerally[,] employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore, will not be entitled to unemployment benefits." The Eighth District Court of Appeals in *Shephard* also cited to *Irvine* to support its determination that this general rule also applied in the context of an employee quitting for medical reasons, as was the case in *Shephard*. Thus, this part of the second paragraph in the "**REASONING**" section of Hearing Officer Colton's Decision is consistent with Ohio law. However, and contrary to Hearing Officer Colton's finding that Appellant had not notified the employer of any issue or problem or that he was thinking about quitting, the record demonstrates that there was no evidence presented concerning this issue and that Hearing Officer Colton did not inquire as to whether or not Appellant had in fact reported the issue or problem to the employer or advised that he was thinking about quitting, and had thereby allowed the employer a reasonable opportunity to correct, address or change the problem.

> Quitting is a drastic measure, and should only be done as a last available option. Here, based on the available evidence and witness testimony, it cannot be found by a preponderance of the evidence that claimant acted reasonably or as an ordinarily prudent person would in a same or similar situation before deciding to quit. Claimant did not discuss any concerns he had with the employer before he quit.[7] **He has not shown that he had no choice but to quit**, or that he quit for good cause.[8] This is a disqualifying separation.

Appellant has set forth three bases for reversing the Commission's decision: 1.) Hearing Officer Colton and the Commission applied an incorrect legal standard, i.e., placing the burden on Appellant to establish that he had "no choice but to quit"; 2.) the Decisions of the Hearing Officer and Commission that Appellant quit his job without just cause is unlawful and against the weight of the evidence[9]; and 3.) in light of the un-contradicted testimony of the employer

---

[7] This Court finds that this sentence is not supported by the transcript of the hearing. There was no testimony or evidence presented on this issue, i.e., that Appellant did or did not discuss his concerns with the employer prior to quitting on March 18.

[8] (Emphasis added by bold print.) It is the highlighted part of this sentence in the "**REASONING**" section of the Decision that Appellant argues indicates that Hearing Officer Colton applied the incorrect standard, requiring reversal of the Commission's Decision. In support of this argument, Appellant cites to and quotes from the Fourth District Court of Appeals' decision in *Henize v. Giles*, 69 Ohio App.3d 104, 111-112, 590 N.E.2d 66. In that case, the Court did find that the standard of "requiring establishment by the claimant of no other recourse but to quit employment in order to justify entitlement to unemployment compensation benefits, was not an application of the *Peyton-Irvine* just-cause-to-quit standard, and consequently, the standard used...was improper, erroneous, and not in accordance with the applicable law." *Id.*, 69 Ohio App.3d at 112. However, the Court also found that the error was not harmless because "the evidence adduced at the hearing before the referee could have conceivably supported a finding of [***] just cause to quit work." *Id.* The court explained: "The record herein includes evidence that appellant's employer had repeatedly failed to resolve her grievances concerning inferior work by other employees and failed to repair her machine despite many complaints by appellant, that appellant had been verbally harassed by the plant manager, and that the plant manager had applied discipline with respect to employees in a discriminatory fashion. The trier of fact could have inferred that these conditions were present on August 24, 1981, the last date of appellant's employment and that, if this testimony was credited, it would constitute a justifiable reason for leaving. [Citation omitted.] Therefore, application of an improper standard by the referee and the board was unlawful and not harmless error." *Id.*

[9] Appellant asserts that the evidence established that the employer only provided sporadic employment insufficient for Mr. Turner to maintain his health benefits and support his family, and that it was reasonable and prudent for Appellant to return to the IBEW Local 38 hiring hall to seek other employment. However, as noted above, the transcript of the hearing included in the Commission's certified record does not support this broad assertion. Appellant did testify that the "the off and on work" did affect his ability to support his family; yet, technically Mr. Higgins did not **testify** concerning the fact that 300 hours must be logged for a union member such as Appellant to maintain his health and welfare benefits. However, even considering this information along with Mr. Higgins' statement that between January 1 and March 18, 2013 Appellant had worked 264 man-hours, along

and Appellant that the employer lacked work, the Commission's decision that Appellant was not separated from his employment due to lack of work is against the manifest weight of the evidence.[10]

This Court may reverse the Commission's determination only if it is "unlawful, unreasonable, or against the manifest weight of the evidence." *Shephard, supra*, 853 N.E.2d 335, at ¶18, citing *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207, 1995 Ohio 206. In making this decision, this Court must give deference to the Commission in its role as finder of fact. *Shephard, supra*, citing *Irvine, supra*, 19 Ohio St.3d 15, 18. This Court may not reverse the Commission's decision simply because "'reasonable minds might reach different conclusions.'" *Shephard, supra*, quoting from *Irvine, supra*, 19 Ohio St.3d 15, 18. "On close questions, where the board might reasonably decide either way, [this Court has] no authority to upset the agency's decision. *Id.* Instead, [this Court's] review is limited to determining whether the Commission's decision is unlawful, unreasonable, or totally lacking in competent, credible evidence to support it." *Shephard, supra* at ¶18, citing *Irvine*, 19 Ohio St.3d 15, 18.

