

COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

SHARON THOMAS,

Appellant,

v.

OHIO UNEMPLOYMENT  
COMPENSATION REV. COMM., et al.

Appellees.

) Case No. CV 10 737373

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) JUDGE RONALD J. SUSTER

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) JOURNAL ENTRY

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The Court of Common Pleas, when reviewing an administrative decision, may not substitute its judgment for that of an agency. In an unemployment compensation benefits case, R.C. 4141.282(H) provides that this Court should affirm the decision of the Review Commission unless the decision was “unlawful, unreasonable, or against the manifest weight of the evidence...” Determinations of factual questions are primarily reserved for the hearing officer and courts cannot usurp that function. *Brown-Brockmeyer v. Roach* (1947), 148 Ohio St. 511; *Irvine v. Unemploy. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15, 18. Where a decision is supported by some competent, credible evidence, it will not be reversed as being against the manifest weight of the evidence. *Irvine*, 19 Ohio St. 3d at 17.

The burden of proof of showing that the Review Commission made an unreasonable or unsupportable decision falls on Appellant Sharon Thomas. The Court finds that Ms. Thomas has not met this burden. Ms. Thomas has failed to show that the Review Commission’s decision was unlawful, unreasonable or against the manifest weight of the evidence. After review of the record, the Court further finds that the Review Commission’s decision was supported by competent, credible evidence.

As to Assignment of Error No. 1, Ms. Thomas erroneously maintains that Dave Lakatos, Investigator for the Ohio Department of Job and Family Services engaged in the unauthorized practice of law when testifying at Ms. Thomas’ hearing. Mr. Lakatos was the investigator, and thus, it was appropriate for him to present evidence concerning the representations made by Ms. Thomas in order to obtain benefits. In any event, she had the full opportunity to cross-examine him as to the results of the investigation. Moreover, the hearing itself was an administrative hearing pursuant to OAC 4146-7-02(B), which proceedings are not bound by common law or statutory rules of evidence or by formal rules of procedure.

The case law cited by Ms. Thomas in support of Assignment of Error No. 1 also presents no support for the proposition that an administrative agency's ruling can be set aside based on Mr. Lakatos' participation in the hearing. Indeed, the Ohio Supreme Court in *Cleveland Bar Association v. CompManagement Inc.* (2004), 104 Ohio St. 3d 168 found that mandating use of attorneys at a workers' compensation hearing would frustrate the goals of the system, and that nonlawyers appearing in a representative capacity before the Industrial Commission are not engaged in the unauthorized practice of law. The same reasoning applies here. Assignment of Error No. 1 is overruled.

Assignment of Error No. 2 is also overruled. Hearing officers may make use of hearsay evidence as administrative hearings are not bound by the same strict rules of evidence governing court procedures. The duty of the fact finder is to weigh and consider the reliability of the evidence and credibility of the witnesses. *Shepard v. Dir.*, 166 Ohio App. 3d 747, 753 (8<sup>th</sup> Dist. App., 2006); *Fisher v. Bill Lake Buick*, 2006-Ohio-457 at 20 (8<sup>th</sup> Dist. App. No. 86338). Ms. Thomas has failed to show that the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence. In fact, in her brief, she admits that she did not contest having received benefits that she was ineligible to receive. This Court is not permitted to substitute its judgment for that of the Review Commission, which found that Ms. Thomas made fraudulent misrepresentations in order to get those benefits.

*Judgment affirmed.*

IT IS SO ORDERED.

DATE: 2.21.12

  
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JUDGE RONALD J. SUSTER

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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**



SHARON THOMAS  
Plaintiff

Case No: CV-10-737373

Judge: RONALD SUSTER

STATE OF OHIO UNEMPLOYMENT ET AL  
Defendant

**JOURNAL ENTRY**

98 DISPOSED - FINAL

JOURNAL ENTRY AND OPINION, OSJ, JUDGMENT: AFFIRMED. CASE DISMISSED.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

OSJ  
Judge Signature

2/21/2012  
Date