

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

Kelli S. Hill, :  
Appellant, : Case No. 11CVF08-10320  
vs. : JUDGE SERROTT  
Aeroteck, Inc., :  
Appellees. :

**DECISION AND ENTRY AFFIRMING THE ORDER OF APPELLEE DIRECTOR,  
OHIO DEPARTMENT OF JOB & FAMILY SERVICES AS MODIFIED  
AND  
NOTICE OF FINAL APPEALABLE ORDER**

Rendered this 15<sup>th</sup> day of December, 2011

**SERROTT, J.**

This case is before the Court on an administrative appeal from the July 20, 2011 Order of Appellee, the Director of the Ohio Department of Job & Family Services, disallowing further review of the Ohio Unemployment Compensation Review Commission's decision finding that Appellant had refused without good cause to accept an offer of suitable work. The relevant facts and procedural history are as follows.

**I. FACTS**

On January 14, 2010, the Ohio Department of Job & Family Services (ODJFS) issued a decision allowing Appellant's application for unemployment compensation. ODJFS subsequently granted Appellant's applications for extended benefits. However, on December 30, 2010, ODJFS issued a Determination finding that Appellant had, for personal reasons, refused an offer of work from Aerotek, Inc. The Determination stated that Appellant was overpaid benefits

in the amount of \$291.00 as a result of “fraud,” and was also overpaid benefits in the amount of \$2,860.00, which was deemed to be “non-fraud.” (See Record of Proceeding).

Appellant filed an appeal, explaining that she did not accept the position as it was located in Dublin, Ohio, and the drive would be too far from her residence in Columbus, Ohio. ODJFS conducted a “fact finding investigation,” and determined that the 25.5 mile distance was not a valid reason for Appellant to reject the job offer. (Id.). Appellant sought further review, and the matter came before a Hearing Officer for a telephone evidentiary hearing on May 4, 2011.

Traci Arminio, ODJFS’ Fraud Investigator, testified that the fraud stemmed from the fact that Appellant did not notify the agency that she had refused the position. (Hearing Transcript, p. 5). Karen Schrickel, a Customer Support Associate with Aerotek, testified that the company is a staffing agency. She stated that Appellant completed paperwork on October 7, 2010 and was offered a customer service representative position to commence on October 11, 2010. (Id. at 7). The job was full-time, paid \$12.00 an hour, and was classified as a “temporary to hire” position. (Id. at 8).

Appellant testified that she was offered and accepted the position. She admitted that she knew the job was located in Dublin, Ohio, but was unaware of how far away it was from her home in Columbus, explaining that it could be a forty-five minute drive depending on traffic. (Id. at 10). Believing the distance to be too great, she contacted Aerotek and declined the position. Upon being questioned as to what her objections were to the distance, Appellant explained that she felt she needed to be closer to her daughter “in case something happened.” (Id. at 11-12).

The Hearing Officer affirmed ODJFS’ Determination, finding that “Claimant refused the offer of work because it was too far to drive. However, the job was only twenty-five minutes

away and a reasonable person would not determine in today's economic environment that this was too far to drive." (Hearing Officer's Decision, p.4). Thus, the Hearing Officer determined that Appellant had refused without good cause to accept an offer of suitable work, but the Hearing Officer ruled that Appellant did not intentionally file a fraudulent claim for benefits. The Hearing Officer concluded that Appellant was overpaid benefits from October 10, 2010 through January 29, 2011 and was statutorily obligated to reimburse the sum of \$3,151.00. ODJFS disallowed further review, and this appeal ensued.

In her Notice of Appeal, Appellant claims that she was never offered a position with Aerotek. She asserts that:

I arrived on October 7, 2010 prior to my scheduled interview time. At that point they asked me to fill out paperwork for the position. I followed their request. I waited for over an hour for my interview with Christine Meier and was told that I would need to reschedule due to a conflict. I called back later that day to talk to Christine. She discussed the position with me via phone. Upon discussing my experience and background she was not sure if I met the necessary qualifications for the position. She did not feel that it was necessary for either of us to continue further with the interview. My reply to her was that it was fine because it was a very long drive from my home anyway. I was very upset that they wasted so much of my time for nothing.

(Notice of Appeal, p. 2).

Appellant further asserts that she tried to explain to the Hearing Officer exactly what happened, but the Hearing Officer refused to allow her to do so, simply wanted her to answer questions, and twisted what she was saying into what the Hearing Officer wanted to hear. Additionally, Appellant contends that the Hearing Officer incorrectly determined that she received unemployment benefits through January 29, 2011 when the benefits ceased in December, 2010. Appellant does agree with the Hearing Officer's conclusion that she did not file a fraudulent claim.

