

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

RAYMOND J. JOHNSON	:	
	:	Appellate Case No. 23522
Plaintiff-Appellant	:	
	:	Trial Court Case No.
	:	2007-CV-10269
v.	:	
	:	(Civil Appeal from
SK TECH, INC., et al.	:	Common Pleas Court)
	:	
Defendant-Appellees	:	
	:	

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OPINION

Rendered on the 20<sup>th</sup> day of July, 2010.

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Plaintiff-Appellant, *pro se*

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BROGAN, J.

{¶ 1} Raymond J. Johnson appeals *pro se* from two adverse rulings made  
by the trial court in this case. First, he appeals from the trial court’s judgment entry

affirming an administrative decision upholding the denial of his application for unemployment benefits. Second, he appeals from the trial court's entry of summary judgment against him on a complaint against his former employer, appellee SK Tech, Inc.<sup>1</sup>

{¶ 2} Johnson advances four assignments of error related to the unemployment-compensation ruling. First, he contends the Unemployment Compensation Review Commission ("Review Commission") and the trial court erred by denying him unemployment benefits in violation of the Social Security Act of 1935. Second, he claims the Review Commission and the trial court erred in upholding an administrative hearing officer's decision that was unlawful. Third, he asserts that the Review Commission and the trial court erred in upholding an administrative hearing officer's decision that was unreasonable. Fourth, he argues that the Review Commission and the trial court erred in upholding an administrative hearing officer's decision that was against the manifest weight of the evidence.

{¶ 3} Johnson advances an additional three assignments of error related to his appeal from the trial court's entry of summary judgment in favor of SK Tech. First, he contends the trial court erred in entering summary judgment against him because genuine issues of material fact exist. Second, he claims the trial court's

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<sup>1</sup>The record reflects that Johnson filed a pro se complaint against SK Tech alleging claims related to the termination of his employment. His complaint included a notice of appeal from an administrative decision denying him unemployment benefits. The trial court bifurcated the wrongful-discharge action against SK Tech and the administrative appeal regarding unemployment benefits. The trial court affirmed the denial of unemployment benefits in July 2008. Johnson attempted to appeal that decision, but we dismissed the appeal due to a lack of Civ.R. 54(B) certification from the trial court. The trial court then entered summary judgment in favor of SK Tech in June 2009.

entry of summary judgment “was not warranted as a matter of law.” Third, he asserts that the trial court erred in entering summary judgment “because reasonable minds would not have granted Summary Judgment to Defendant/Appellee.” Each of the foregoing three assignments of error contains multiple sub-parts.

### **A. Factual and Procedural Background**

{¶ 4} A brief summary of the facts underlying the present dispute is set forth in Johnson’s appellate brief challenging the denial of unemployment benefits:

{¶ 5} “Appellant was hired by SK Tech, Inc. as a Die Engineer on September 19, 2005.

{¶ 6} “At the time of hire, Appellant was told to read and sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 7} “Appellant ignored the instructions to sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 8} “Appellant worked for Appellee for approximately 1 year and 5 months without signing the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 9} “Appellee subsequently revised the employee Handbook and insisted that Appellant sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 10} “Appellant refused to sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form because signing said form would violate his firmly held religious beliefs.

{¶ 11} “Appellant attempted to reconcile the objectionable statements in the Employee Handbook and Acknowledgment form, in meetings with Appellee, and by signing said form and adding his reservations.

{¶ 12} “Appellee refused to accept Appellant’s reservations on the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 13} “Appellee told Appellant that he would be terminated from his employment at SK Tech if Appellant did not sign an unaltered ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.

{¶ 14} “Appellant subsequently had a meeting with Toshiaki Nishikawa San, Appellant’s immediate Supervisor and a member of management of Appellee, in which Toshiaka Nishikawa San stated, through his interpreter, that Appellee would deviate from the requirement to sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form and that the Handbook is just a guide.

{¶ 15} “Approximately two weeks later, Appellant was terminated from his employment at Appellee, SK Tech, Inc.”<sup>2</sup>

{¶ 16} Following his termination, Johnson sought unemployment compensation. His claim was denied throughout the administrative process. The basis for denial was that he had been terminated for just cause, which disqualified him from receiving unemployment compensation. As set forth above, Johnson filed

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<sup>2</sup>The facts set forth above are consistent with the allegations in Johnson’s complaint against SK Tech. Because that complaint is verified, it has evidentiary quality for summary-judgment purposes. *State ex rel. Spencer v. East Liverpool Planning Commission*, 80 Ohio St.3d 297, 298, 1997-Ohio-77 (“Sworn pleadings constitute evidence for purposes of Civ.R. 56, and courts are not limited to affidavits in determining a summary judgment motion.”).

a notice of appeal from the Review Commission's final denial of unemployment benefits, along with a pro se complaint against SK Tech. The trial court construed the complaint as containing claims against the company for wrongful discharge in violation of public policy (religious discrimination), breach of implied contract, and promissory estoppel.

{¶ 17} In granting SK Tech summary judgment, the trial court found no religious discrimination because the company did not treat any employees differently based on their religion. Instead, it required all employees to sign the receipt-and-acknowledgment form in its revised employee handbook. The trial court found no viable breach of contract claim because Johnson never signed an unaltered receipt-and-acknowledgment form. Finally, the trial court concluded that promissory estoppel did not apply because Johnson did not rely to his detriment on Nishikawa's promise of continued employment without signing the handbook. Even if Johnson had relied on Nishikawa's promise, the trial court found such reliance to be unreasonable. Finally, with regard to unemployment compensation, the trial court upheld an administrative finding that Johnson had been terminated for just cause based on his refusal to sign an unaltered receipt-and-acknowledgment form. The trial court found that the administrative decision was not unreasonable, unlawful, or against the weight of the evidence. This timely appeal followed.

### **B. Unemployment Compensation Appeal**

{¶ 18} As a means of analysis, we turn first to Johnson's appeal from the denial of unemployment benefits. Our review in such appeals is limited. *Silkert v. Ohio Dept. of Job & Family Services*, 184 Ohio App.3d, 2009-Ohio-4399, ¶26, citing

*Giles v. F. & P. Am. Mfg., Inc.*, Miami App. No. 2994-CA-36, 2005-Ohio-4833, ¶13. “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, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 1995-Ohio-206, paragraph one of the syllabus. “All reviewing courts, including common pleas, courts of appeal, and the Supreme Court of Ohio, have the same review power and cannot make factual findings or determine witness credibility. \* \* \* However, these courts ‘do have the duty to determine whether the board’s decision is supported by evidence in the record.’” *Silkert*, supra, at ¶ 26, quoting *Tzangas*, supra, at 696.

{¶ 19} Ohio Revised Code Section 4141.29 establishes the eligibility requirements for unemployment benefits. A claimant is ineligible if he is discharged for “just cause.” R.C. 4141.29(D)(2)(a). The issue before us is whether SK Tech terminated Johnson for just cause. “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.” *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. In conducting our review, we bear in mind that the unemployment compensation statutes should be construed liberally in favor of the applicant. *Clark Cty. Bd. of Mental Retardation & Developmental Disabilities v. Griffin*, Clark App. No.2006-CA-32, 2007-Ohio-1674, ¶10.

{¶ 20} In his first assignment of error regarding unemployment benefits, Johnson contends the Review Commission and the trial court violated the Social Security Act of 1935 by denying him a fair hearing before an impartial tribunal. This

argument implicates 42 U.S.C. 503(A)(3), which conditions federal grants to states for unemployment compensation administration on states providing, inter alia, “opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.” See, also, *Kelly v. Lopeman* (S.D. Ohio 1987), 680 F.Supp. 1101, 1105 (finding a private right of action under section 503(A)(3)).

