

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

PATRICK M. HIGGINS

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Case Number: CV 2011-09-3105

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Plaintiff,

FILED BUTLER CO.
COURT OF COMMON PLEAS

JUDGE MICHAEL J. SAGE

vs.

MAY - 2 2012

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OHIO DEPARTMENT OF JOB AND SWAIN
FAMILY SERVICES

CLERK OF COURTS

DECISION AND ENTRY
REMANDING BACK TO
REVIEW COMMISSION

Defendant.

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FOR FURTHER PROCEEDINGS

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This matter came before the Court on an appeal by Appellant, Patrick H. Higgins, of a decision issued by the Ohio Unemployment Compensation Review Commission (“Review Commission”) finding that he was overpaid benefits from October 23, 2010 through February 26, 2011, and that he is required to reimburse the State \$3,475.00 for overpayment of benefits. For the reasons set forth below, the Court remands this matter to the Review Commission for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On October 20, 2010, Appellant filed an Application for Determination of benefits beginning October 17, 2011. Appellant was already receiving extended unemployment benefits of \$355.00 per week. (Tr.p. 6).

On November 24, 2010, Appellant’s application for benefits was approved for a weekly benefit amount of \$133.00, to replace the extended benefits he was receiving of \$355.00. Appellant did not appeal this decision.

Without any action taken on Appellant's part, on December 20, 2010, a corrected determination was issued Disallowing Appellant's claim for benefits. At that time, Appellant went back to receiving the extending benefits amount of \$355.00. Appellant did not appeal the decision Disallowing his claim.

Again, without any action taken by Appellant, on March 2, 2011, another corrected determination was issued indicating that Appellant's October 20th application for benefits would be Allowed for a weekly benefit amount of \$147.00. In that determination, Appellant was notified that he would have to repay the overpayment of benefits totaling \$3,475.00. Appellant has appealed this decision.

Again, without any action taken by Appellant, a fourth corrected determination was issued on March 22, 2011, to correct a typographical error.

LEGAL ANALYSIS

This Court is required to utilize the standard of review set forth in R.C.

4141.282(H) when considering appeals of decisions rendered by the Review Commission.

R.C. 4141.282 (H) states:

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

See *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694.

Under this standard of review, the reviewing court must affirm the Commission's finding

if some competent, credible evidence in the record supports it. *Central Ohio Joint Vocational School Dist. Bd. of Educ. v. Administrator* (1986), 21 Ohio St.3d 5, 8. In making this decision, this Court must give deference to the Commission in its role as the finder of fact.

While the Court cannot make findings of fact or to determine credibility, the Court does “have the duty to determine whether the [commission's] decision is supported by the evidence in the record.” *Tzangas*, 73 Ohio St.3d at 696, 653 N.E.2d 1207, quoting *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 18, 19 OBR 12, 482 N.E.2d 587.

In the case at hand, Appellant argues that the error that created the overpayment was a clerical error on the part of the Ohio Department of Job and Family Services (ODJFS), who administers the unemployment benefits. Appellant directs this Court to the Review Commission’s decision on August 16, 2010, where the Hearing Officer noted that “[i]t is unfortunate that it took ODJFS the amount of time that it did to correct the situation.”

It is clear from the record in this matter that Appellant simply filed an application of benefits, which was initially allowed. (See Determination 221819231-1, Nov. 24, 2010). At that time, Appellant was to stop receiving his extended benefits payment of \$355.00 and now only received \$133.00. Despite the dramatic reduction, Appellant did not appeal this decision.

Then, through no action taken by Appellant, the Review Commission submitted a new determination on December 20, 2010, Disallowing Appellant’s claim. (See

Determination 221819231-2). In that determination, it states that “the following portion of the determination is corrected due to receipt of corrected remuneration information.” It goes on to say that Appellant’s claim was disallowed because he failed to have at least twenty qualifying weeks of employment or did not earn the average weekly wage of \$213.00. The determination does not specify what new information ODJFS received that caused it to issue a correction. Appellant admittedly did not appeal this decision because he felt he had submitted the information and he assumed that the right determination had been made. (Tr.p. 10). Appellant was not sure if he had enough weeks to qualify. (Tr. p. 10). Because this was now disallowed, Appellant went back to receiving his extended benefits of \$355.00 per week. (Tr.p. 8).

Then, again without any action by Appellant, a third Determination was issued on March 20, 2011, stating that Appellant’s claim filed October 20, 2010, was now Allowed and that his new weekly benefits would be \$147.00 a week. (See Determination 221819231-3). The very first sentence of the new Determination states “[t]his determination corrects the determination with ID number 221819231-2, issued on 12/20/2010.” Again, there is no explanation in the Determination as to what information was received that causes ODJFS to correct its prior determination Disallowing the claim. Appellant took no action to seek its correction. Furthermore, there’s no explanation as to why Appellant’s weekly benefits increased from \$133.00 in the original allowance to \$147.00 in the corrected determination.

In this March 20, 2011, Determination, Appellant was notified that he was

overpaid benefits and that he would need to re-pay \$3475.00. (See Determination 221819231-3).

Appellant has appealed the Determination 22819231-3 that indicates he is liable for an overpayment. Therefore, the issue before this Court is whether Appellant is liable for paying that overpayment or whether it should be excused under R.C. §4141.35(B).

Appellant's basis for arguing he should be excused from repayment lies within the Determination 22819231-2 and his claim that there was a clerical error.

R.C. §4141.35(B) provides:

(B) If the director finds that an applicant for benefits has been credited with a waiting period or paid benefits to which the applicant was not entitled for reasons other than fraudulent misrepresentation, the director shall:

(1)(a) Within six months after the determination under which the claimant was credited with that waiting period or paid benefits becomes final pursuant to section 4141.28 of the Revised Code, or within three years after the end of the benefit year in which such benefits were claimed, whichever is later, by order cancel such waiting period and require that such benefits be repaid to the director or be withheld from any benefits to which such applicant is or may become entitled before any additional benefits are paid, provided that the repayment or withholding shall not be required where the overpayment is the result of the director's correcting a prior decision due to a typographical or clerical error in the director's prior decision, or an error in an employer's report under division (G) of section 4141.28 of the Revised Code.

(Emphasis added).

The question becomes whether the previously outlined corrections were a result of

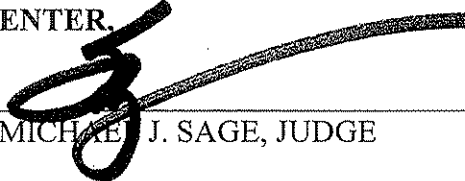
a "clerical error in the director's prior decision" as required to excuse repayment under R.C. §4141.35(B).

It is clear from the ODJFS records that no action was sought by Appellant to seek a change of the initial allowance or the subsequent disallowance. What is not clear from the records provided by ODJFS is what the corrected information was and from where it was received. Accordingly, the Court is unable to make a determination, based upon the records, whether these corrections resulted from a clerical error or not.

WHEREFORE, the Court remands this matter back to the Review Commission for a determination as to what the corrected information was that caused the multiple changes to the determinations and what was the source of that information, if any.

SO ORDERED.

ENTER.



MICHAEL J. SAGE, JUDGE

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