## II. STANDARD OF REVIEW AND LEGAL ANALYSIS

In reviewing unemployment compensation cases, “[a]n appellate court may reverse the board's decision if the court finds the decision unlawful, unreasonable, or against the manifest weight of the evidence.” Wash. County Eng'r v. Adm'r (Sept. 25, 1996), 4th Dist. No. 95CA34 (citing Tzangas, Plakas & Mannos v. Administrator (1995), 73 Ohio St.3d 694, paragraph one of the syllabus). “This standard applies to courts of common pleas and courts of appeals.” Id. (citing Tzangas, Plakas & Mannos, 73 Ohio St.3d at 696). “In its review, a court determines whether ‘some competent, credible evidence’ supports the board's conclusion.” Id. (quoting Central Ohio Joint Vocational School Dist. Bd. of Edn. v. Administrator (1986), 21 Ohio St.3d 5, 8). “The resolution of purely factual questions, including the credibility of conflicting testimony and the weight given to the evidence, is primarily within the province of the board.” Id. (citing Tzangas, Plakas & Mannos v. Administrator, 73 Ohio St.3d at 697). “[A]ppellate courts are obligated to defer to the board's findings and have no authority to make their own findings.” Id. “A court may not substitute its judgment for that of the Administrator or the board.” Id. (citing Simon v. Lake Geauga Printing Co. (1982), 69 Ohio St.2d 41, 45).

“At an administrative hearing, the claimant has the burden of proving her eligibility for unemployment compensation benefits.” Id. (citing Irvine v. State Unemp. Comp. Bd. of Rev. (1985), 19 Ohio St.3d 15, 17). R.C. 4141.29(D)(2)(b) provides that a person is not eligible for unemployment compensation benefits if that person “refused without good cause to accept an offer of suitable work.” The statute “does not require all employees to accept offers of suitable work. Rather, the statute permits an employee to refuse an offer for ‘good cause.’” Id. “When

making determinations of good cause, the board must decide each case upon its particular facts.”

Id. “Traditionally, ‘good cause’ means that which an ordinarily intelligent person would consider a justifiable reason for doing or not doing a particular act.” Id. (citing Irvine v. State Unemp. Comp. Bd. of Rev., 19 Ohio St.3d at 17).

The Court has thoroughly reviewed the record as well as the assertions set forth in the Notice of Appeal. Appellant’s challenges to the manner in which the Hearing Officer conducted the hearing are not substantiated. The transcript reflects that the Hearing Officer repeatedly offered Appellant the opportunity to present her evidence and to refute the testimony of the other witnesses. On three separate occasions, the Hearing Officer asked Appellant whether she had any additional evidence to present. Additionally, the Hearing Officer’s questions to all of the witnesses were relevant to the issues and to her role as a fact finder. There is no evidence in the record supporting Appellant’s claim that the Hearing Officer “twisted” Appellant’s testimony to what she wanted to hear.

Appellant’s argument that she was never offered a position with Aerotek is clearly belied by her own testimony. Appellant unequivocally stated that she was offered and accepted the position, but then subsequently contacted Aerotek to decline the job once she realized the distance she would be required to travel. Again, Appellant was afforded full opportunity to present her case, and the facts set forth in her Notice of Appeal completely contradict her testimony and will not be considered.

What is subject to review is whether there is competent and credible evidence to support the underlying Order. The issue is whether Appellant “refused without good cause to accept an offer of suitable work,” which can be narrowed further into whether an ordinary intelligent person would consider the twenty-five mile distance between Appellant’s residence and the job

site as a justifiable reason for rejecting the position. The Hearing Officer found Appellant did not have good cause, and the Court is required to defer to her findings and to not usurp her judgment. The Court finds that her decision is supported by competent and credible evidence and is not unreasonable or unlawful. The job location was not outside of the Central Ohio area, and there was no evidence that Appellant lacked transportation or could not reasonably get herself to and from the job site. The only explanation Appellant offered for declining the position was that she wanted to be closer to her daughter "in case something happened." Appellant failed to provide a more concrete basis for refusing the job. For instance, she did not have a specific child care issue that would render acceptance of the job problematic. Her general concern is one shared with all working parents, but the distance was not so great that an ordinary person would find the job to be unsuitable.

Finally, it appears the Hearing Officer did erroneously state that Appellant received benefits through January 31, 2011 as the record reflects unemployment compensation ceased on December 31, 2010. However, the error is not material as the Hearing Officer correctly calculated that the overpayment was \$3,151.00, which is the amount Appellant received from October 10, 2010 through December 31, 2010. The Court will modify the underlying Order to indicate that Appellant was overpaid benefits from October 10, 2010 through December 31, 2010.

Based on the above, ODJFS' Order is AFFIRMED as modified. As Appellant has filed an Affidavit of Indigency, no costs will be assessed. Pursuant to Civ. R. 54(B), the Clerk of Courts is hereby directed to serve upon all parties notice and the date of this judgment.

**IT IS SO ORDERED.**

**Copies to (via e-filing notification):**

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Appellant

Franklin County Court of Common Pleas

**Date:** 12-15-2011  
**Case Title:** KELLI S HILL -VS- AEROTECK INC  
**Case Number:** 11CV010320  
**Type:** DECISION/ENTRY

It Is So Ordered.



*Mark Serrott*

/s/ Judge Mark Serrott