

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

STUART WEBSTER

APPELLANT,

vs.

THE OHIO DEPARTMENT  
OF JOB AND FAMILY  
SERVICES, ET AL.

APPELLEES

□  
]I  
□  
]I  
□  
]I  
□  
]I  
□

CASE NUMBER 12CV24

JUDGE CAIN

MAGISTRATE MCCARTHY

**DECISION TO AFFIRM AND JUDGMENT ENTRY**

**CAIN, J.**

This is an administrative appeal from the November 9, 2011 decision of the Unemployment Review Commission upholding an earlier administrative finding that appellant had committed fraud in pursuit of his unemployment compensation claim. By way of historical background, appellant was employed on a part time basis by two employers, Sanese Services and Aladdin Temple. At the time, he had an open unemployment compensation claim from an earlier job loss and was being paid benefits appropriately. In making his periodic applications for benefits, appellant was alleged to have committed a fraud by not supplying appellee with correct information about his ongoing employment status. Specifically, appellant purportedly failed to disclose his active employment with Sanese Services and Aladdin Temple.

Appellant denied the charges of fraud. A hearing was held on October 4, 2011 and on October 20, 2011. At the hearing, documentary evidence was

presented and testimony was taken from appellant and appellee's claims investigator. Appellant claimed that he has done nothing improper and has not committed fraud. R.C. 4141.35 provides that if appellee finds that any fraudulent misrepresentation has been made by an applicant for benefits with the object of obtaining benefits to which the applicant was not entitled, then appellee shall reject the claim, order a repayment of benefits paid, and declare the applicant ineligible to receive further benefits for a given period of time. In this case, due to the finding of fraud, appellant was required to pay back to appellee \$37,345.50 and was declared ineligible for future benefits.

In a R.C. 4141.282 appeal, the court must affirm the commission unless its decision was unlawful, unreasonable, or against the manifest weight of the evidence. Otherwise, the court must affirm such decision. *Tzangas, Plakas, & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694. The law is well settled that a reviewing court may reverse the Review Commission's determination only if it is unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas*, at 696. Reviewing courts should defer to the commission's findings regarding the determination of purely factual issues, such as the credibility of witnesses and the weight to be given to conflicting evidence. *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159, 161.

In considering alleged fraud in an unemployment compensation case, the issue of whether or not a party engaged in a fraudulent act is a factual determination and, therefore, if there is some credible proof upon which the board's decision was based, that finding may not be disturbed. *Christie v.*

*Administrator, Ohio Bureau of Empl. Servs.*, 1996 Ohio App. LEXIS 3875 (Ohio Ct. App., Lake County Sept. 6, 1996)

Further, the burden of proof is upon the claimant to establish the right to unemployment benefits under the unemployment compensation law of Ohio. *Shannon v. Bureau of Unemp. Comp.* (1951), 155 Ohio St. 53, 97 N.E.2d 425, paragraph one of the syllabus; *Bays v. Shenango Co.* (1990), 53 Ohio St. 3d 132, 140, 559 N.E.2d 740. The intent to commit fraud may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances. See *Nichols v. Ohio Bur. of Emp. Serv.* (Mar. 14, 1989), 1989 Ohio App. LEXIS 914, Jefferson App. No. 87-J-21, unreported.

Furthermore, the traditional standards of fraud applicable in tort do not extend to unemployment determinations. See, *Riley v. Administrator, Ohio Bureau of Employment Servs.*, 82 Ohio App. 3d 137, 611 N.E.2d 485, 1992 Ohio App. LEXIS 4430 (Ohio Ct. App., Logan County 1992)

In this case, appellant would apply for benefits on a routine basis for well over one year. During this period of time he was employed on a part time or spot labor basis. Each time he applied, he responded to the inquiry of whether or not he worked during that period with repeated “no” responses. In reliance on appellant’s representations, appellant was paid the full unemployment compensation that appeared to be due him. The amounts received were not reflective of offsets that would have been made if appellee knew appellant was working and earning wages.

In cross checking wage and time records supplied to appellee, it was discovered that apparently appellant was actively working and collecting full benefits as if he were not working. Upon learning of the existence of an investigation, appellant did not make further application for unemployment benefits. He believed the issue under consideration was whether he was self employed. Upon further investigation, the detailed wage records of Aladdin Temple and Sanese Services confirmed that false information about appellant not working was being supplied to appellee.

Appellant contends that the information recordation system used by appellee is flawed and thus incorrectly recorded the information routinely supplied by appellant. While a flaw in the system is possible, it is the case that for approximately a year and one half, appellant was working part time for two employers, but the records maintained by appellee demonstrate that each time appellant contacted appellee to apply for benefits, he responded "no" the query of whether he was working. Given that circumstance, it would be incumbent on appellant to produce whatever evidence is available to him to demonstrate support for his contention that the information he was supplying was accurate. Appellant maintains that his bank records could lend support to his position, but he claims that he had insufficient time to acquire them. Additionally, appellant apparently maintained his own pay records, but did not keep them.

Appellant takes exception to appellee's conclusion that appellant was committing an ongoing fraud. Appellant contends that from the beginning of his dealings with appellee, he has entered into the system the hours and rates of pay

for all time worked for the two involved employers. Why those entries did not register with appellee's computer system, appellant is unable to say. He does, however, suggest that a flaw exists in the system. What must be kept in mind is that the burden of proof is upon the claimant to establish the right to unemployment benefits under the unemployment compensation law of Ohio. *Shannon*, supra.

Appellant suggests that no specific evidence of fraudulent intent is contained in the record. However, this determination may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances. *Johnson v. Ohio Bur. of Empl. Servs.*, 1998 Ohio App. LEXIS 2177 (Ohio Ct. App., Cuyahoga County May 14, 1998), citing *Nichols*, supra

Here, given the circumstance that appellant is wholly unable to offer any reason why the vast objective evidence in this case is at total variance with his self serving testimony, the finder of fact is presented with situation from which an inference very easily can be drawn that appellant was knowingly presenting false information to appellee with the goal of obtaining unreduced unemployment compensation benefits.

Upon a full consideration of the entire record, the court finds appellee's adjudication order to be lawful, reasonable, and in conformity with the manifest weight of the evidence.

Accordingly, judgment is hereby entered in favor of appellee. Costs to be paid by appellant.

Copies to:

Carla Oglesbee  
Counsel for Appellant

Patria V. Hoskins,  
Counsel for Appellee ODJFS

Franklin County Court of Common Pleas

**Date:** 06-07-2012  
**Case Title:** STUART WEBSTER -VS- OHIO STATE DEPT JOB FAMILY SVCS  
DIRECTOR ET AL  
**Case Number:** 12CV000024  
**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 12CV000024

Case Style: STUART WEBSTER -VS- OHIO STATE DEPT JOB FAMILY SVCS  
DIRECTOR ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes