COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

2012 FEB 28 PM 2:09
SETH ANN ROSE
CLERK OF COURTS

CHRISTINE D. ROBISON,

Appellant,

vs.

Case No. 2011-099

SWITZERLAND OF OHIO LOCAL BOARD OF EDUCATION, COMPMANAGEMENT, INC., et al.,

Appellees.

JOURNAL ENTRY

This matter is before the Court on a fully-briefed appeal of a decision of the Unemployment Compensation Review Commission. Appellant Christine D. Robison (*hereinafter referred as "Robison"*) is represented by Attorney Charles H. Bean, Esq. and Appellee, Director, Ohio Department of Job and Family Services is represented by Ohio Attorney General Michael DeWine through Principal Assistant Attorney General Yvonne Tertel, Esq.

During the 2009-2010 school year, Robison was a substitute bus driver and substitute aide for the Switzerland of Ohio Local School District (*herein after referred to as "Switzerland"*). On April 26, 2012, Switzerland sent a letter to Robison, advising her about the next school year and requesting that she contact them prior to June 7, 2010 to ensure the timely completion of the required background checks for school employees. Robison was further advised through this letter to notify the Switzerland central office if she did not intent to continue working during the 2010-2011 school year. Robison did neither of these things. Instead, Switzerland officials called Robison after not hearing from her by the requested deadline date. At that time, Robison notified the Switzerland officials that she would not be returning to employment for Switzerland since she had been hired full-time at her other place of employment.

Thereafter, on June 14, 2010, Robison filed an application for the determination of unemployment benefits with the Director of the Ohio Department of Job and Family

COURT OF COMMON PLEAS
MONROE COUNTY
JULIE R. SELMON
JUDGE

FINAL APPEALABLE ORDER

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Services. On July 2, 2010, the Director allowed Robison's claim for benefits, basing the decision on the fact that Robison had other non-educational employment that established separate eligibility for benefits.

Robison appealed this decision, arguing that she had been working for her other employer full-time for the past year and had not been laid off from that position. In its redetermination decision dated August 2, 2010, the Director found that because Robison had been given reasonable assurance of employment with an educational institution, she was ineligible for the benefits she had received for the weeks of June 26, 2010 through July 24, 2010, totaling $540.00.

On August 18, 2010, Robison timely appealed the Director's redetermination and the case was set for hearing before Hearing Officer Tonya Brady.

Hearing Office Brady held a hearing on December 10, 2010 where both parties appeared. On December 30, 2010, Hearing Officer Brady affirmed the Director's redetermination decision denying Robison the benefit she requested. In her findings, Hearing Officer Brady found that Robison received reasonable assurances of employment as a substitute for the 2010-2011 school year and therefore she was ineligible to receive benefits during the summer, pursuant to R.C. § 4141.29(I).

On January 18, 2011, Robison again appealed. Upon a review of the record and without further hearing, the Review Commission affirmed the Hearing Officer's decision. This appeal followed.

This Court's role is limited to determining whether the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence. It is only under one of these criteria that the Court shall reverse, vacate or modify the decision; otherwise, the Review Commission's determination must be upheld. *Tzangas, Plakas & Mannos v. Adm.,* 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995). Under R.C. § 4141.282, all

courts sitting in review of the Review Commission must apply the same standard of review. *Tzangas,* 73 Ohio St.3d at 697, 653 N.E.2d at 1210.

The Review Commission's function as trier of fact remains intact. *Tzangas,* 73 Ohio St.3d at 697, 653 N.E.2d at 1210. Where factual matters, the credibility of witnesses, and the weight of conflicting evidence are at issue, the court should defer to the Review Commission's determination and may not reverse simply because it interprets the evidence differently than did the board. *Brown-Brockmeyer Co. v. Roach,* 148 Ohio St. 511 (1947); *Fahl v. Bd. of Review,* 2 Ohio App.2d 286; 207 N.E.2d 774 (1965). As trier of fact, the Review Commission and/or its hearing officer is in the best position to judge such issues. See, *Meyers v. Garson,* 66 Ohio St.3d 610, 614 N.E.2d 742, 745-746 (1993). Therefore, as long as there is competent credible evidence in the record that would support the decision of the Review Commission, the Review Commission's decision must stand. *Irvine v. Bd of Rev.,* 19 Ohio St.3d 15, 482 N.E.2d 587 (1985); *accord, C.E. Morris Company v. Foley Construction Co.,* 54 Ohio St.2d 279, 376 N.E.2d 578 (1978). A decision by the Review Commission will be against the manifest weight of the evidence only if the decision is "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice***." *Sambunjak v. Bd. of Rev.,* 14 Ohio App.3d 432, 433, 471 N.E.2d 835, 837 (1984).

Under no circumstances may a reviewing court make factual determinations or substitute its judgment for that of the Review Commission. *Kilgore v. Bd. of Rev.,* 2 Ohio App.2d 69, 71-73, 206 N.E.2d 423, 424-425 (1965). Appeals from the Review Commission, regardless of the appellate level at which the appeal occurs are **not** *de novo* trials; they are error proceedings. *Kilgore*, 2 Ohio App.2d at 71-73, 206 N.E.2d 423, 424-425; *Tzangas*, 73 Ohio St.3d at 697, 653 N.E.2d at 1210. Therefore, the fact that reasonable minds may differ as to factual conclusions is not a basis upon which the Review Commission may be

reversed where credible evidence existed. *Tzangas*, 73 Ohio St.3d at 697, 653 N.E.2d at 1201.

An employee working for an educational institution in other than an instructional, research, or principal administrative capacity is ineligible for unemployment benefits if (1) his or her underlying term of employment began during the period between academic years or terms of school and (2) he or she had reasonable assurance of educational employment for the next academic year or school term. See R.C. § 4141.29(I)(1)(b). What qualifies as "reasonable assurance" under the statute is a question to be resolved in the first instance by the Review Commission, and therefore depends on the factual considerations of each particular case. *Ash v. Bd. of Rev.,* 26 Ohio St.3d 158, 163, 497 N.E.2d 724 (1986).

In Ohio, unemployment compensation legislation has been enacted to benefit teachers and non-instructional employees of education institutions whose employment has terminated at the end of an academic year and whose employment prospects for the ensuing academic year are doubtful. *University of Toledo v. Heiny*, 30 Ohio St.3d 143, 146. Furthermore, in that case, the Ohio Supreme Court adopted case law established in the State of Pennsylvania, stating that such types of legislation were "surely not enacted to subsidize the vacation period of those who know well in advance that they may be laid off for certain specified period." *Id.* Unemployment benefits may only be paid to teachers or other educational personnel if prior to or at the beginning of the ensuing academic year or term, he or she had no contract or reasonable assurance of reemployment. *Knight v. Adm., Ohio Bur. Of Emp. Serv.,* 28 Ohio St.3d 8, 10.

R.C. § 4141.29 requires that an employee of an educational institution be given reasonable assurance of reemployment for the following year. See *Cohen v. Toledo Public Schools*, 6th District No. L-04-1056, 2004-Ohio-6889 at 24.

In the case before this Court, the Court finds that there exists a separate written

letter specifically addressed to Robison from Switzerland, giving her advance notice of her reemployment in the 2010-2011 school year. The letter went on and requested that Robison provide certain information to Switzerland before the start of the next school year so that her mandated background check could be completed on time.

The Court finds that Robison was employed as a substitute bus driver. The 2009-2010 school year came to an end and the Court further finds that she was given reasonable assurance of reemployment by Switzerland in the same capacity for the following school year, by means of the letter dated April 26, 2010.

The Court finds that Robison voluntarily chose not to pursue her same employment with Switzerland for the 2010-2011 school year since she found other full-time employment somewhere else.

Based upon all of the foregoing, the Court finds that there was competent credible evidence upon which the Review Commission could rely, and as a result, the decision of the Unemployment Compensation Review Commission is hereby ***affirmed***. Said decision was not unlawful, unreasonable or against the manifest weight of the evidence.

The Court makes the express determination that there is no just cause for delay and that this decision constitutes a final appealable order for purposes of Civ.R. 54(B).

Costs to Appellant.

IT IS SO ORDERED.

DATED: February 28, 2012

JULIE R. SELMON, JUDGE

(COPIES SENT THIS DAY TO:
Charles H. Bean, Esq. and Principal Assistant Attorney General Yvonne Tertel)

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