

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

KATHLEEN A. WINTERS,	:	APPEAL NO. C-110050
	:	TRIAL NO. A-1003719
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES,	:	
and	:	
CINCINNATI CATHOLIC RELIGIOUS	:	
COMMUNITIES, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

Kathleen Winters appeals the trial court’s judgment that affirmed the Ohio Unemployment Compensation Review Commission’s decision denying unemployment-compensation benefits to Winters. We conclude that Winters’s sole assignment of error is without merit, so we affirm the judgment of the trial court.

Winters was employed by the Cincinnati Catholic Religious Communities as a physical education teacher. Winters was discharged from her position following an incident with a first-grade student at St. John the Baptist school. Following her discharge, Winters was granted unemployment-compensation benefits.

Cincinnati Catholic Religious Communities objected to the grant of benefits, and the Director of the Ohio Department of Job and Family Services issued a redetermination that Winters was entitled to benefits. Cincinnati Catholic Religious

Communities appealed to the Unemployment Compensation Review Commission, and a hearing was held before a hearing officer.

During the hearing, Cincinnati Catholic Religious Communities presented evidence that Winters had mistaken a first-grade boy as one of her kindergarten pupils whom she was trying to instruct about the procedure for getting drinks at a water fountain. According to the testimony of Lori Schrader, a teacher who had witnessed the incident, Winters “grabbed [the boy] on the right wrist and * * * forcibly pulled him, yanked him away from the water fountain.” Winters testified that she had mistaken the boy for one of her students, and that she had not grabbed his wrist but had put her hands on his shoulders to redirect him. Cincinnati Catholic Religious Communities also presented evidence that Winters had been previously disciplined for her interactions with students and other school employees. While not disputing that she had been so disciplined, Winters challenged the factual bases of the disciplinary actions. At the conclusion of the hearing, the hearing officer reversed the director’s redetermination and held that Winters was not entitled to unemployment-compensation benefits.

Winters’s request for further review was denied by the Unemployment Compensation Review Commission. Winters appealed to the trial court. Following a hearing, the trial court affirmed the decision of the Unemployment Compensation Review Commission. Winters now appeals.

In her sole assignment of error, Winters asserts that the trial court erred when it affirmed the commission’s denial of unemployment-compensation benefits. An individual is not entitled to unemployment compensation if she was discharged for just cause. R.C. 4141.29(D)(2)(a). Whether there was just cause to discharge an employee is a factual determination. *Irvine v. Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587. “An appellate court may reverse the Unemployment Compensation Board of Review’s ‘just cause’ determination only if it is unlawful, unreasonable or against the manifest weight of the evidence.” *Tzangas*,

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Plakas & Mannos v. Ohio Bur. of Emp. Serv., 73 Ohio St.3d 694, 1995-Ohio-206, 653 N.E.2d 1207, paragraph one of the syllabus.

Winters contends that the hearing officer improperly considered hearsay evidence about prior incidents for which Winters had been disciplined. The hearing officer was not bound by the rules of evidence. R.C. 4141.281(C)(2). We conclude that the hearing officer did not improperly consider the testimony about the other incidents. In his decision, the hearing officer did not focus on the allegations underlying the other disciplinary action but on the fact that Winters had been warned about her inappropriate behavior. Winters did not deny that she had been disciplined previously.

Further, having reviewed the record, we conclude that the hearing officer's decision that there was just cause to discharge Winters after the incident involving the first-grader was not against the manifest weight of the evidence. The hearing officer was in the best position to determine the credibility of Winters's and Schrader's testimony about the incident. We also conclude that the hearing officer's decision was not unlawful or unreasonable. The sole assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., SUNDERMANN and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 5, 2011

per order of the Court _____
Presiding Judge