{¶ 21} With regard to the fairness of the administrative proceedings in his case, Johnson failed to raise any issue under section 503(A)(3) in the trial court. Therefore, he has forfeited his ability to raise the issue here. *Society Bank v. Kuntz* (Nov. 22, 1995), Montgomery App. No. 15056 (“Issues not raised before the trial court may not be addressed on appeal.”). With regard to the fairness of the proceedings in the trial court, Johnson’s only argument is that the “law and authorities” he cited were ignored. From this, he infers that the trial court was biased against him.

{¶ 22} Upon review, we agree that the trial court did not address every case Johnson cited. The trial court did cite numerous cases itself, however, in the course of deciding whether SK Tech had terminated Johnson for just cause. Ultimately, the trial court concluded: “In this case, SK Tech’s requirement that all employees acknowledge the handbook containing rules and procedures was reasonable. Mr. Johnson’s refusal to sign an acknowledgment and receipt was not reasonable. The record before this Court demonstrates that the evidence supports the just cause determination.” Although Johnson obviously disagrees with this conclusion, the trial court supported its ruling with a logical analysis and citation to legal authority. We

see no evidence that the trial court displayed unfairness or bias against Johnson. Accordingly, his first assignment of error is overruled.

{¶ 23} Johnson's other three assignments of error regarding unemployment benefits challenge the Review Commission's decision that he was terminated for just cause and the trial court's agreement. In his second assignment of error, he contends the trial court erred in upholding an administrative denial of unemployment benefits that was unlawful. More specifically, Johnson claims his refusal to sign the receipt-and-acknowledgment form stemmed from his firmly held religious beliefs and that his discharge violated anti-discrimination laws. He argues that the Review Commission made no effort to investigate why he would not sign the form. He also asserts that the Review Commission made no effort to investigate whether SK Tech could have accommodated his religious beliefs. Johnson insists that he was not fired for just cause because SK Tech could have accommodated his religious beliefs to avoid forcing him to sign the receipt-and-acknowledgment form. He proposes three accommodations: (1) "deviating" and not requiring him to sign, as the company had done for his first seventeen months with SK Tech, (2) allowing him to sign with his added reservations and modifications, or (3) having witnesses acknowledge that he had received the employee handbook.

{¶ 24} Upon review, we find the foregoing arguments to be unpersuasive. Introductory remarks in SK Tech's employee handbook advised employees: "For your benefit and ours, it is important that you read, understand *and comply with all of the provisions within this handbook.*" (Emphasis added). The handbook then contains, among other things, the following "EEO Policy":

{¶ 25} “It is the Company’s intent to provide equal opportunity for all persons in employment. The Company’s policy states that all qualified applicants for employment may be recruited, hired and assigned on the basis of merit without regard to race, color, religion, creed, sex, age, ancestry, national origin, marital status, disability or sexual orientation. The employment policies and practices of the Company have been and will continue to ensure that all qualified associates are treated equally with no discrimination in compensation, opportunities for advancement (including promotions and transfers), training and discipline.

{¶ 26} “The Company does not condone, permit or tolerate discrimination as described above against associates. Persons who engage in such discrimination may be subject to appropriate discipline up to and including termination of his/her employment.”

{¶ 27} At the end of SK Tech’s handbook is the receipt-and-acknowledgment form. Among other things, the form makes it an employee’s responsibility “to know and to understand the Company policies and procedures” contained in the handbook. The form further provides that by signing it, an employee acknowledges, among other things, his awareness and understanding of his responsibility “to know and to understand” SK Tech’s policies.

{¶ 28} Although Johnson avoided signing a receipt-and-acknowledgment form when he was hired in 2005, SK Tech later revised its handbook. At that time, human-resources director Jeff Francis required all employees to sign a receipt-and-acknowledgment form. The administrative record contains a statement from Francis describing Johnson’s response when he was asked to sign the form:

“Ray argued and told us that he had concerns about (primarily) the EEO Policy of not to discriminate based on Race, Creed, Color, or Sexual Orientation. [H]e stated he would not sign in agreement of the Sexual Orientation as that is agreeing with Sin (specifically sodomy).”<sup>3</sup> Francis recalled that “the issues forefront in [his] discussion with [Johnson] were primarily the EEO [non-discrimination policy].” For his part, Johnson testified during the administrative hearing and gave the following explanation for refusing to sign the receipt-and-acknowledgment form: “Well, if I sign it, it basically states that I gave my stamp of approval on things that the Lord looks at as immoral.” (Hearing transcript at 19). Johnson also provided a statement in which he indicated that signing would mean he “must comply with Sin[.]”

{¶ 29} After several meetings with SK Tech management, Johnson eventually did sign the receipt-and-acknowledgment form. In so doing, however, he made a number of changes. He underlined some words, circled other words, and added limiting language such as “Within God’s Law.” He also added a disclaimer that his “signature is subject to change at the sole discretion of signer.” Human-resources director Francis refused to accept Johnson’s alterations to the form. Francis perceived the alterations as an attempt by Johnson to avoid following the company’s rules. As a result, he asked Johnson again to “sign the

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<sup>3</sup>While the record reflects that Johnson also had other problems with the handbook, testimony from both Francis and Johnson establishes that his disagreement with the non-discrimination policy was the primary impediment to signing the receipt-and-acknowledgment form. Cf. *Morad v. Ohio Dept. of Job and Family Services*, Cuyahoga App. No. 86296, 2006-Ohio-1350, ¶¶29-30 (recognizing that the existence of multiple reasons for terminating employment does not preclude a claimant from recovering unemployment compensation).

acknowledgment that you understand the rules of this company *and you will abide by the rules of our company* while working for us.” (Id. at 10) (emphasis added). Johnson responded that “he just couldn’t do it.” (Id.). Francis feared that Johnson’s refusal to sign an unaltered form might subject SK Tech to a lawsuit if Johnson ever violated the anti-discrimination policy contained in the handbook. Francis perceived Johnson’s refusal to sign the form as a refusal to abide by the non-discrimination policy. (Id. at 21). In fact, he testified that Johnson “knowingly told” the company he could not follow the policy. (Id. at 10, 21). Francis’ concerns are consistent with Johnson’s own testimony that signing the form would have obligated him to “comply with all” of the handbook, which he refused to do. (Id. at 19).

{¶ 30} For present purposes, we accept that Johnson’s refusal to sign the form stemmed from his firmly held religious beliefs. We are unpersuaded, however, that SK Tech could have accommodated those religious beliefs in one of the ways proposed by Johnson on appeal. As set forth above, Johnson insists that just cause for his discharge did not exist because SK Tech could have “deviated” from its policy and not required him to sign the receipt-and-acknowledgment form. Alternatively, he claims the company could have permitted him to sign with his alterations or could have had witnesses acknowledge his receipt of the handbook.

{¶ 31} The trouble with the foregoing proposals is that they do not resolve the root problem clearly illustrated above—Johnson’s admitted refusal to agree to follow the non-discrimination policy contained in SK Tech’s handbook. As set forth above, Johnson testified at the administrative hearing that he equated signing the receipt-and-acknowledgment form with approving the company’s non-discrimination

policy and agreeing to comply with it.<sup>4</sup> (Id. at 19). As an employer, however, SK Tech had a right to adopt a uniform workplace policy that included non-discrimination on the basis of sexual orientation. Moreover, although Johnson previously had not signed a receipt-and-acknowledgment form, the record suggests that SK Tech's failure to obtain an earlier signature may have been an oversight. In any event, as an at-will employer, SK Tech was entitled to require all employees to sign the form after the company handbook was updated. As an at-will employee, Johnson's recourse if he disagreed with the contents of the company handbook and refused to sign the form was to resign or risk being fired.

