IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MEZAN H. RAMAZANI,	)	**CASE NO. CV 11 762562**
	)	
Plaintiff-Appellant,	)	**JUDGE JOHN P. O'DONNELL**
	)	
vs.	)	
	)	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, *et al.*	)	**JOURNAL ENTRY**
	)	
Defendants-Appellees.	)	

John P. O'Donnell, J.:

This case is an appeal by the plaintiff, Mezan Ramazani, from a decision by the Ohio Department of Job and Family Services that Ramazani was terminated from his employment with just cause.

STATEMENT OF FACTS

Ramazani worked as a maintenance associate for defendant-appellee Harvey Schach, d.b.a. Hilton Garden Inn[1]. His employment began on September 18, 2002, and ended when he was terminated on January 12, 2011.

Ramazani was disciplined on a few occasions during his employment. He was disciplined in 2005 and 2007, and then again in November of 2010. As a result of the situation in 2010, Ramazani received and signed a written warning that stated: "Any further infractions may result in termination."

Less than two months later, on January 12, 2011, a hotel guest pulled her car up to the back entrance to check out. With her car stopped at the back entrance, she began clearing off

[1] Appellee Harvey Schach d.b.a. Hilton Garden Inn will be referred to throughout this entry as the Hilton Garden Inn.

snow that had fallen onto her car. Ramazani asked the guest to move her car to a different area to avoid the chance of another guest slipping and falling on the snow that had been brushed off. The guest took offense to the request and complained to the hotel manager. As a result, and because of his past infractions, Ramazani was terminated.

Ramazani contends that the snow being brushed from the guest's car was blowing into the entranceway of the hotel, causing a safety hazard for other guests, and that he asked the guest to pull her vehicle forward out of concern for the safety of other guests and employees.

The record includes the hotel's employee disciplinary action report, dated January 12, 2011, which states as follows:

> Final Written warning, on above date a guest had pulled their car from the parking lot to under the porte cochere by the back entrance of the hotel. While proceeding to check out some snow from atop the roof fell on her front windshield and hood, and the guest then proceeded to clear it off. At this time Mr. Ramazani was also outside dealing with snow issues and proceeded to inform the guest she could not park there and she had to move her vehicle and clean it off somewhere else. He said that someone will trip and fall and he will be blamed for this occurrence. He then proceeded to tell the guest that he would have to pay if someone falls. The guest became extremely distraught due to the way Mr. Ramazani was speaking to her. The conversation then came inside the hotel and the guest wanted to voice a formal complaint due to the way she was spoken too (*sic*). Even though the guest had come inside and was asking for a manager Mr. Ramazani continued to talk over her in attempting to make his point heard.

On the day after his termination, Ramazani filed a claim for unemployment benefits with appellee Ohio Department of Job and Family Services. The ODJFS issued a determination of benefits that denied the claim on the basis that Ramazani was terminated for just cause. Ramazani appealed, and the ODJFS issued a redetermination that reversed the determination and allowed the claim without a hearing. The Hilton Garden Inn appealed the

redetermination, and the ODJFS transferred jurisdiction of the claim to the unemployment compensation review commission for an evidentiary hearing. The hearing was held on May 26, 2011.

At the hearing, the Hilton Garden Inn called its guest service manager, Joel Hoffmaster, as a witness. His testimony supported the Hilton Garden Inn's position. He described the occurrence as an "altercation" between Ramazani and the guest. George Innacone, the regional director of operations, and Ramazani also testified.

The hearing officer reversed the ODJFS's redetermination, and denied the claim on the basis that Ramazani was terminated for just cause. The hearing officer reasoned as follows:

> * * * The testimony and evidence presented establishes that claimant engaged in a loud verbal altercation with a guest. The evidence indicates that claimant acted in a manner which was inconsistent with the employer's interest in providing satisfactory customer service. The facts further show that claimant had been issued a number of prior warnings, including a final warning in November 2010. After a review of the entire record in this matter, the Hearing Officer finds that there was sufficient fault or misconduct on the part of claimant to reasonably justify the discharge. * * *

Because Ramazani had already been paid benefits totaling $4,275.00, the hearing officer ordered that those payments be repaid to the ODJFS.

Ramazani appealed the hearing officer's decision to this court on August 23, 2011. The appeal is now decided on Ramazani's merit brief, the ODJFS's opposition brief, and the transcript of proceedings.

