

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RICHARD S. MORRIS,)	CASE NO. CV 12 785099
)	
Appellant,)	
)	
v.)	JUDGE BRENDAN J. SHEEHAN
)	
)	
BIG LOTS STORES, INC., <i>et al.</i> ,)	
)	
Appellees.)	OPINION AND JUDGMENT
)	ENTRY
)	
)	

This case is an administrative appeal from the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to R.C. §4141.282. The Review Commission found that Richard S. Morris (“Appellant”) was discharged from employment with Big Lots Stores, Inc. (“Big Lots”) for just cause in connection with Appellant’s work performance. Appellant contends that his discharge was without just cause.

Appellant was employed by Big Lots as an assistant manager. Appellant missed work on December 15 and 16, 2011. The records available to the Review Commission and this Court demonstrate that Appellant visited the emergency room at Southwest General Hospital on December 16, 2011. Big Lots maintains that Appellant was terminated for “job abandonment” because Big Lots claims he did not call in for two days of work. Appellant maintains that he notified his supervisors via text message that he was in the emergency room.

The standard of review this Court must apply to appeals of unemployment compensation benefits determinations is set forth in R.C. §4141.282(H):

The court shall hear the appeal on the certified record provided by the commission. 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.

The Court's power to review agency decisions is, therefore, strictly limited. The Ohio Supreme Court has further explained the limited power of a reviewing court in stating:

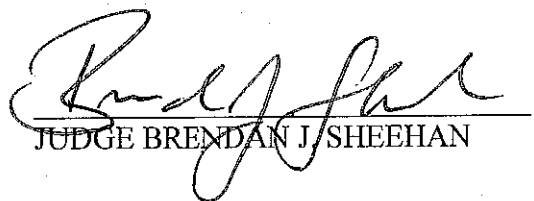
Such courts are not permitted to make factual findings or to determine the credibility of witnesses. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 13, 233 N.E.2d 582 [42 O.O.2d 6]. The duty or authority of the courts is to determine whether the decision of the board is supported by the evidence in the record. *Kilgore v. Bd. of Review* (1965), 2 Ohio App.2d 69, 71, 206 N.E.2d 423 [31 O.O.2d 108]. The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. *Craig v. Bur. of Unemp. Comp.* (1948), 83 Ohio App. 247, 260, 83 N.E.2d 628 [38 O.O. 356]. Moreover, "[o]ur statutes on appeals from such decisions [of the board] are so designed and worded as to leave undisturbed the board's decisions on close questions. Where the board might reasonably decide either way, the courts have no authority to upset the board's decision." *Charles Livingston & Sons, Inc. v. Constance* (1961), 115 Ohio App. 437, 438, 185 N.E.2d 655 [21 O.O.2d 65].

Irvine v. State Unemploy. Comp. Bd. of Review, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985).

According to the record of the Review Commission, Appellant was in the emergency room of a local hospital on one of the days for which he did not report to work. While there is disputed evidence as to whether Appellant contacted his place of employment from the emergency room, it is unreasonable to require individuals to contact their employers while seeking medical attention.

The court finds that the decision of the Review Commission is unreasonable and failed to adequately consider evidence in the record. **ACCORDINGLY, THE DECISION OF THE REVIEW COMMISSION IS REVERSED. PARTIES TO BEAR THEIR OWN COSTS.**

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 9/19/12

CERTIFICATE OF SERVICE

A copy of the foregoing was served by mail this 19th day of September, 2012 on the following:

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