

SEP 2012

COMMON PLEAS COURT  
WARREN COUNTY OHIO  
FILED

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JAMES L. SPAETH  
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IN THE COURT OF COMMON PLEAS  
COUNTY OF WARREN, STATE OF OHIO

HAROLD GRAY,

Plaintiff,

-vs-

OHIO DEPT. OF JOB AND  
FAMILY SERVICES, et al.,

Defendants.

CASE NO. 11CV80027

ENTRY GRANTING  
PERMANENT JUDGMENT  
ON MAGISTRATE'S DECISION

A Magistrate's Decision having been filed herein on August 27, 2012 and no objections to the Decision having been filed within fourteen (14) days from that date, the Court **ORDERS** the Decision adopted as a permanent judgment of this Court.

for J. Flannery  
JUDGE NEAL B. BRONSON

C: Attorney Robin Jarvis  
Harold Gray, pro se

COMMON PLEAS COURT  
WARREN COUNTY OHIO  
FILED

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JAMES L. SPAETH  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
STATE OF OHIO, COUNTY OF WARREN  
GENERAL DIVISION

HAROLD GRAY,

Appellant

v.

OHIO DEPT. OF JOB AND  
FAMILY SERVICES, et al.,

Appellees

CASE NO. 11CV80027

MAGISTRATE'S DECISION

This matter came before the Court upon Harold Gray's R.C. 4141.282(H) appeal of a May 25, 2011 decision of the Ohio Unemployment Compensation Review Commission. The Commission disallowed review of a decision from a Redetermination appeal dated April 7, 2011, finding that Mr. Gray had been overpaid federal Emergency Unemployment Compensation benefits in the amount of \$1,386.00, and directing that he repay that amount to the Ohio Department of Job and Family Services.<sup>1</sup>

For a period including July through October 2010, Mr. Gray was paid a weekly amount of federal Emergency Unemployment Compensation based upon his

<sup>1</sup> Mr. Gray argued in his brief that he was not overpaid, but at oral argument he stated that he did not challenge the new, lower, weekly benefit calculation. He likewise did not contest that the difference between what he was paid during the period of July to October 2010, and his entitlement for the same period based on the redetermination was \$1,386.00. Rather, he urged that it was inequitable to pay him those funds and then to require him to repay them months later, after they had been spent supporting his household.

wages from a job he left in December 2006. When Mr. Gray qualified once again for Ohio unemployment benefits by virtue of income earned during a new base period of employment in 2010, he was directed to reapply for State benefits. His new weekly benefits award was determined to be lower. The difference between the higher EUC payments he received and the new State unemployment compensation benefits he was entitled to receive during the subject period comprises the overpayment of \$1,386.00. The overpayment has been reimbursed to the ODJFS in a lump sum: it was deducted from another award of unemployment benefits Mr. Gray received pursuant to a separate claim. Mr. Gray now seeks the return of the \$1,386.00 deducted from this other award, urging that the repayment should have been waived because the overpayment was not his fault and because repayment "would be contrary to equity and good conscience" pursuant to 26 U.S.C.A. §3304.

"If the Director [of the Ohio Department of Job and Family Services] finds that an applicant for benefits has been credited with a waiting period or paid benefits to which the applicant was not entitled to reasons other than fraudulent misrepresentation, the directors shall, 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.”<sup>2</sup> There is no dispute as to the timeliness of the Director’s recalculation and repayment order under the statute.

The Hearing Officer found that the overpayment was not Mr. Gray’s fault. But the Hearing Officer stated, “in order to find that requiring repayment would be contrary to equity and good conscience under Federal law, the Hearing Officer must find that the claimant has no financial means with which to repay the overpayment now or in the future. Because claimant had monetary entitlement to regular UI benefits beginning on July 4, 2010, and he is also currently employed, regular UI benefits and/or earnings may be used to offset most, if not all of the overpayment of EUC benefits, or to repay same. Therefore, the hearing Officer cannot find that requiring repayment would be contrary to equity and good conscience and the overpayment of EUC benefits will not be waived. . . . [A]ny outstanding balance not repaid or recovered through collection efforts will be recovered by the withholding of any future benefits to which claimant is or may become entitled.”