STANDARD OF REVIEW

This appeal is brought pursuant to section 4141.282 of the Ohio Revised Code, which provides, in pertinent part:

> If the court finds that the decision of the [unemployment compensation review] 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 hearing officer determines purely factual questions. See, *e.g.*, *Irvine v. Unemploy. Comp. Bd. of Review*, 19 Ohio St.3d 15, 17, (1985). As such, a reviewing court is not permitted to make factual findings or determine the credibility of witnesses. *Id.* at 18. The court's duty is limited to determining whether the decision of the board is supported by the evidence in the record. *Kilgore v. Bd. of Review*, 2 Ohio App.2d 69, 71 (4th Dist. 1965). A hearing officer's decision cannot be reversed as being against the manifest weight of the evidence if it is supported by some competent, credible evidence going to each element of the controversy. See, *e.g.*, *DiGiannantoni v. Wedgewater Animal Hospital, Inc.*, 109 Ohio App.3d 300, 305 (10th Dist. 1966). Where the hearing officer might reasonably decide either way, the courts have no authority to upset the hearing officer's decision. *Irvine* at 18.

LAW AND ANALYSIS

Ramazani sets forth one assignment of error:

> The Unemployment Compensation Review Commission erred when it reversed the Director of Ohio Department of Job and Family Services (*sic*) March 10, 2011 Redetermination and found that Ramazani was terminated with just cause in connection with work.

A claimant is not eligible for unemployment benefits if he has been terminated for "just cause" in connection with his work. R.C. § 4141.29(D)(2)(a). The Ohio Supreme Court has defined just cause as "that which, to an ordinary intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine* at 17. Because there is "not a slide-rule definition of just cause," whether just cause exists must be determined upon the facts of each case. *Id.*

The Hilton Garden Inn's employee handbook states that any behavior which, in the opinion of the company, is detrimental to its interests, team members, and guests will not be tolerated and is cause for just dismissal.[2] The hearing officer found that Ramazani was terminated for just cause because he acted in a manner which was inconsistent with the employer's interest in providing satisfactory customer service. If competent, credible evidence was presented at the hearing that supports the hearing officer's finding, the court cannot reverse the decision as being against the manifest weight of the evidence.

Joel Hoffmaster's testimony supports the hearing officer's decision. Hoffmaster's account of the altercation between Ramazani and the guest clearly desribes a situation adverse to the hotel's interest in providing excellent customer service. Ramazani testified to a different set of events, but it is within the hearing officer's discretion to decide the credibility of the witnesses. As long as the hearing officer's decision is supported by competent, credible evidence - which is the case here - the court should affirm.

In his brief, Ramazani cites to *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Srvs.*, 73 Ohio St.3d 694, 697, (1995), for the proposition that the hearing officer should consider whether an award of benefits will further the underlying purpose of unemployment compensation, namely to "provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own." But this is not a case where Ramazani bears no fault. He argued with a customer under circumstances that reflected badly on the hotel. In starting that argument, especially in the light of his recent previous discipline, he ran the risk of getting fired.

[2] Ramazani's Employee Disciplinary Action Report is attached to the ODJFS's opposition brief as Exhibit 4 and references the Hilton Garden Inn's Code of Conduct #37, summarized above.

Ramazani's citation to *Kiikka v. Admin., Bur. of Emp. Srvcs.*, 21 Ohio App.3d 168, 286 (8th Dist. 1985) for support is unavailing. In *Kiikka,* the employee was discharged for excessive tardiness and refusal to work overtime. His claim for unemployment benefits was denied at each level of the administrative process, and the denial was affirmed by the court of common pleas and the court of appeals. The appeals court noted that the critical issue is not whether an employee has technically violated some company rule, but rather whether the employee, by his actions, demonstrated an unreasonable disregard for his employer's best interests. *Id.* at 169. If tardiness is an unreasonable disregard of an employer's best interests, then arguing with a customer as a worker in an industry where keeping the guest satisfied is the employer's primary interest is just as surely antithetical to the employer's best interest.

Because the decision of the hearing officer was not unlawful, unreasonable, or against the manifest weight of the evidence, the decision of the unemployment compensation review commission is hereby affirmed.

IT IS SO ORDERED:

_____ Date: _____
Judge John P. O'Donnell

SERVICE

A copy of this journal entry was sent by email, this 13th day of November, 2012, to the following:

Eric J. Harsey
ejharsey@lawejh.com
Attorney for plaintiff-appellant

A copy of this entry was not sent by email to Patrick MacQueeney, counsel for the defendant-appellee ODJFS, because he has failed to provide the court an email address as required by Local Rule 8.0(A).

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Judge John P. O'Donnell