

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

**LESLIE K. DEMPSEY,**

**Appellant,**

**CASE NO. 12CVF-01-945**

**-vs-**

**JUDGE HOGAN**

**DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES, ET AL.,**

**Appellees.**

**DECISION AND ENTRY  
AFFIRMING THE DECISION OF THE COMMISSION  
DISALLOWING REQUEST FOR REVIEW AS MAILED ON  
JANUARY 4, 2012**

**HOGAN, JUDGE**

The above-styled case is before the Court on an appeal of the Decision Disallowing Request for Review issued by the Unemployment Compensation Review Commission (hereinafter referred to as Commission) that denied Leslie Dempsey's (hereinafter referred to as Appellant) administrative appeal. The Commission dismissed the Appellant's appeal by its Decision mailed January 4, 2012. In this appeal, the Appellant named the Ohio Department of Job and Family Services (hereinafter referred to as the Appellee) and Appellant's former employer, US Security, Inc. (hereinafter referred to as Employer)

The Appellant filed his Brief on April 4, 2012. The Appellee filed its Brief on April 12, 2012. The Employer filed its Brief on April 18, 2012. The Appellant did not file a Reply. After a review of the pleadings, briefings, and certified record, this Court holds that the Commission's Decision Disallowing Request for Review of January 4, 2012 is

**AFFIRMED.**

**I. STATEMENT OF THE CASE**

This appeal arises as a result of the Commission's Decision that denied

unemployment compensation benefits to the Appellant.

## **II. STATEMENT OF THE FACTS**

The Appellant was hired by his Employer in September of 2010 and was terminated on September 6, 2011. (Hr. Tr.1, P. 8, L. 17 – 25)<sup>1</sup> Appellant was employed as a security guard. (Hr. Tr.1, P. 9, L. 1 - 4) Appellant admitted that his Employer had offered him work and that he refused it. (Hr. Tr.1, P. 10, L. 1 - 10)

The Appellant also established that the work he was performing for his Employer was for Chase and that that job had been eliminated. (Hr. Tr.1, P. 11, L. 12 – 16) The Appellant's written submission to the Commission and his response at the hearing established that after the Chase job ended his Employer offered him as many as four new work assignments. (Hr. Tr.1, P. 12, L. 3 – 25 & P. 13, L. 1 - 8) The Appellant testified that some of his work concerns came from the fact that he was receiving some form of social security benefit and he was actually limited in the amount of hours he could work. (Hr. Tr.1, P. 20, L. 16 - 20)

Ms. Howard testified on behalf of the Appellant's former Employer. She established that work was offered to the Appellant and work was declined by the Appellant. Specifically Ms. Howard testified that the Appellant had refused an offer of a permanent job in August of 2011. (Hr. Tr.1, P. 23, L. 11 - 18) Please note the following testimony of Ms. Howard at page 24, of the first hearing transcript:<sup>2</sup>

11 || Q: And so you had continuing work available for Mr. Dempsey had he not  
 12 || refused the assignment.  
 13 || A: Yes.

During Appellant's cross examination of Ms. Howard, the Appellant asserted that

<sup>1</sup> The hearing at the administrative level was conducted on two separate dates: November 7 and 22 of 2011. Reference to the first hearing will be Hr. Tr.1 and the second will be Hr. Tr.2.

<sup>2</sup> The darker text is a 'copy image' from the certified record.

his termination was in retaliation due to a 'threat' of a discrimination complaint. (Hr. Tr.1, P. 27, L. 15 – 16) That was denied by Ms. Howard. The first hearing was stopped due to the time constraints placed on the Hearing Officer. A new date of November 22, 2011 was set and the hearing was recommenced on that date.

At the continued hearing the Appellant continued his cross examination of Ms. Howard. During the cross examination, the witness actually briefly examined the Appellant and during that exchange the Appellant claimed to have never been offered a permanent/full time job prior to the end of his work at the Chase location. (Hr. Tr.2, P. 6, L. 11 - 15)

Major Warnock also testified at the continued hearing on behalf of the Employer. The following testimony is relevant: (Hr. Tr.2, P. 15)

11 | Q: Were you involved in issuing offers to the employees when the Chase  
 12 | Bank contract uh changed?  
 13 | A: Yes I, yes I am ma'am.  
 14 | Q: What is the offer that you made to your employees?  
 15 | A: Uh actually Mr. Dempsey got uh quite a few offers. I offered him  
 16 | second shift at Polaris which is at 1111 Polaris Parkway and I offered  
 17 | him one at 8800 Lyra Drive.  
 18 | Q: And when did you make these offers to him?  
 19 | A: I offered him the one at Polaris the day that he was removed, or  
 20 | that the day the temporary assignment stopped and then I offered him  
 21 | the one a 8800 Lyra Drive approximately three days before this happened  
 22 | because he wanted to cut his hours down because he's on social security  
 25 | exceed the cap on social security.  
 26 | A: Yes ma'am.

The testimony established the offers as well as the Appellant's motivation for not taking some of the jobs offered. Major Warnock's testimony was supported by that of Lieutenant Posey. (Hr. Tr.2, P. 28, L. 12 - 24)

The hearing was finally concluded and the Hearing Officer issued her Decision on

December 13, 2011. Based upon the evidence and testimony received, the Hearing Officer provided the following 'reasoning' within her Decision:

**Claimant received \$567.00 in benefits from ODJFS for the weeks ending August 13, 2011 to October 1, 2011. As stated above, claimant is not entitled to benefits for those weeks because of the suspension of benefits imposed as a result of his refusal of a suitable offer of work without good cause. Under these circumstances, the Hearing Officer finds that claimant remains required to repay \$567.00 to ODJFS for benefits he received for the weeks ending August 13, 2011 to October 1, 2011.**

Appellant appealed the Decision. At this point in the administrative process, the Appellant's primary objection was his assertion that he was never offered a full-time and/or a permanent position to replace the work that was ending. Appellant also claimed that the Employer had not appropriately responded to his administrative subpoenas.

