

DANIEL M. HERRIGAN

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SUMMIT COUNTY CLERK OF COURTS **IN THE COURT OF COMMON PLEAS**  
**COUNTY OF SUMMIT**

**INFOCISION MANAGEMENT CORP., )**

**CASE NO. CV 2011-10-5665**

**Plaintiff )**

**JUDGE CORRIGALL JONES**

**-vs- )**

**ORDER**

**TIMOTHY FRANKLIN, et al., )**

**FINAL AND APPEALABLE**

**Defendant )**

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On October 6, 2011, the Plaintiff-Appellant, Infocision Management Corp., filed this administrative appeal from the decision of the Ohio Unemployment Compensation Review Commission pursuant to Ohio Revised Code § 4141.282(H).

The transcript of proceedings was filed on November 18, 2011. The briefing schedule pursuant to Ohio Summit County General Division Local Rule 19.03 and this court's order is now complete. The issues raised by this administrative appeal are now deemed submitted.

The facts of the case are as follows. Appellee Franklin is a former employee of Appellant. Appellee was discharged on or about January 31, 2011. On March 2, 2011, the Director of the Ohio Department of Job and Family Services found that Franklin had been terminated by his employer without just cause in connection with work and was entitled to unemployment benefits. On May 4, 2011, the Director issued a redetermination reversing the earlier finding. The employee filed a timely appeal and the Unemployment Compensation

Review Commission held a telephone conference on July 13, 2011. In a decision mailed August 8, 2011, the hearing officer reversed the redetermination and found that Franklin was not terminated for good cause and was entitled to unemployment benefits. The Hearing Officer's Decision by the Unemployment Compensation Review Commission found as follows.

The evidence did not establish any neglect of duty or willful violation of any rule or training on claimant's part. The contradictions between the employer's sworn testimony at the hearing and the fact-finding information and documents provided by the employer undermined the employer's credibility in this matter. Based upon all of the circumstances here, the Hearing Officer finds that claimant's conduct did not constitute sufficient fault or misconduct to justify his discharge. The Hearing Officer finds that the claimant was discharged without just cause in connection with work.

The Review Commission disallowed a request for further review on September 7, 2011. The administrative appeal was timely filed by Infocision in this court on October 6, 2011.

The role of the court of common pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary

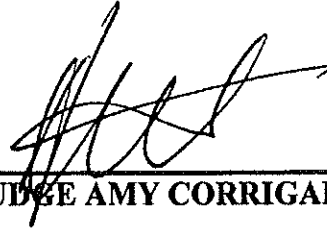
conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

Upon appeal, a court may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code §4141.282(H); *Tzangas, supra; Irvine, supra*. If the evidence supports the Review Commission's conclusion, a reviewing court may not substitute its own findings of fact. *Durgan v Ohio Bur. Of Emp. Serv.* (1996), 110 Ohio App.3d 545 at 551. In this case, the hearing officer found the testimony of Timothy Franklin credible and ruled accordingly. Here the former employer, Appellant Infocision, argues that the finding is against the manifest weight of the evidence. The hearing officer specifically found that the employer's testimony was not credible, thus explaining her findings to the contrary of its witness's testimony. Under Ohio law, "Where conflicting testimony exists, the Ohio Unemployment Compensation Review Commission, not the court, resolves the conflicts and determines the credibility of the witnesses." *Cottrell v Dir., Ohio Dep't of Job & Family Services*, 2006 Ohio 793.

After a thorough review of the record, the court finds that there was competent, credible evidence to support the conclusions made below. The record contains sufficient credible evidence that Appellee Franklin was discharged by his employer, the Appellant, without just cause in connection with work. The court is unable to find that the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence.

The decision of the Ohio Unemployment Compensation Review Commission is **AFFIRMED**. This administrative appeal is **DISMISSED** with prejudice. This shall serve as a final appealable order. There is no just cause for delay.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Amy Corrigan Jones', is written over a horizontal line.

**JUDGE AMY CORRIGALL JONES**

cc: Attorney Kathleen Gadd  
Attorney Susan Sheffield  
Timothy Franklin