{¶ 32} By Johnson's own admission, the issue between the parties was larger than simply proving he had *received* a copy of the employee handbook by

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<sup>4</sup> Parenthetically, we note that an employee's signature on SK Tech's receipt-and-acknowledgment form does not necessarily signify agreement with the contents of the handbook or a promise to comply with its terms. The handbook itself states that it is important for employees to "read, understand and comply with all of the provisions within this handbook." The receipt-and-acknowledgment form makes it an employee's responsibility "to know and to understand" the policies and procedures found in the handbook. By signing the form, an employee acknowledges, among other things, awareness of his responsibility "to know and to understand" SK Tech's policies. Nowhere in the receipt-and-acknowledgment form is an employee actually required to agree with those policies or even promise to follow them. The record makes clear, however, that Johnson viewed his signature on the receipt-and-acknowledgment form as indicating his approval of the company's non-discrimination policy and his agreement to comply with it. Moreover, Francis' testimony makes clear that SK Tech was aware of Johnson's perception of the form and of his refusal to agree to comply with the non-discrimination policy. As set forth above, Francis even testified during the administrative hearing that he asked Johnson to "sign the acknowledgment that you understand the rules of this company *and you will abide by the rules of our company while working for us.*" (Hearing transcript at 10) (emphasis added). Thus, even though the receipt-and-acknowledgment form itself did not require Johnson to agree with or follow the company's non-discrimination policy, the record contains evidence that Johnson and Francis both perceived a signature on the form as an agreement to abide by the policy.

allowing him to sign his own altered receipt-and-acknowledgment form or having other employees witness him receiving the handbook. As explained above, the administrative record makes clear that Johnson's refusal to sign an unaltered receipt-and-acknowledgment form stemmed from his disagreement with, and refusal to abide by, the company's non-discrimination policy. Allowing Johnson to sign an altered form or having employees watch him receive a handbook would not resolve this more fundamental issue. Johnson did not have a religious objection to placing his name on a piece of paper. Rather, he had a religious objection to agreeing not to discriminate against co-workers on the basis of their sexual orientation. His refusal to place his signature on the receipt-and-acknowledgment form was a proxy for this larger objection. But we are aware of no authority prohibiting an employer from imposing a uniform workplace non-discrimination policy that includes sexual orientation—even over an employee's religious objection. That being the case, the only way to accommodate Johnson's religious objection was for SK Tech to exempt him and essentially agree to allow him to discriminate against co-workers on the basis of sexual orientation.

{¶ 33} An employer obviously could accommodate *any* religious objection by simply waiving the rule or policy at issue. But the law does not always require capitulation. Under both Title VII and R.C. Chapter 4112, “[a]n employee bears the initial burden of establishing a prima facie case of religious discrimination. He meets the burden by showing that he holds a sincere religious belief that conflicts with an employment requirement, he has informed his employer of the conflict, and he was discharged for failing to comply with the conflicting employment

requirement.” *Franks v. Natl. Lime & Stone Co.* (2000), 138 Ohio App.3d 124, 128. “Once a prima facie case of discrimination is established, the burden shifts to the employer to show that it could not reasonably accommodate the employee without undue hardship in the conduct of its business. The reasonableness of an accommodation is determined on a case-by-case basis.” *Id.* at 131.

{¶ 34} In our view, accommodating Johnson’s religious objection to SK Tech’s non-discrimination policy by permitting him to discriminate against co-workers on the basis of their sexual orientation is unreasonable, as a matter of law.<sup>5</sup> It would be a peculiar result to compel SK Tech to allow Johnson to discriminate against co-workers in order to avoid discriminating against him. Surely, the company had no such obligation.

{¶ 35} Once an employer takes the position that it cannot reasonably make any accommodation,<sup>6</sup> an employee must be given an opportunity “to make suggestions for possible accommodation.” *Martinez v. Ohio Dept. of Adm. Serv.*

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<sup>5</sup>Johnson does not directly admit that he wants to be allowed to discriminate against co-workers. As set forth above, however, the record reflects that he refused to sign the receipt-and-acknowledgment form because he could not agree to abide by the company’s non-discrimination policy. He explained: “Well, if I sign it, it basically states that I gave my stamp of approval on things that the Lord looks at as immoral. \* \* \* *And I can’t do that. Because it says you must comply with all (inaudible).*” (Hearing transcript at 19) (emphasis added). Johnson also provided a statement in which he indicated that signing would mean he “must comply with Sin[.]” It follows, then, that Johnson necessarily did want to be permitted to discriminate against other SK Tech employees based on their sexual orientation. Otherwise, he would have agreed to comply with the policy prohibiting such discrimination.

<sup>6</sup>Because SK Tech neither attempted nor proposed any accommodation in this case, we will presume that it has taken the position that no reasonable accommodation is possible.

(1997), 118 Ohio App.3d 687, 695 n2. Based on the reasoning set forth more fully above, we conclude that the accommodations proposed by Johnson (allowing him to work without signing a receipt-and-acknowledgment form, permitting him to sign his own altered form, or having other employees witness him receiving the handbook) are not reasonable, as a matter of law, because they do not address the core issue—to wit: his admitted refusal to abide by the non-discrimination policy in the company handbook as signified by his unwillingness to sign the form. Accordingly, we reject Johnson’s argument that his termination constituted unlawful religious discrimination. To the contrary, SK Tech lawfully fired Johnson based on his disagreement with, and refusal to follow, the company’s written non-discrimination policy. Johnson’s second assignment of error is overruled.

{¶ 36} In his third assignment of error related to unemployment benefits, Johnson claims the trial court erred in upholding an administrative denial of benefits that was unreasonable.

{¶ 37} In support, he cites several other cases involving terminations for failure to sign forms.

{¶ 38} In the first case, *NTA Graphics, Inc. v. Lonchyna* (June 21, 1991), Lucas App. No. L-90-271, certain employees were fired after refusing to sign a statement acknowledging a handbook that they believed changed their employment status to “at will.” The Sixth District Court of Appeals upheld an administrative finding that the employees were terminated without just cause. The Sixth District saw ample evidence to support an administrative finding that the failure to sign the acknowledgment was not insubordination or refusal of a reasonable order. In

reaching this conclusion, the appellate court cited a “previous course of conduct relative to disciplinary reprimands \* \* \*.”

{¶ 39} Three other cases cited by Johnson are administrative decisions. In *Belskie v. Dynaquest Corp.* (1997), Unemployment Comp. Bd. Rev. No. B96-02798-0000, an employee was fired for refusing to sign a written covenant not to compete. At the time of hire, the employee had signed a handbook acknowledgment form, but no portion of the handbook addressed covenants not to compete. The Ohio Unemployment Compensation Board of Review held that the employee was fired without just cause, reasoning that “the employee was within his rights not to agree to the covenant not to compete.” The Board explained: “Had the employer wished the claimant to submit to a covenant not to compete, they could have required such when hiring the claimant. The claimant then would have had an opportunity to either accept or reject the employment based on full knowledge of the employer’s requirements.”