Concerning the subpoenas, Appellant claimed that had he had the documents requested by the subpoenas, he would have been able to prove: 1) There was no full time job open at the relevant time as claimed by the Employer; and/or 2) If there was, his Employer would not have offered it to him. The Commission disagreed and adopted the Hearing Officer's Decision and declined to further review the matter. That Decision was mailed on January 4, 2012.

Appellant timely appealed that Decision to this Court and the matter has now been briefed. The Court has conducted a review of the pleadings; briefs and certified record. This appeal is ready for a determination.

### **III. STANDARD OF REVIEW**

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. R.C. 4141.282(H) provides:

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.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission's decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.*(1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer’s and the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162.

The parties must understand that the issues in this appeal are controlled by the Ohio Supreme Court’s decision of *Pennington v. Dudley* (1967), 10 Ohio St.2d 90. Please note the following from paragraph two of the *syllabus*:

2. Whether work is 'suitable work' within the meaning of Section 4141.29, Revised Code, is a question of fact for determination by the trier of the facts.

Given the standard of review and the deference to be given to the trier of fact, the Appellant’s burden on appeal is quite high.

From within this framework, this Court will render its decision on the merits of the Appellant’s appeal.

**IV. ANALYSIS:**

The Appellant's *pro se* Brief is somewhat difficult to follow. Yet it is apparent that two issues are raised within Appellant's Brief. One concerns the subpoenas issued by the Appellant and the second one deals with Appellant's assertion that he was not offered suitable work.

***A) Subpoenas:***

It appears to this Court that Appellant did attempt to preserve his objections concerning the subpoena issue. Appellee's Brief did not address this issue. The Employer's Brief asserted that the Appellant failed to establish a due process issue. The Employer claimed that the Appellant had ample opportunity to establish his arguments at the two hearings conducted at the administrative level.

This Court has reviewed the record and the arguments of the Appellant. It does not appear that the Appellant made a formal objection concerning the alleged lack of documents from his former Employer during the hearing. The record shows that the Employer did comply with the subpoenas and did produce documents that it had in its possession.

From a review of the record, there is no due process issue or any discovery issue concerning the subpoenas that could be significantly egregious enough as to warrant a new hearing. If there was error, and there was not, it would have been harmless given the fact that the Appellant's own testimony established the elements necessary to support the Hearing Officer's Decision. See, *Sinnet v. Ohio Dept. of Health*, 2009-Ohio-6990 (10<sup>th</sup> Dist.) at ¶15.

**B) Merits:**

The Appellee's position is simple, the jobs offered to the Appellant in early August of 2011 were rejected by the Appellant. Hence, the Appellant does not qualify for benefits

due to his own conduct. The Appellee asserted that there was sufficient evidence during the hearings to show that the Appellant was offered work and he declined. The Court agrees.

Here the record reflected a number of job opportunities having been offered to the Appellant and rejected by the Appellant prior to the Appellant seeking unemployment benefits. Appellant refused to accept the work for a number of weak and legally insignificant reasons. Appellant primarily argued that the Hearing Officer should have believed him and not the evidence against him.

The Appellee relied upon the following language from *Nowak v. Board of Review, Bureau of Unemployment Compensation* (1948), 150 Ohio St. 535:

The purpose of this law is to assist those who are unfortunate enough to be involuntarily unemployed, but it is not intended to benefit those who capriciously refuse similar work for which they are reasonably fitted and for which they can receive wages prevailing for similar work in the community.  
*Id.* at 537

Clearly, the documented offers of similar work – rejected by the Appellant – establish that the Commission’s Decision of January 4, 2012 is lawful, reasonable, and supported by the weight of the evidence.

The Commission’s Decision of January 4, 2012 is **AFFIRMED**.

**V. DECISION:**

The Commission’s Decision Disallowing Request for Review of January 4, 2012 is

**AFFIRMED.**

**THIS IS A FINAL APPEALABLE ORDER**

Copies to:

LESLIE K DEMPSEY  
4687 LODGELANE DR  
COLUMBUS, OH 43229  
Appellant pro se

Michael DeWine, Esq.

Ohio Attorney General  
Patria V. Hoskins, Esq.  
Assistant Attorney General  
30 East Broad Street, 26<sup>th</sup> Floor  
Columbus, Ohio 43215-3428  
Attorney for Appellee  
Ohio Department of Job  
And Family Services

JAIME U. KOLLIGIAN  
3480 WEST MARKET STREET, SUITE 300  
AKRON, OH 44333  
Counsel for the Appellee US Security Inc.



Franklin County Court of Common Pleas

**Date:** 05-09-2012  
**Case Title:** LESLIE K DEMPSEY -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR  
**Case Number:** 12CV000945  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. T. Hogan", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom.

/s/ Judge Daniel T. Hogan

Court Disposition

Case Number: 12CV000945

Case Style: LESLIE K DEMPSEY -VS- OHIO STATE DEPT JOB FAMILY  
SERVICES DIRECTOR

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes