

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

**JOSEPH J. CANYOCK, ET AL** )  
Appellees )

**JUDGMENT JOURNAL**  
**ENTRY**

FILED  
COMMON PLEAS COURT  
2012 MAR 29 P 3:51

-vs-

Case No: 10-CV-528

JOHN A. CORNIGAN  
CLERK OF COURTS  
JEFFERSON COUNTY OH

**JEFFERSON INVESTIGATORS &** )  
**SECURITIES INC** )  
Defendants )

**JOSEPH J. BRUZZESE, JR.**  
**JUDGE**

\*\*\*\*\*

This is an appeal by the employer of its Employee's unemployment benefits. The uncontested facts are that Employee worked for Employer as a security guard getting about 30 hours per week. At some point, Employee sought additional employment elsewhere. At the other employment, Employee received a fixed schedule of Monday, Friday and Saturday from 8:00 a.m. to 3:00 p.m. He asked Employer in this case to schedule around those hours. Employee ended up losing substantial hours per week with Employer and on some weeks got no hours at all.

The factual dispute centers on whether or not Employee was available for work when Employer needed him. Employee says that he was and Employer says that he was not.

The standard of review can be found at R.C.4141.282(H) which reads as follows:

"If the Court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or remand the matter to the commission. Otherwise, the Court shall affirm the decision of the commission."

Under this standard of review, deference must be given by the Court to the hearing officer, who is supposed to be in a better position to evaluate credibility than the Court. In this particular case the hearing was conducted by phone so the hearing officer's ability to access

credibility would have been only marginally better than the Court's. Still, the standard of review applies, even though the reason for the standard perhaps does not.

The pertinent part of the hearing officers reasoning states:

"The employer argues that claimant limited his availability, but claimant appeared at the hearing and presented credible, sworn testimony that he was not offered more hours, despite the fact that he was available to work. In light of the evidence presented in this case, the hearing officer finds that claimant was partially unemployed from his work at Jefferson Investigators and Security, Inc. Claimant's application remains allowed."

Neither party argues that Employee was actually offered hours that he rejected. Because there appears to be some evidence to support the hearing officers conclusion, this Court must affirm.

The decision of the unemployment compensation review commission dated July 16, 2010 is affirmed.

  

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JUDGE JOSEPH J. BRUZZESE, JR.

Copies to:

All Attorneys of Record