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COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Ohio County Board of Education,	:	
Appellant,	:	CASE NO. 11CVF-09-11503
-vs-	:	**JUDGE SERROTT**
Director, Ohio Department of Job and Family Services, et al.,	:	
Appellees.	:	

DECISION AND ENTRY REVERSING THE ORDER OF APPELLEE, DIRECTOR OF OHIO DEPARTMENT OF JOBS AND FAMILY SERVICES
AND
NOTICE OF FINAL APPEALABLE ORDER

Rendered this 6th day of January, 2012.

SERROTT, JUDGE.

I. PRELIMINARY STATEMENT AND FACTS

This matter came on for hearing upon the appeal of employer, Ohio County Board of Education, Appellant. The matter has been briefed and is ready for decision. This is an appeal granting Timothy Toland unemployment compensation benefits. The Appellant hired Toland as a substitute janitor to work when the regular janitor was sick, off work, or otherwise absent. Appellant is the Board of Education that operates the high school where Toland was employed. (TR. 7-9). Toland did not have regular work hours and was on an "on-call" work as needed basis. (TR. 10). Toland had previously (2009) been granted unemployment benefits from the State of Ohio based upon his work with an Ohio company. (TR. 22). However, the Appellant employer herein is wholly located and operates in Wheeling, West Virginia. (TR. 25-26.) Toland has always resided in the State of West Virginia for the last fifty-three (53) years. (TR. 25.) The Appellant, employer, has no affiliation with the State of Ohio in spite of the fact that "Ohio" appears as part of Appellant's name. (TR. 16.)

Toland also worked as a substitute janitor for another high school in West Virginia and thus was not always available to work for Appellant when Appellant called Toland for

work. (TR. 29.) The very nature of Appellant's work indicated he was never intended to be full time and he had no set hours. (TR. 29.) From November 2010 until May, 2011, Appellant offered Toland work 238 times and he only worked 58 of those opportunities. (See Exhibit's A and B)

Because Toland worked and earned less weekly than the amount of weekly unemployment benefits that he was entitled to, he filed a claim for partial unemployment. The Appellee conducted a hearing and ultimately, the Appellee, commission granted Toland unemployment compensation based upon his partial unemployment. During the hearing, Appellant argued that the nature of Toland's work (on-call) did not qualify him for unemployment compensation and that the Appellee lacked jurisdiction over Appellant because both Toland and Appellant were West Virginia residents. (TR. 28.) The Appellant lost both arguments and has appealed to this Court raising two issues which will be addressed next.

II. LEGAL ANALYSIS

A. Standard of Review

In reviewing unemployment compensation case, "[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 court of appeals." Id. (citing Tzangas, Plakas & Mannos, 73 Ohio St. 3d at 696). "In its review, a court determines whether 'some competent, credible evidene' 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).

In order for Toland to obtain unemployment benefits he must show that he meets the term "employment" as defined in O.R.C. 4141.01 (B)(1) and (B)(2) and that he was "involuntarily" partially unemployed. (See O.R.C. § 4141.01(N).) Appellant assigns as error that Appellee's award to Toland of unemployment compensation is contrary to law, unreasonable and against the manifest weight of the evidence because of the following:
(1) Toland was offered work 238 times and either did not answer or declined work about 180 times while employed and thus Toland was not "involuntarily" partially unemployed;
(2) that Appellee did not have jurisdiction to award unemployment compensation to a West Virginia resident working for a West Virginia employer with no affiliation with the State of Ohio.

For the reasons to follow, the Court sustains both claimed assignments of error and reverses the determination of the Commission awarding Appellee unemployment benefits.

B. Toland was not "involuntarily" partially unemployed because he was offered work over 238 times and only accepted work 58 times.

Exhibit B establishes that Appellant was offered work over 238 times yet worked only 58 times during the period 11/22/10 to 05/20/11. (TR. Exhibits A and B) Moreover, for the week of January 31, 2011 Toland was offered work on January 31, 2011, February 1, 2 and February 6th at $93.00 per day. Appellant only responded and worked January 31, 2011, only one of the 4 days offered. (TR. 8-9.) Thus, during the week in question he would have earned $377.00 which was greater than Appellant's weekly benefit rate of $365.00 from his previous claim against an Ohio employer. Based upon the above testimony and Exhibits A and B, the Court finds that the employment offered Toland would have placed him outside the definition of "partially unemployed." Thus, this case is unlike the case cited by Appellee, Clark County Board v. Griffin 2007 Ohio 1674.

In the Clark case, the claimant testified she "accepted work when she was called" (Id. ¶ 2). Even working when she was called, she only worked 2-3 hours per day one to two days a week. (Id. ¶ 2). In the case at bar, the claimant did not testify he accepted the work when

called and did not dispute that he only worked 58 times out of 238 requests during a seven (7) month period. (See Exhibits A and B.) Thus, the case at bar is unlike the facts of Clark case.

In the case at bar, the claimant either refused or was unavailable for work about 180 times. Thus, Appellant was not "involuntarily" partially unemployed and thus was not entitled to benefits. The decision of the Appellee was against the manifest weight of the evidence and contrary to law.

C. O.R.C. §4141.01 (B)(1) and (2) authorize unemployment benefits for employees who meet the definition of having been "employed" and then becoming involuntarily unemployed.

The Appellee is authorized to award unemployment benefits to those individuals who meet the definitions and qualifications set forth in O.R.C. 4141.01 et seq. O.R.C. §4141.29, which provide eligible claimants shall receive benefits as compensation due to involuntary, or partial unemployment, as set forth by the statute. To meet the definition of unemployed, the claimant must first have been employed as defined by the term "employment" in O.R.C. 4141.01 (B)(1) and (2).

"Employment" is defined in O.R.C. 4141.01 (B)(1) and (2) and does not include a resident of another state employed wholly outside the State of Ohio by an employer wholly located outside the State of Ohio. (Id.) "Employment" does include any service performed outside the State of Ohio if the service is localized in the State of Ohio, or if some services are performed in Ohio; other exceptions apply to non-resident claims, for example when no coverage exists in any state, or if an employer outside the State has "elected" coverage in Ohio. (See 4141.01 (B)(2)(f), (h), (i) and (j). However, a close review of the definition of "employment" establishes that it does not include the situation at bar of a claim by a non-resident against a non-resident employer who has no connections, or affiliations, with the State of Ohio.

The State's argument that O.A.C. 4141-31-01 et seq. authorizes interstate claims such as Toland's is unavailing. A review of those administrative code provisions establish that claims may be made interstate by claimants that have available "credits" in the "liable" state. No evidence exists that the claimant has credits in West Virginia or that such credits

are even available. Moreover, the director of the agency may promulgate rules but those rules cannot conflict with the statute which sets forth the definitional requirements for "employment". Thus, the regulations cannot authorize benefits to a non-resident employed by a non-resident when the statute itself does not authorize such benefits.

Therefore, the Court finds that Toland as a non-resident is ineligible for benefits based upon a claim against a non-resident employer. The decision of the Commission is therefore contrary to law. Thus, the Court reverses the determination of the Commission in this case and rules that the claimant is not entitled to benefits as against this employer.

Pursuant to Civ. 58(B), the Clerk of Courts is hereby directed to serve upon the parties notice and the date of this Final Appeal Order.

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Franklin County Court of Common Pleas

Date:	01-06-2012
Case Title:	OHIO COUNTY BOARD EDUCATION -VS- TIMOTHY R TOLAND
Case Number:	11CV011503
Type:	DECISION/ENTRY

It Is So Ordered.

/s/ Judge Mark Serrott