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LORAIN COUNTY

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IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GREGORY A. WRIGHT)	CASE NO. 11CV172664
)	
Plaintiff)	JUDGE CHRISTOPHER R. ROTHGERY
)	
vs)	JOURNAL ENTRY
)	
DIRECTOR, OHIO DEPT. OF JOBS & FAMILY SERVICES, et al.)	
)	
Defendants)	

This matter came on for consideration of Plaintiff/Appellant Gregory A. Wright's ("Mr. Wright") Brief and Assignments of Error, Defendant/Appellee the Ohio Department of Job and Family Services' ("ODJFS) Brief and the administrative record.

This Court finds that this case is an administrative appeal. Specifically, this Court finds that Mr. Wright is appealing his denial of unemployment compensation from the Ohio Department of Job and Family Services.

STANDARD OF REVIEW

R.C. 4141.282 governs unemployment compensation appeals to the court of common pleas. Subsection (H) of that statute provides as follows:

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

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commission. Otherwise, the court shall affirm the decision of the commission. *Id.*

The Review Commission's function as trier of fact remains intact. As such, this Court should defer to the Review Commission where factual matters, the credibility of witnesses, and the weight of conflicting evidence are at issue. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Fahl v. Bd. Of Rev.*, 2 Ohio App.2d 286; *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69. As proceedings such as this are not *de novo* trials, this Court may not make factual determinations or substitute its judgment for that of the Review Commission; for "[i]f the decision is supported by credible proof, the finding may not be disturbed." *Kilgore*, 2 Ohio App.2d at 71-73.

ANALYSIS AND CONCLUSIONS OF LAW

Mr. Wright's first claim on appeal is that the finding of the Review Commission was against the manifest weight of the evidence. On review of purely factual questions, the common pleas court is limited to determining whether the UCRC hearing officer's determination is supported by the evidence in the record. *Tzangas Plakas v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697. Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be affirmed. *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. Therefore, this court "may only reverse an unemployment compensation eligibility decision by [UCRC] if the decision is unlawful, unreasonable, or against the manifest weight of the evidence." *Markovich v. Emps. Unity, Inc.*, 9th Dist. No. 21826, 2004-Ohio-4193 (citations omitted). "Where conflicting testimony exists, the commission, not the court, resolves the conflicts and determines the credibility of the witnesses." *Cottrell*

v. Director, Ohio Dept. of Job and Family Services, 10th Dist. No. 05AP-798, 2006-Ohio-793.

Mr. Wright testified that prior to participating in training he was told he would be on the regional board instead of the CSX route. Tr. 9-10. Further, Mr. Doss, the fleet manager for Schneider National, testified that prior to Mr. Wright beginning orientation, Mr. Doss informed Mr. Wright that would be running regional routes to surrounding states. Tr. 18. After being informed of this, Mr. Wright still accepted the position with Schneider National. *Id.* After driving regional routes for approximately nine weeks, Mr. Wright informed dispatch that he was parking the truck at the Schneider operating center in Seville, Ohio until Schneider secured the CSX contract. Tr. 13. This occurred while Mr. Wright was in the middle of a run. Tr. 19. Further, there was no evidence provided indicating that Mr. Wright informed Schneider of his medical condition or a medical condition of his son that would require him to be home every night. As such, upon review of the administrative record, this Court does not find that the decision denying unemployment compensation was unlawful, unreasonable or against the manifest weight of the evidence. Therefore, this Court affirms the finding of the hearing officer that Appellant quit his job without just cause.

Mr. Wright also contends that the hearing officer's failure to mandate the enforcement of subpoenaed persons and materials violated his due process rights. At his hearing, however, Mr. Wright failed to raise this issue. The issue was only raised after Mr. Wright received the hearing officer's adverse ruling. At the hearing, Mr. Wright testified as well as Mr. Doss on behalf of Schneider. No objection or request for continuance was made based upon the fact that Mr. Darwin Clapton was not present.

Further, it is unclear what testimony Mr. Clapton would have offered to help establish Mr. Wright's claims. Based upon these facts, this Court finds that Mr. Wright was afforded a reasonable opportunity to be heard before the Review Commission.

Based upon the above findings, this Court denies Mr. Wright's appeal and affirms the administrative decision. Case closed at Plaintiff/Appellant Mr. Wrights' costs.

TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.

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JUDGE CHRISTOPHER R. ROTHGERY

cc: ATTY. RILEY
ATTY. TERTEL