{¶ 40} In the next case, *Newhouse v. Philadelphia Carpet Co.* (1998), Unemployment Comp. Bd. Rev. No. B98-00905-0000, an employee was fired for refusing to sign his employer’s policy statement regarding employee purchases of company merchandise for personal use. The employee objected to certain language in the statement, claiming that it imposed unreasonable restrictions. He refused to sign. The employee was fired after being given several warnings that his failure to sign could result in termination. The Unemployment Compensation Review Commission held that the employee’s refusal to sign did not amount to misconduct or neglect of duty and did not constitute just cause for termination. In

support, the Review Commission reasoned:

{¶ 41} “The employer was free to implement a policy regarding employee purchases of company product. They were also free to restrict business activities of employees in conflict with the company. They did not need the consent of employees to implement this policy. With or without claimant’s signature at the bottom of the policy statement, Philadelphia Carpet Company could have taken disciplinary action for claimant’s violation of the policy. Claimant has some legitimate reservations about the wording of the policy. His refusal to sign for the policy was not misconduct or neglect of duty.

{¶ 42} “For these reasons, the Review Commission will hold that claimant was discharged by Philadelphia Carpet Company (Shaw Industries) without just cause in connection with work.”

{¶ 43} In the last case, *Nichols v. Batavia Nursing & Convalescent Inn* (1988), Unemployment Comp. Bd. Rev. No. 663173-BR, an employee was fired for refusing to sign a written disciplinary warning regarding an unexcused absence from work. The employer required a signature on a warning as proof of an employee’s receipt and understanding of it. The signature did not necessarily indicate agreement with the warning. Nevertheless, the employee refused to sign the warning because she disagreed with it. The Unemployment Compensation Board of Review held that the employee’s discharge for not signing was without just cause, reasoning:

{¶ 44} “The facts establish the claimant was discharged from employment with the employer refused [sic] to permit the claimant to return to work after she

refused to sign a written warning. Although the Administrator and Referee held the claimant quit employment, the evidence establishes the claimant was willing to continue employment, although she was unwilling to sign a written warning as a result of her absence of October 24, 1986. The claimant's refusal to sign a warning with which she did not agree, does not constitute just cause for discharge within the meaning of the cited provision of the Ohio Unemployment Compensation Law. Whether or not the warning was justified is not determinative of the issue. Although in the present case, the facts establish a misunderstanding occurred when the claimant requested to be excused from work on October 24, 1986, the absence could be legitimately classified as an unexcused absence. Notwithstanding this fact, however, the claimant's refusal to sign the written warning does not constitute an act of misconduct justifying her discharge from employment. The employer has contended the claimant's signature was required to acknowledge receipt of the warning. Obviously, another employee could have witnessed the warning to establish the warning was prepared and presented to the claimant. While the claimant's refusal to sign the warning may have been stubborn and imprudent, given the employer's avowed intent to discharge the claimant if she persisted, such conduct does not rise to a level justifying the individual's discharge from employment. \* \* \*."

{¶ 45} In a case not cited by the parties, *Roseman v. Tom Harrigan Olds Nissan* (Dec. 16, 1988), Montgomery App. No. 11130, we addressed an employee's termination for refusing to sign a letter with which he did not agree. In that case, the letter indicated that the employee had been offered and had rejected two positions

with his company. The employee read the letter, but would not sign because he did not agree with its contents. As a result, he was fired. The Ohio Unemployment Compensation Board of Review held that the termination was without just cause. The trial court agreed, and we affirmed. In so doing, we approved the following finding by a referee: "The sole reason claimant was discharged was his refusal to sign a letter with which he did not agree. There is no showing that the claimant in any way did any willful or wrongful act against the best interest of the employer. Based upon the entire record before the referee, it must be concluded that the claimant was discharged by Tom Harrigan Olds Nissan without just cause in connection with his work."

{¶ 46} In another uncited case, *Kal Kan Foods, Inc. v. Ohio Bureau of Employment Services* (March 13, 1984), Franklin App. No. 83AP-885, the Tenth District Court of Appeals held that an employee who was fired after refusing to sign a warning notice was discharged for just cause. Notably, however, the Tenth District stressed that the employee's refusal to sign the written notice was merely the culmination of many events that led to her discharge. Conversely, in *Swegheimer v. Board of Review Bureau of Employment Services* (Oct. 4, 1983), Stark App. No. CA-6148, the Fifth District Court of Appeals upheld a finding that just cause for termination did not exist when an employee was fired solely for refusing to sign an "employee conference report" prepared by her employer. But, see, *Clagg v. Board of Review Bureau of Employment Services* (Nov. 16, 1982), Lawrence App. No. 1572 (by a two-to-one vote upholding an administrative finding that an employee was discharged for just cause for refusing to sign a "notice of

unsatisfactory performance” where company policy provided that failure to sign was grounds for dismissal).

{¶ 47} Although none of the foregoing cases is identical to Johnson’s, many of them do support the proposition that an employee’s refusal to sign a document provided by an employer does not necessarily constitute just cause for discharge under Ohio unemployment compensation laws. We find that to be the case here. “Just cause determinations in the unemployment compensation context \* \* \* must be consistent with the legislative purpose underlying the Unemployment Compensation Act.” *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 697. “The [A]ct was intended 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.” *Id.* (citation omitted). “When an employee is at fault, he is no longer the victim of fortune’s whims, but is instead directly responsible for his own predicament. Fault on the employee’s part separates him from the Act’s intent and the Act’s protections. Thus, fault is essential to the unique chemistry of a just cause termination.” *Id.* at 697-698. “[T]he question of fault cannot be rigidly defined, but, rather, can only be evaluated upon consideration of the particular facts of each case.” *Id.* at 698.

{¶ 48} Under the particular facts of Johnson’s case, we conclude that he was terminated through no “fault” of his own, at least within the meaning of Ohio’s unemployment compensation laws. SK Tech’s Jeff Francis confirmed at the administrative hearing that Johnson’s termination had nothing to do with his job performance. (Hearing transcript at 8). The company wanted him to keep working,

and he had no prior disciplinary record. (Id. at 8-9). Johnson likewise enjoyed his job and wished to continue working for SK Tech. (Id. at 19-20, 23). Despite this mutual satisfaction, Johnson determined that he could not in good conscience sign the company's receipt-and-acknowledgment form. As explained above, he equated doing that with putting his "stamp of approval on things that the Lord looks at as immoral." (Id. at 19). Thus, Johnson's religious convictions ultimately were the root cause of his termination. Having reviewed the record and heard Johnson's oral argument, we do not question the sincerity or firmness of those convictions. Indeed, he was so deeply committed to his religious beliefs that he sacrificed a well-paying job he enjoyed. We do not find Johnson at "fault," within the meaning of Ohio's unemployment compensation laws, for holding sincere religious beliefs that cost him his job. Cf. *Morad v. Ohio Dept. of Job and Family Services*, Cuyahoga App. No. 86296, 2006-Ohio-1350, ¶26, quoting *Whipkey v. Ohio Bureau of Employment Services* (1994), 63 Ohio Misc.2d 517, 522 ("[A]n individual who quits work because of a belief that a continuance in the employment would violate some principle of good moral conduct may be considered to have quit with just cause. A violation of claimant's morals includes being required to do anything which is immoral[.]").

{¶ 49} We find further support for our conclusion in *Tary v. Bd. of Review, Bureau of Unemployment Compensation* (1954), 161 Ohio St. 251. In that case, an unemployed claimant who had sincere religious convictions against laboring on Saturday turned down a job that would have required Saturday work. The Ohio Supreme Court held that claimant's rejection of the job did not disqualify her from

receiving unemployment benefits. The majority reasoned that the job was unsuitable for the claimant because it posed a risk to her moral values. In reaching this conclusion, the *Tary* court explained:

{¶ 50} “There is no risk to the morals of a nonbeliever or a Christian who observes the Sunday Sabbath, if he works on Saturday, because such employment does not violate his ‘sense of duty.’ *What is moral to one person may be immoral to another.* Moral standards change. Some acts which are considered moral today were deemed highly immoral a century ago, and conversely the standards of today recognize some things as being immoral which were formerly considered right and proper.

