

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

DENISE WASHINGTON)	CASE NO. 11 CV 3421
)	COURTROOM NO. 4
)	JUDGE JOHN M. DURKIN
APPELLANT)	
)	
VS.)	
)	JUDGMENT ENTRY
OHIO UNEMPLOYMENT)	
COMPENSATION REVIEW)	
COMMISSION, ET AL)	
)	
APPELLEES)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to Ohio Revised Code Section 4141.282.

In this case, the record before the Review Commission establishes that the Director, Ohio Department of Job and Family Services (“Director”) issued an initial determination on April 5, 2011 that Appellant, Denise Washington (“Washington”) was discharged from employment with just cause pursuant to Ohio Revised Code Section 4141.29(D)(2)(a) and disallowed Washington’s claim for unemployment compensation benefits dated March 8, 2011. No appeal was taken to the April 5, 2011 determination and it became final.

On May 12, 2011 Appellant filed a new claim for benefits for the benefit year ending May 5, 2012. Thereafter, Director issued an initial determination on May 23, 2011 that Washington had not worked 20 qualifying weeks of employment or did not meet the minimum qualifying weekly wage during the applicable base period and



2011 CV
03421
00008581156
JUDENT

52753
P 000148

disallowed Washington's claim for benefits. Director also determined that "The current separation issue is the same as was previously adjudicated and, therefore, cannot be re-litigated. A previously issued determination ruled the claimant's separation from PROVIDER SERVICES HOLDINGS, LLC to be disqualifying."

Washington timely appealed the Director's May 23, 2011 determination and on June 21, 2011 the Director affirmed the determination disallowing Washington's claim for benefits. Thereafter, Washington filed a timely appeal and the matter was transferred to the Review Commission on July 13, 2011.

An Evidentiary hearing was held by telephone before the Review Commission on August 15, 2011. On August 16, 2011, the Review Commission issued a decision affirming the redetermination by the Director disallowing Washington's claim for benefits issued on June 21, 2011 pursuant to *Gary A. Morrison v. Administrator, Bureau of Employment Services*, U.S. District Court (Ohio, Southern Distr., Eastern Div.) Case Nos. C-2-84-1601 and C-2-86-0112 (1988, unreported). In *Morrison*, the Court enjoined the Director and Review Commission from relitigating, in a second benefit year, the reason for a separation from employment where that issue had been ruled on in a previous benefit year and became final. Accordingly, the Review Commission determined that since the issue of Washington's separation from employment was determined to be disqualifying in Washington's prior benefit year because she was discharged for just cause, the issue cannot be relitigated in her claim filed in the second benefit year.

On September 6, 2011 Washington timely requested a further review by the Review Commission. On October 6, 2011 the Review Commission disallowed Washington's request. This appeal followed.

In this case, Washington argues that the Director incorrectly relied on *Morrison*. Washington claims *Morrison* is not applicable to this case since she affirmatively reapplied for benefits in the second benefit year based on her request for a re-evaluation of the Director's decision due to her family circumstances.

The Review Commission argues *Morrison* applies to this case and that neither the Review Commission nor the Court can re-examine an issue that was conclusively determined in a prior proceeding. *Vickers v. Vasu Communications*, 5th Dist. No. 2007CA0120, 2008-Ohio-5800. In *Vickers*, the claimant's application for unemployment benefits was denied after it was determined that the claimant was discharged for just cause. The claimant appealed but later withdrew the appeal. The claimant filed another application for benefits based on the same termination in the second benefit year. The Court, in affirming the denial of the application stated as follows:

{¶ 25} In this case, appellant's first claim for unemployment compensation benefits (October 2, 2006) was denied because just cause was found for appellant's discharge. This was appellant's first benefit year. Appellant appealed, but the appeal was withdrawn. The appeal sub judice concerns appellant's second claim for unemployment compensation benefits (October 22, 2006) from the same termination, but in the second benefit year. This claim was denied based upon the doctrine of collateral estoppel.

{¶ 26} Upon review, we concur appellant was barred from re-litigating an issue previously determined and wherein an appeal was not pursued. We find collateral estoppel was the correct doctrine to apply in this case.

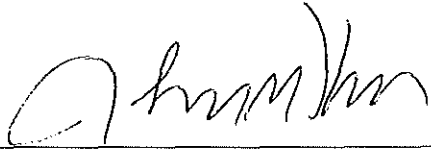
The procedure for reviewing a Review Commission's decision is plainly set forth in R.C. 4141.282(H). To reverse, vacate or remand the matter, this Court must find that

the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to support the Review Commission's decision.

The record before the Review Commission reveals that Washington's first claim for benefits was denied in the first benefit year because it was determined that she was discharged for just cause. No appeal was taken to this determination nor was an extension of the appeal period properly requested pursuant to Ohio Revised Code Section 4141.281(D)(9). Accordingly, that determination became final. The Review Commission properly determined that Washington's second claim for benefits filed in the second benefit year could not be relitigated because it was determined that she was discharged for just cause in the prior benefit year and that determination was final.

After a review of the record herein, the Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Review Commission is hereby affirmed.

DATE: 8/23/12



JUDGE JOHN M. DURKIN

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5

000151