---

with Mr. McElrath's testimony and documentary evidence establishing that the employer had six weeks of work lined up for him beginning the very day he quit, Appellant would have met the 300 hour requirement by March 31, 2013 and been able to maintain his health and welfare benefits. Further, Appellant attached as Exhibit "A" to his Brief In Support Of Appeal, an Affidavit completed by the employer, through Kenneth McElrath, averring that the parties agree that Appellant had the right to return to the hiring hall under the Union Agreement, and MAC Installations has no objection to Appellant receiving unemployment benefits." This sworn testimony was not submitted at the time of the hearing or with Appellant's Request For Review, but only subsequent to the Decisions of the Hearing Officer and Commission, and for purposes of the Appeal to this Court; and is not part of the certified record from the Commission. Therefore, it cannot be considered by this Court. *Lawson v. State of Ohio, Unemp. Comp. Board of Review, et al.*, 8th Dist. No. 70256, 1996 Ohio App. LEXIS 5195 (Nov. 21, 1996). Moreover, even if Appellant had provided it with his Request For Review or even if this Court could consider it, the fact remains that whether or not the employer agrees not to contest unemployment compensation benefits or whether or not there has been any breach of a collective bargaining agreement, is irrelevant to the determination of "just cause". *Westphal v. Cracker Barrel*, 9th Dist. No. 09 CA 009602, 2010-Ohio-290, 2010 Ohio App. LEXIS 163, ¶7; and *Wilson v. Matlack, Inc.*, 141 Ohio App.3d 95, 98, 750 N.E.2d 170 (4th Dist. 2000).

[10] This assertion is not supported by the transcript of the hearing, as more fully developed above.

According to the Eighth District Court of Appeals, "it is well-established that the burden of proof in an unemployment compensation case is on the employee to prove that []he was discharged by [his] employer without just cause, or quit work with just cause, and is therefore entitled to unemployment benefits under R.C. 4141.29(D)(2)(a). *Shephard, supra* at ¶20. Moreover, "as a general rule, administrative agencies are not bound by the strict rules of evidence applied in a court."[11] *Id.* at ¶22.

Applying these principles to the instant matter, this Court finds as follows.

First, the "**REASONING**" section of Hearing Officer Colton's Decision, read in its entirety does not demonstrate that she, and therefore, the Commission applied an incorrect legal standard. Moreover, assuming *arguendo* that this section of the Decision can be so construed, and what makes this case distinguishable from *Henize* is that, any error is harmless because the evidence and information demonstrated by the certified record could not have supported a finding of just cause to quit work. There was no evidence submitted to demonstrate that there was a change in Appellant's terms of employment he had had for approximately two years, or to demonstrate a reduction in Appellant's wages, hours or benefits, much less a substantial reduction that under Ohio law could qualify as just cause to quit. *See Bethlenfalvy v. Ohio Dept. of Job & Family Services*, 2005-Ohio-2612, 2005 Ohio App. LEXIS 2484. Technically, the statements by Mr. Higgins, Appellant's representative at the hearing, did not constitute evidence since his statements or assertions were not made under oath. However, even if they

---

[11] Appellant asserted at page 3 of his Brief that the documents constituting Employer's Exhibit "A" submitted at the hearing and entered into the record by Hearing Officer Colton were not authenticated, but made no argument that Hearing Officer Colman should not have considered them for this reason; and in this Court's opinion any such argument would be without merit. Indeed, Ohio Adm.Code 4146-7-02(B) Evidence, reads in relevant part: "***The proceedings shall be informal, and the review commission and hearing officers shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure."

can and should be considered because the rules of evidence at administrative hearings are relaxed[12] and when considered with the testimony of Mr. McElrath, they do not demonstrate that Appellant would have lost his health and welfare benefits had he not quit, and they do not demonstrate any change in employment terms or reduction in hours, much less a substantial reduction in hours. And, again, the Affidavit of Mr. McElrath cannot be considered by this Court for purposes of this appeal.

Moreover, while the certified record demonstrates that there was no evidence submitted that prior to March 18, 2013 Appellant had not notified the employer of his problem with "the off and on work", it also demonstrates that there was no evidence submitted to establish that prior to Appellant telling his employer on March 18, 2013 that he was quitting, he had discussed the problem of "the off and on work" with the employer so as to give the employer the opportunity to solve the problem before Appellant quit. However, the certified record also demonstrates that Officer Colton did not inquire of either Mr. McElrath or Appellant concerning this issue.