{¶ 51} “*The test in the instant case, however, is not whether the proffered employment presents a risk to the morals of a majority of our citizens, but, as the statute specifies, whether it presents a risk to the ‘claimant’s \* \* \* morals.’*

{¶ 52} “*The first moral obligation of a person is to remain true to his religious convictions and to conform to what he believes to be his sense of duty.* Where one has been schooled to believe in and practice the tenets of a faith which compels him to abstain from secular work on Saturdays, and, by reason of such training and his conscientious affiliation with the church of such a faith, possesses a fixed, definite and immutable conviction that he must refrain from secular work on Saturdays, it would seriously offend the moral conscience of such a person to require him to engage in secular work on Saturday.

{¶ 53} “*The test of an individual’s morals in [sic] subjective, and one’s morals is dependent upon his conscientious beliefs.* The precepts of a religion in which one

believes are an integral and essential part of one's morals.

{¶ 54} “We are of the opinion that the acceptance of the proffered employment by the claimant in the instant case would have seriously offended the ‘*claimant's \* \* \* morals*’ based on her sense of duty and her religious conscience. *The evidence is uncontradicted that her refusal to accept was not fanciful, actuated by bad faith, or prompted by a desire to remain in the ranks of the unemployed, but was based solely on the fact that the proffered employment involved a risk to her morals.*” Id. at 255-256 (emphasis added).<sup>7</sup>

{¶ 55} *Tary* is factually distinguishable, of course, insofar as it involved an unemployed claimant’s suitability for available work, whereas the present case involves “just cause” for Johnson’s discharge from his work. Nevertheless, the parallel between the two cases is unmistakable. If the claimant in *Tary* could not be denied unemployment compensation for turning down a job with a requirement she found morally objectionable, Johnson should not be denied unemployment compensation for being discharged from a job based on a requirement he found morally objectionable. In each case, only a sincerely held religious belief prevented the claimant from being employed. Thus, *Tary*’s reasoning is applicable here.

{¶ 56} If religious convictions and morals are viewed subjectively, as *Tary* indicates, then the issue is not whether we agree with Johnson’s objections to non-discrimination on the basis of sexual orientation or find such a position to be

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<sup>7</sup>The statute cited by the *Tary* court was R.C. 4141.29. When assessing the suitability of potential employment for a claimant, the current version of the statute still requires a court to consider “the degree of risk to the claimant’s \* \* \* morals.” R.C. 4141.29(F).

reasonable. Rather, the issue is whether Johnson “possesses a fixed, definite and immutable conviction” that prevented him from agreeing to abide by SK Tech’s non-discrimination policy. *Id.* at 256. In *Tary*, the Ohio Supreme Court appears to have tested the sincerity of the claimant’s religious objection by noting that she was a conscientious member of a religious sect that believed secular work on Saturday was a violation of God’s law. *Id.* at 253. In the present case, Johnson’s membership or non-membership in a particular religious sect is not part of the record. Nevertheless, we do not believe proof of such membership is always necessary. As the *Tary* court itself noted, “[t]he test of an individual’s morals in [sic] subjective, and one’s morals is dependent upon his conscientious beliefs.” *Id.* at 256. Proof that a claimant is part of a particular religion may be one way to evaluate the sincerity of his beliefs, but it is not the only way. As set forth above, Johnson’s pro se filings in this case, his appellate argument, and his willingness to sacrifice a job he enjoyed convince us, beyond doubt, that his religious beliefs are sincere and deeply held. We see no evidence whatsoever that Johnson’s refusal to sign SK Tech’s receipt-and-acknowledgment form was motivated by insubordination, bad faith, or a desire to become voluntarily unemployed. Because Johnson was fired through no “fault” of his own, we conclude that SK Tech lacked just cause to terminate him. Accordingly, the Review Commission’s decision to deny Johnson’s claim for unemployment benefits was unreasonable. See *Ulliman v. Ohio High School Athletic Assn.*, 184 Ohio App.3d 52, 63, 2009-Ohio-3756 (recognizing that decisions are unreasonable if they are not supported by a sound reasoning process). The third assignment of error is sustained.

{¶ 57} In his fourth assignment of error related to unemployment benefits, Johnson claims the trial court erred in upholding an administrative denial of benefits that was against the manifest weight of the evidence. Specifically, Johnson insists that he did not violate any SK Tech “rule or policy” when he refused to sign a receipt-and-acknowledgment form. In support, he claims that the employee handbook itself did not require an employee’s signature.

{¶ 58} Upon review, we find the foregoing argument to be without merit. The SK Tech handbook included a receipt-and-acknowledgment form at page fifty. Instructions on that page directed the recipient to “[p]lease ready [sic] the following statements and sign below to indicate your receipt and acknowledgment of the SK Tech Employee Handbook.” In addition, human-resources director Jeff Francis testified that it was the company’s policy to have every employee sign the form. (Hearing transcript at 5). Although the company apparently did not have a written rule that employees would be terminated for refusing to sign, there is no requirement that all company rules be reduced to writing. The unemployment hearing reflects that SK Tech lacked a written rule prohibiting employees from killing one another, but we harbor no doubt that murder is grounds for termination. Likewise, nothing precluded the company from enforcing its unwritten rule that failure to sign the receipt-and-acknowledgment form would result in termination, particularly when Johnson admits being informed of the rule. His fourth assignment of error is overruled. Having sustained Johnson’s third assignment of error, however, we conclude that the trial court erred in upholding the Review Commission’s denial of unemployment compensation.

### C. Appeal from Summary Judgment Ruling

{¶ 59} We turn next to Johnson's appeal from the trial court's entry of summary judgment in favor of SK Tech. Although we concluded above that he was discharged without just cause for purposes of unemployment compensation, that determination does not mandate a ruling in his favor on his complaint against SK Tech. This is so because the standards are different. As an admittedly at-will employee, Johnson could be fired by SK Tech without just cause. *Vitanza v. First Nat. Supermarkets, Inc.* (June 24, 1993), Cuyahoga App. No. 62906 (recognizing that "where the employment relationship is at-will, the employer can at any time terminate the employee with or without just cause"). In fact, the company could discharge him for any lawful reason unless something altered the at-will relationship between the parties. *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 103.

{¶ 60} As set forth above, the trial court construed Johnson's complaint as setting forth claims against SK Tech for wrongful discharge in violation of public policy (religious discrimination), breach of implied contract, and promissory estoppel. The trial court then found no genuine issue of material fact precluding summary judgment in favor of SK Tech on these claims. We review an appeal from summary judgment de novo. *Baiko v. Mays* (2000), 140 Ohio App.3d 1, 10. Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law because it appears from the evidence, when viewed in favor of the non-moving party, that reasonable minds can come to but one conclusion, which is adverse to the nonmoving party. *State ex. rel. Duganitz v. Ohio Adult Parole Auth.*

(1996), 77 Ohio St.3d 190, 191.

{¶ 61} Johnson advances three assignments of error with multiple sub-parts related to the trial court's summary judgment ruling. In his first assignment of error, he sets forth five perceived factual disputes that he contends preclude summary judgment. They are: (1) whether he was discharged because of his firmly held religious beliefs for purposes of his wrongful-discharge claim; (2) whether his direct supervisor, Toshiaki Nishikawa, promised that he would not have to sign the receipt-and-acknowledgment form; (3) whether Nishikawa promised that he could keep his job; (4) whether there was a requirement to sign the receipt-and-acknowledgment form at the time of his initial hire; and (5) whether the requirement to sign the receipt-and-acknowledgment form "became policy" at SK Tech.