This Court may reverse, vacate, or modify a decision of the Review Commission only if “the Court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence.”<sup>3</sup> In making this determination, the Court may rely only on the certified record provided by the

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<sup>2</sup> R.C. 4141.35(B)(1)(a)

<sup>3</sup> R.C. 4141.282(H)

Commission, and the Court is limited to determining whether the Review Commission's decision is supported by that record.<sup>4</sup>

A hearing was held by telephone before the Unemployment Compensation Review Commission on April 4, 2011. Mr. Gray was the only person to testify at the hearing, and no other parties participated. The Hearing Officer, Brian Forbes, stated that the subject of the appeal was the overpayment order. He asked Mr. Gray about his weeks of employment with, and compensation from, two employers he had in 2010, and asked if Mr. Gray had any reason to dispute the accuracy of the figures the Commission relied on in concluding that he had been overpaid benefits. Mr. Gray replied that "to verify the exact amounts [he] would have to check the record," but he otherwise had no reason to dispute the calculation. The Hearing Officer then asked Mr. Gray if he would like to add anything. He said, "ODJFS had full knowledge and control of the events and should be accountable for the outcome." The Hearing Officer referred to Mr. Gray's written statements of December 19, 2010 and January 26, 2011, and Mr. Gray continued, "I just believe that the Ohio Department of Job and Family Services should be held accountable for any errors that they have created. This does create quite a hardship on somebody that has been unemployed and living on... a minimum wage." He testified that he was employed full-time with McGraw Timmons Accounting Service as of the time of the April 4, 2011 hearing, at an hourly rate of \$10.50.

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<sup>4</sup> *Id.*

The Hearing Officer issued a ruling on April 7, 2011 that Mr. Gray had the ability to reimburse the overpayment based upon his employment income and the unemployment benefits he continued to receive. As it happened, sometime after the overpayment determination, Mr. Gray was also paid a lump sum award pursuant to another claim, and it was from this other award that the \$1,386.00 overpayment was deducted.

Ohio has no waiver provision for overpayment of unemployment compensation benefits based upon hardship, or based upon a finding that equity and good conscience militate against requiring the benefits to be repaid.<sup>5</sup> Ohio has apparently not adopted the EUCo8 waiver provision that Mr. Gray refers to in his brief. There is little caselaw in Ohio treating "equity and good conscience" in the context of a federal benefits repayment issue, and of that caselaw, none provide guidance in identifying the circumstances under which equity and good conscience support, or fail to support, a repayment order.<sup>6</sup>

This Magistrate notes that the Hearing Officer identified two sources of income Mr. Gray might use to reimburse the federal benefits overpayment, even if the overpayment had to be reimbursed incrementally over time. A third became available to Mr. Gray later, that being a lump sum award pursuant to a separate

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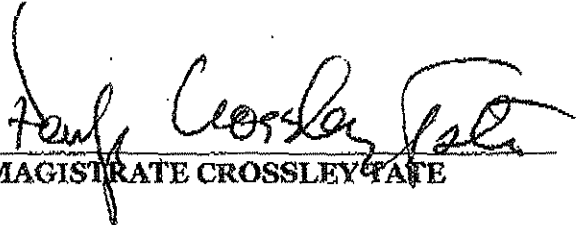
<sup>5</sup> See R.C. 4141.35(B)

<sup>6</sup> *George v. Admr. Ohio Bur. Of Emp. Serv.* (Aug. 8, 1988), Seneca App. No. 13-87-14, unreported; *Alkire v. Duellma Electric Supply Co.* (Dec. 18, 1996), Jefferson App. No. 95-J-4, unreported; Discretionary appeal Not Allowed, 78 Ohio St.3d 1467 (1997).

claim. The overpayment was deducted from that award, and the balance paid to Mr. Gray. In the circumstances, this Magistrate does not find that the Hearing Officer's repayment order was unreasonable, unlawful, or against the weight of the evidence.

Accordingly, the April 7, 2011 decision of the Ohio Unemployment Compensation Review Commission is affirmed. Plaintiff shall bear the costs of this action.

It is so ordered.



MAGISTRATE CROSSLEY TATE

NOTICE TO PARTIES

The parties shall take notice that this decision may be adopted by the Court unless objections are filed within fourteen (14) days of the filing hereof in accordance with Civil Rule 53 (D)(3)(b).

A party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusions, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R.53 (D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R.53 (D)(3)(b).



MAGISTRATE CROSSLEY TATE

C: Attorney Robin Jarvis  
Harold Gray, pro se