In his Reply Brief, Appellant has cited and quoted from O.R.C. 2506.03(A) in support of his argument that he "was not permitted to present evidence [through his union representative] regarding his rights under the collective bargaining agreement and how those facts impacted the ultimate issue under consideration by the hearing officer" and "the hearing officer arbitrarily prevented Mr. Higgins, an individual with knowledge of the collective bargaining agreement, to provide evidence regarding Mr. Turner's employment opportunities with the employer and through the union hiring hall" and "the effect of the restricted hours

---

[12] Ohio Adm.Code 4146-7-02(B).

offered by MAC Installations."[13] However, O.R.C. 2506.03(A) has no application herein since it applies to decisions made by a political subdivision; it is O.R.C. 4141.282 that sets forth the procedure to be followed when appealing a final decision of the unemployment compensation review commission to a court of common pleas. *Jacqueline J. Abrams-Rodkey v. Summit County Children Services, et al.*, 163 Ohio App.3d 1, 2005-Ohio-4359, 836 N.E.2d 1, at ¶¶30-32; *The Shepherd Color Co. v. Director, ODJFS, et al., supra*, ¶31. And, as already noted by this Court: any rights under the collective bargaining agreement are irrelevant to a determination of "just cause", *Wilson v. Matlack, Inc., supra*; and even considering the information relayed by Mr. Higgins that Appellant had accumulated 264 man-hours and needed 300 to maintain his health and welfare benefits, along with Mr. McElrath's testimony that he had work for Appellant for six weeks, Appellant would have been able to secure an additional 36 hours of work by March 31, 2013 to maintain those benefits. Nowhere in Appellant's briefing does Appellant argue that if Mr. Higgins had been permitted to testify or reopen the testimonial portion of the hearing that he could have and would have developed evidence and information concerning a change in employment terms to include a reduction in work hours, much less a substantial reduction, as compared to his employment with the company from April 11, 2011 to January 1, 2013. But, Mr. Higgins is a union representative, not a lawyer.

Even though not raised by Appellant, Ohio Adm.Code 4146-7-02 requires the hearing officer to provide a fair hearing, guarantees each interested party and the interested party's representative certain rights, and imposes upon the hearing officer certain duties.[14] In *Lawson*

---

[13] Reply Brief, at pages 5 and 6.

[14] Ohio Adm.Code 4146-7-02 requires that the hearing officer conduct hearings and other proceedings in a case in such order and manner and take any steps consistent with the impartial discharge of his or her duties which appear reasonable and necessary to ascertain all facts and to render a fair and complete decision on all issues

v. State of Ohio, Unemployment Compensation Board of Review, et al., supra, at *12, the Eighth District Court of Appeals found that the hearing officer had fulfilled her duties under Ohio Adm. Code 4146-7-02 to the extent she had repeatedly addressed the pro se claimant, had advised her of her right to cross-examine the employer's witnesses, and had helped her properly frame questions on cross-examination. In *Barnett v. Administrator, Ohio Bureau Of Employment Services, et al.*, 8th Dist. No. 50751, 1986 Ohio App. LEXIS 7137, at*10-11, the Eighth District Court of Appeals found that the referee's failure to provide the unrepresented claimant even basic assistance in developing key, and obvious facts supporting his case was another basis to reverse the decision of the Board denying benefits to the claimant; this was especially true, according to the Court, because the claimant and his physician had submitted written statements during the application process demonstrating the reasonableness of the claimant's decision to quit based on the medical information he had and the other circumstances in place when he made the decision to quit. In *Campion v. Administrator, Ohio Bureau Of Employment Services, et al.*, 62 Ohio App.3d 897, 903, 577 N.E.2d 741, 745-46, 1990 Ohio App. LEXIS 3499, the Eighth District Court of Appeals, citing and relying upon Ohio Adm.Code 4146-7-02 and *Barnett*, held that the referee's failure to inquire and/or failure to more fully inquire of the pro se claimant concerning her testimony about treatment of other employees, harassment, a self-

---

which appear to be presented. It also provides that a hearing officer conducting a proceeding may examine the interested parties and other witnesses, and each interested party and his representative shall have, in relevant part, all rights of fair hearing, including the right of examination and cross-examination of witnesses, the right to present testimony and other evidence, the right to inspect and examine documents, and the right to present testimony and other evidence in explanation and rebuttal and the right to present argument. Also, where a claimant or employer is not represented by counsel, it requires the hearing officer to advise the party as to his rights, aid him in examining and cross-examining witnesses and give him every assistance compatible with the discharge of his or her official duties.

imposed progressive discipline policy that the employer violated, and her firing serving as a pretext because the probationary period had ended, constituted a denial of a fair hearing.

Thus, the pivotal or determinative issue or question for this Court that remains is the following. Did Hearing Officer Colton fulfill her obligation to help the pro se claimant/Appellant and his union representative develop testimony or evidence concerning if and how "the off and on work" from January 1 to March 18, 2013 had differed or changed from his employment prior to that time period, to include whether or not the change constituted a substantial reduction in his work hours so as to constitute "just cause" to quit; and whether or not Appellant had discussed this problem or issue with the employer. In this Court's opinion, the answer to this pivotal issue or question is "no". Therefore, the decisions of the Hearing Officer and Commission were unlawful. Accordingly, the Commission's decision is reversed and this matter is remanded to the Commission for further proceedings, to include another hearing, consistent with this Opinion.

IT IS SO ORDERED.

There is no just reason for delay.

Pamela A. Barker 3-18-14

JUDGE PAMELA A. BARKER DATED