{¶ 62} Upon review, we conclude that none of the foregoing issues precluded the entry of summary judgment. As explained in our analysis of Johnson's unemployment appeal, he was discharged for not signing the receipt-and-acknowledgment form. The primary reason for his refusal, however, was a sincere religious belief that SK Tech's non-discrimination policy was immoral. In order to establish a prima facie case of religious discrimination, Johnson was required to prove that his sincere religious belief conflicted with an employment requirement, that he informed SK Tech of the conflict, and that he was discharged for failing to comply with the requirement. *Franks*, 138 Ohio App.3d at 128. Construing the evidence in a light most favorable to Johnson, a trier of fact could

find the foregoing elements established.<sup>8</sup>

{¶ 63} The issue then becomes whether SK Tech reasonably could have accommodated Johnson without undue hardship. *Id.* at 131. Although SK Tech faults Johnson for neglecting to allege a lack of accommodation in his complaint, we note that the employer bears the burden to show that it cannot reasonably accommodate an employee's religious beliefs once a prima facie case has been established. *Franks*, supra. In any event, the uncontroverted evidence demonstrates, as a matter of law, that SK Tech reasonably could not have accommodated Johnson's religious beliefs.

{¶ 64} As we explained in our analysis of Johnson's unemployment appeal, supra, an employer may take the position that no accommodation is possible. If it does, the employee must be given an opportunity to suggest possible accommodations. *Martinez*, 118 Ohio App.3d at 695 n.2. Johnson did so in the present case. In our analysis above, we rejected each of his proposed accommodations, which included allowing him to work without signing the receipt-and-acknowledgment form, permitting him to sign a self-altered form, or having other employees witness him receiving the company handbook.

{¶ 65} We concluded above that these proposed accommodations did not resolve the root issue, which concerned Johnson's disagreement with, and refusal

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<sup>8</sup>While SK Tech contends Johnson's complaint does not allege religious discrimination, it does assert that he refused to sign the receipt-and-acknowledgment form "due to moral and religious issues." (Complaint at ¶35). It also includes a cause of action for wrongful discharge in violation of public policy. (*Id.* at ¶56-69). Construing the complaint liberally in Johnson's favor, we believe the trial court reasonably read it to allege unlawful discharge based on religious discrimination.

to abide by, SK Tech's non-discrimination policy. The record demonstrates, beyond dispute, that Johnson's refusal to sign an unaltered receipt-and-acknowledgment form was merely a manifestation of this larger issue. That being the case, the only way to accommodate Johnson's religious objection was for SK Tech to allow him to discriminate against co-workers on the basis of their sexual orientation. We reiterate our opinion that such an accommodation is unreasonable, as a matter of law. Therefore, SK Tech did not engage in unlawful religious discrimination in violation of public policy even though Johnson was discharged due to his religious beliefs.

{¶ 66} The next two alleged factual disputes addressed by Johnson also fail to raise a genuine issue of material fact. They concern whether Toshiaki Nishikawa promised he could keep his job without signing the receipt-and-acknowledgment form. According to Johnson's deposition testimony, human-resources director Francis threatened several times to terminate him for not signing an unaltered receipt-and-acknowledgment form. Nishikawa then met with Johnson on February 9, 2007, and told him that he would not be required to sign the form. Nishikawa stated that he had spoken with the company president and that Johnson could keep his job without signing. (Johnson deposition at 67-72). Approximately one week later, Francis again approached Johnson and asked him to sign the form unconditionally and without alterations. (Id. at 74). Johnson conveyed to Francis the assurance he had received from Nishikawa about not having to sign the form. (Id. at 75). Johnson again refused to sign despite being threatened by Francis with termination. (Id. at 78). Four days later, Francis met with Johnson a final time and

terminated his employment. (Id. at 78-79). Johnson did not interview with other companies, look for another job, or reject any job offers from the time Nishikawa told him he did not need to sign the form until Francis terminated his employment. (Id. at 81-85).

{¶ 67} Although Johnson's deposition testimony supports his claim that Nishikawa agreed he could keep his job without signing the form, this agreement does not preclude summary judgment against Johnson on his claims for promissory estoppel or breach of contract. Nishikawa told Johnson that he could work for SK Tech without signing the form, and Johnson did so—until the company changed its mind. Johnson concedes that his employment relationship with SK Tech was at-will. Therefore, the company had a right to change its policies any time, including its decision to allow Johnson to continue working without signing the receipt-and-acknowledgment form. See, e.g., *Lake Land Emp. Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 247, 2004-Ohio-786, ¶18 (recognizing “that either an employer or an employee in an at-will relationship may propose to change the terms of their employment relationship at any time” and that the remedy if the other party is dissatisfied with the change is to terminate the relationship). In order to prevail on a promissory estoppel claim, Johnson must establish that he was promised continued employment for a specific period of time, that he actually relied on the promise to his detriment, and that such reliance was reasonable. *Steele v. Mara Ents., Inc.*, Franklin App. No. 09AP-102, 2009-Ohio-5716, ¶13-14.

{¶ 68} Johnson's promissory estoppel claim fails, as a matter of law, because there is no evidence that Nishikawa promised him continued employment,

without signing the receipt-and-acknowledgment form, for a specific duration. During his deposition, Johnson conceded that the duration of his continued employment was not mentioned. (Johnson depo. at 72). But Nishikawa's oral promise of employment for an unspecified duration was nothing more than a promise to continue the at-will relationship for another day. The promissory estoppel claim also fails because there is no evidence that Johnson relied on the promise to his detriment. Following Nishikawa's promise that he could keep his job, Johnson did not do, or fail to do, anything in reliance on the assurance. (Id. at 81-85). He simply stayed put and continued working, which is insufficient to establish the necessary element of detrimental reliance.<sup>9</sup> Cf. *Nilavar v. Osborn* (1998), 127 Ohio App.3d 1, 18 (reasoning that "an at-will employee who claims reliance in not looking for other work cannot distinguish himself from one who merely continues working normally"); *Stickler v. Key Corp.*, Cuyahoga App. No. 80727, 2003-Ohio-283, ¶27 ("Detrimental reliance does not exist where the promisee merely refrains from seeking other employment unless he rejects an offer."); *Talley v. Teamsters, Chauffeurs, Warehousemen, and Helpers, Local No.*

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<sup>9</sup> Parenthetically, we note too that it is questionable whether Johnson's reliance on Nishikawa's promise was reasonable. In this regard, the SK Tech handbook provides: "Statements or promises by a supervisor, a manager or a department head will not constitute \* \* \* agreements with you or other associates." (SK Tech handbook at 8). The handbook further states: "No agent or associate of this Company has any authority to enter into any employment contract with any associate on behalf of the Company without a resolution by our Owner." (Id. at 14). Given that Johnson's promissory estoppel claim fails, as a matter of law, for the reasons set forth above, we need not decide whether the claim also fails because the foregoing disclaimer rendered his reliance on Nishikawa's assurance unreasonable.

377 (1976), 48 Ohio St.2d 142, 146 (recognizing that a plaintiff's reliance on a promise must be "of a sufficiently definite and substantial nature so that injustice will result if the 'promise' is not enforced").

{¶ 69} Johnson's remaining two alleged factual disputes also do not preclude summary judgment. He contends a jury question exists as to whether there was a requirement to sign a receipt-and-acknowledgment form when he was hired. This issue is immaterial. Regardless of whether such a rule existed at the outset of his employment, SK Tech was entitled to change the terms of the employment relationship at any time. *Lake Land Emp. Group of Akron*, supra, at ¶18. The undisputed evidence establishes that human-resources director Francis ultimately enforced a rule requiring all employees to sign a receipt-and-acknowledgment form after Johnson was hired. Johnson refused and was terminated. It is immaterial whether a prior rule existed regarding signatures on receipt-and-acknowledgment forms.

{¶ 70} Finally, Johnson contends summary judgment was inappropriate because there is a triable issue about whether the requirement to sign the receipt-and-acknowledgment form "became policy" at SK Tech. This argument borders on frivolous. Instructions on the receipt-and-acknowledgment form directed the recipient to "[p]lease read [sic] the following statements and sign below to indicate your receipt and acknowledgment of the SK Tech Employee Handbook." Francis testified that it was company policy to have every employee sign the form. Johnson concedes that Francis directed him to sign the form or face termination. Johnson refused and was fired. We see no genuine issue of material fact as to

whether SK Tech had a policy of requiring employees to sign the receipt-and-acknowledgment form. Johnson's first assignment of error is overruled.

{¶ 71} In his second assignment of error related to SK Tech, Johnson contends the trial court erred in entering summary judgment when it "was not warranted as a matter of law." He presents seven arguments in support.

{¶ 72} Johnson first contends summary judgment was inappropriate because the trial court failed to recognize religious discrimination. We fully addressed the religious discrimination issue above in our analysis of Johnson's unemployment appeal. Based on the reasoning set forth there, we conclude that the trial court properly entered summary judgment against him on his wrongful-discharge claim premised on religious discrimination because SK Tech could not reasonably accommodate his religious beliefs.

{¶ 73} Johnson next claims the trial court erred by entering summary judgment and affirming the Review Commission, which he claims failed to "investigate" the accommodation issue. Once again, we fully addressed SK Tech's ability to accommodate Johnson's religious beliefs above and need not repeat our analysis here.

{¶ 74} Johnson's third argument is that the trial court "erred by failing to recognize estoppel as a result of the actions of employer by tolerating Plaintiff/Appellant not signing the Receipt & Acknowledgment Form for 1 year and 5 months leading Plaintiff/Appellant to believe his employment is secure as long as he meets work standards." This argument fails for several reasons. First, insofar as Johnson argues promissory estoppel, which is the claim in his complaint, SK Tech's

mere silence about his lack of a signature on the receipt-and-acknowledgment form is not a “promise.” Any reliance on such silence was not reasonable. Moreover, as explained above, there can be no estoppel because SK Tech made no promise to Johnson during those seventeen months that he could keep his job for a specific period of time without signing a receipt-and-acknowledgment form. Therefore, given the at-will nature of the employment relationship, human-resources director Francis remained free to change the terms of employment and decide that Johnson did have to sign the form. Finally, the record does not reflect that Johnson did anything or refrained from doing anything (other than simply continue working) as a result of not being forced to sign a receipt-and-acknowledgment form for his first seventeen months with the company. For these reasons, promissory estoppel cannot apply.<sup>10</sup>

{¶ 75} Johnson’s fourth argument is that the trial court “failed to recognize the express contract created by oral promise made by management that Plaintiff/Appellant would not be required to sign the ‘Receipt & Acknowledgment of SK Tech Employee Handbook’ form.” This argument reiterates Johnson’s claim that SK Tech was bound, apparently permanently, by Nishikawa’s assurance that he could “keep his job” without signing the receipt-and-acknowledgment form. As explained above, this assurance, which did not address the duration of Johnson’s employment, merely continued the existing at-will relationship. Nothing in the record suggests that Nishikawa altered the at-will nature of Johnson’s employment or

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<sup>10</sup>In his appellate brief, Johnson cites case law for the proposition that violation of an employer’s policy is not necessarily just cause for termination where the same violation has been tolerated in the past. As explained above, however, SK Tech did not need just cause to terminate Johnson, an at-will employee.

precluded the company from changing its mind later and adding a requirement to sign the receipt-and-acknowledgment form. *Lake Land Emp. Group of Akron*, supra, at ¶18.

{¶ 76} Johnson's fifth argument is that the trial court erred "in [not] recognizing just what was created by Raymond J. Johnson not signing the 'Receipt & Acknowledgment of SK Tech Employee Handbook' form[.]" This argument repeats his claim that his failure to sign a receipt-and-acknowledgment form when he was hired precluded the company from later demanding his signature. This assertion lacks merit for the reasons set forth above.

{¶ 77} Johnson's sixth argument is that the trial court and the Review Commission "failed to determine whether the 'Receipt & Acknowledgment of SK Tech Employee Handbook' form is 'merely a receipt' as argued by Defendant/Appellee, or in fact, a contract." The essence of this argument appears to be that the receipt-and-acknowledgment form is contractual in nature because it binds employees to the company's policies.<sup>11</sup> Regardless of how the form is

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<sup>11</sup>Even if Johnson's assertion were true, it proves nothing pertinent to his claims. Johnson fails to recognize that at-will employment itself "is contractual in nature." *Lake Land Emp. Group*, 101 Ohio St.3d at 247. The "contract" is simply one for employment at will. "In such a relationship, the employee agrees to perform work under the direction and control of the employer, and the employer agrees to pay the employee at an agreed rate. Moreover, either an employer or an employee in a pure at-will employment relationship may legally terminate the employment relationship at any time and for any reason. \* \* \* It follows that either an employer or an employee in an at-will relationship may propose to change the terms of their employment relationship at any time." *Id.* Thus, if Johnson was dissatisfied with certain language in the handbook, or any other terms or conditions of his employment, he was free to propose his own changes. In fact, he did just that, altering the receipt-and-acknowledgment form and signing the modified form. SK Tech rejected those changes, as it had a right to do, and fired him.

characterized, however, SK Tech required Johnson and all other employees to sign it. For the reasons set forth more fully above, the company had a right to require Johnson's signature. Moreover, even if the form were construed as some sort of contract, Johnson refused to sign an unaltered form. Therefore, no contractual agreement arose.

{¶ 78} Johnson's final argument under his second assignment of error is that the trial court "erred by failing to recognize Plaintiff/Appellant's Verified Complaint as Evidence for the purpose of Summary Judgment." This argument is directed toward an August 1, 2008, ruling by the trial court overruling his motion for partial summary judgment. After that ruling, Johnson filed a renewed motion for partial summary judgment on December 19, 2008, in which he expressly relied on an affidavit and his verified complaint. In a March 27, 2009, supplement to the renewed motion, Johnson reminded the trial court that his verified complaint constituted proper Civ.R. 56 evidence. Thereafter, the trial court filed the June 3, 2009, decision, order, and entry from which Johnson has appealed. In that ruling, the trial court overruled Johnson's motion for partial summary judgment while sustaining SK Tech's cross motion for summary judgment. In the course of its written decision, the trial court repeatedly cited facts contained in Johnson's verified complaint. Because the trial court ultimately did recognize Johnson's verified complaint as proper Civ.R. 56 evidence, his seventh argument lacks merit. Having rejected each of Johnson's arguments we overrule his second assignment of error.

{¶ 79} In his third assignment of error related to SK Tech, Johnson contends the trial court erred in entering summary judgment against him "because

reasonable minds would not have granted Summary Judgment to Defendant/Appellee.” Johnson presents three arguments in support: (1) reasonable minds would have recognized that he was not “guilty of any fault”; (2) reasonable minds would have recognized that his signature on the receipt-and-acknowledgment form was unnecessary if the only purpose was to prove receipt of the handbook; and (3) reasonable minds would not have entered summary judgment for SK Tech “[b]ecause the evidence in this case is undisputed and clearly [in] favor of Plaintiff/Appellant[.]”

{¶ 80} Upon review, we find the foregoing arguments to be unpersuasive. For purposes of Johnson’s unemployment compensation appeal, we agree that he was not terminated through any “fault” of his own. This was our reason for finding him entitled to unemployment benefits. But the absence of fault, within the meaning of Ohio unemployment compensation law, has no bearing on SK Tech’s right to fire Johnson, an at-will employee. As set forth above, the company was entitled to discharge him for any lawful reason. His refusal to accept SK Tech’s non-discrimination policy, as evidenced by his refusal to sign the receipt-and-acknowledgment form, is a lawful reason for terminating his employment.

{¶ 81} We are equally unpersuaded by Johnson’s second argument. He contends his signature on the receipt-and-acknowledgment form was unnecessary if the only purpose was to prove his receipt of the handbook. The short answer to this claim is that Johnson’s signature was necessary, regardless of the purpose of the form, because human-resources director Francis told him it was necessary and

directed him to sign it. For the reasons set forth above, Francis was entitled to make this demand. Johnson's recourse as an at-will employee was to refuse and risk termination, which is what happened.

{¶ 82} Finally, we reject Johnson's claim that summary judgment in favor of SK Tech was improper because the undisputed evidence favored him. This assertion presents no new argument for us to address. Based on our analysis, supra, we conclude that SK Tech was entitled to summary judgment on the claims Johnson asserted against it. The third assignment of error is overruled.

**D. Conclusion**

{¶ 83} For the reasons set forth above, we reverse the trial court's judgment entry upholding the Review Commission's denial of Johnson's claim for unemployment benefits. The unemployment case is remanded to the Ohio Department of Job and Family Services, Office of Unemployment Compensation, with instructions to allow Johnson's claim for unemployment benefits.

{¶ 84} The trial court's entry of summary judgment in favor of SK Tech on Johnson's complaint against the company for wrongful discharge in violation of public policy, breach of implied contract, and promissory estoppel is affirmed.

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DONOVAN, P.J., concurring in part and dissenting in part:

{¶ 85} I agree with the majority's resolution of Johnson's unemployment claim. However, I disagree with the majority's resolution of Johnson's claim that the trial court erred by granting summary judgment for SK Tech, Inc., on his claim

for wrongful discharge. In my view, summary judgment for Johnson's employer should have been denied.

{¶ 86} Although Human Resources Director Francis "perceived" Johnson's refusal to sign the form as a refusal to abide by the non-discrimination policy, I am not convinced that the record supports this "perception." Johnson's statements evidence a refusal to accept and/or endorse a homosexual lifestyle based upon his religious creed. The majority concludes that Johnson had a religious objection to agreeing not to discriminate against his co-workers on the basis of their sexual orientation. I am not convinced that the record supports the proposition that Johnson intended to discriminate. Nor am I persuaded that the only way to accommodate Johnson's religious beliefs were to allow him to engage in discrimination.

{¶ 87} In my view, it is incorrect to presume that SK Tech took the position that no reasonable accommodation was possible. Accommodation is a highly fact sensitive task, generally not suitable for summary judgment resolution. Once Johnson articulated a claim of religious discrimination, SK Tech was required to show that it was unable to reasonably accommodate Johnson's religious needs without undue hardship on the conduct of its business. SK Tech did not gather sufficient information about Johnson's concerns so as to discover if an actual conflict existed between his belief and the anti-discrimination policy and if so, whether the conflict could be accommodated. The duty to accommodate sometimes requires that an employee be exempted from an otherwise valid work requirement.

{¶ 88} The trial court at page 4 of its summary judgment decision concluded that “Mr. Johnson did not point to any Rule 56 evidence indicating that he was treated differently because of his religion. However; this is not a disparate impact case, but a case involving reasonable accommodation. The trial court also noted that “all employees were required to sign the receipt and acknowledgment form or be terminated.” However, SK Tech did not have a written policy which required all employees to sign the form. This record does not establish that SK Tech maintained a “Certification Policy” which required that every SK Tech employee must sign and return a receipt to the company. Nor would Johnson’s signature give rise to a contract of employment.

{¶ 89} In *Buonanno v. AT&T Broadband, LLC*, 313 F.Supp.2d 1069 (D. Colo. 2004), the trial court as fact finder concluded in a reasonable accommodation case that Buonanno’s religious beliefs could have been accommodated by “a minor revision of the challenged language. . . .”, *Id.* at 1082, in an employee handbook. The *Buonanno* case emphasizes there is an obvious distinction between conduct and belief. Like Buonanno, all that Johnson asked is that he not be forced to endorse views contrary to his religion as a condition of continued employment.

{¶ 90} SK Tech could have accommodated Johnson by utilizing a form which read:

The Issuing Authority or Supervisor should check the following box ONLY if the employee refuses to sign the Acknowledgment of Receipt and then sign as a witness. (NOTE: A witness signature is only necessary when an employee refuses to sign this acknowledgment of receipt.)

\_ The above-named employee refused to sign the Acknowledgment of

Receipt Statement

Witness Signature	Date
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{¶ 91} In the alternative, SK Tech could have provided Johnson an acknowledgment for his signature which would have complied with Anti-Discrimination laws contained in Title VII and R.C. 4112.02 which read: I, Raymond Johnson, shall not discriminate on the basis of race, color, religion, sex, military status, age or ancestry of any person.

{¶ 92} Johnson has been unnecessarily deprived of his livelihood simply because he chose to follow the dictates of his conscience, not because he intended to discriminate against anyone. As noted by Justice Marshall in *Transworld Airlines, Inc. v. Hardison*, “a society that truly values religious pluralism cannot compel adherents of [minority] religions to make the cruel choice of surrendering their religion or their job.” 432 U.S. 63, 97 S.Ct. 2278 (1977). Johnson was not terminated for discriminatory conduct, but rather his religious beliefs which he had a First Amendment right to express.

{¶ 93} I would reverse the summary judgment in favor of SK Tech.

i. ....

FROELICH, J., concurring:

{¶ 94} I concur and write separately regarding the summary judgment for wrongful discharge. There is no genuine issue of material fact; Appellant was an

at-will employee and was terminated for his refusal to agree to comply with his employer's non-discrimination policy.

{¶ 95} If he were terminated merely for not signing the acknowledgment of receiving the handbook based on (1) a religious belief that he was not to sign such receipts, and/or (2) a reasonable belief that signing the form is an endorsement of the sexual orientation non-discrimination policy and an acknowledgment that he agrees with the policy, which he does not, but that he would comply with it nonetheless, then a reasonable accommodation along the lines suggested by the dissent would not only be appropriate, but be required.

{¶ 96} If he were terminated for not signing, not for any religious reasons, but just because he chose not to follow company policy regarding receipt of the document, then he could be terminated as an at-will employee.

{¶ 97} If he were terminated for affirmatively not agreeing to follow his employer's non-discrimination policy, then, almost regardless of his subjective rationale, this would be a lawful termination of at-will employment. This is what happened.

{¶ 98} The employer was not required to wait until its employee actually discriminated against another employee. Many employers create detailed policies regarding discrimination to avoid liability. See, e.g., Fineman, *The Inevitable Demise of the Implied Employment Contract*, 29 Berkeley J. Emp. & Lab. L. 345, 403 (2008). Retaining an employee with the knowledge that he will not follow the non-discrimination policy could lead to a predictable act of discrimination toward another employee and would subject the employer to liability, let alone result in

