

different end/start dates. In the Application Summary, the last date of employment with Knight Refrigerator is listed as November 8, 2010 and the start date with Payne as September 18, 2010. Director's File, p.1. In the application, appellant indicated that he left Knight Refrigerator to accept other employment and that he left Payne due to lack of work. Id.

In the "Request to Employer for Separation Information", Payne indicated that appellant was employed from September 21, 2010 to October 22, 2010 and that he earned \$2,944.23 during that time. Payne also indicated that, contrary to appellant's assertion, he was not terminated from Payne for lack of work but for gross misconduct and violation of company policy.

On December 28, 2010, ODJFS sent a "Notice of Eligibility Issue" to appellant and identified the following problem:

Quit – Quit to accept other employment; the issue involves employer KINIGHT REFRIGERATED LLC; the source of the issue is initial Claim Application; this issue may affect your unemployment benefits beginning on 11/08/2010.

Id. at 12.

Consequently, appellant answered supplemental questions. Therein, appellant stated that he began his employment with Payne on September 14, 2010. Id. at 13. In question 14, he stated that he last worked for Knight Refrigerated on August 14, 2010. Id. at 15.

In a determination issued on January 18, 2011, the Director held that "[t]he claimant quit KNIGHT REGRIGERATED LLC on 11/08/2010, to accept other employment", a disqualifying separation from employment and that appellant did not meet the requirements for removal of the disqualification set forth in R.C. 4141.29(D)(2)(a). Accordingly, the claim was disallowed.

Appellant appealed the decision. In response, Knight Refrigerated stated that appellant was terminated for poor work performance and submitted several accident/incident reports in support. The Director affirmed the January 18, 2011 determination on May 4, 2011, again finding the appellant quit his employment with Knight Refrigerated on November 8, 2010 and did not qualify for removal of the disqualification of benefits. Appellant appealed to the Unemployment Compensation Review Commission.

On July 22, 2011, the Hearing Officer conducted a telephonic hearing, which Knight Refrigerated, LLC did not attend. According to the undisputed testimony at the hearing, appellant quit his employment with Knight Refrigerated on September 14, 2010 and went to work for Payne on September 18, 2010. Tr. At p.5. He was laid off from Payne on October 20, 2010.

In an August 1, 2011 decision, the Hearing Officer issued the following findings of fact: 1) that appellant quit his employment with Knight Refrigerated to accept new employment with Payne Trucking; 2) appellant was employed with Knight Refrigerated from October 1, 2008 to October 8, 2010 and with Payne Trucking from September 18, 2010 to October 20, 2010. Significantly, the Hearing Office also found that appellant's last day of employment with Knight Refrigerated was October 8, 2010, despite appellant's undisputed testimony that his last day was September 14, 2010. The Hearing Officer affirmed the May 4, 2011 determination on the grounds that "the claimant has not established that he worked three weeks after quitting his prior employment." Consequently, the Hearing Officer concluded that appellant did not meet the requalification requirements. Appellant sought review from Review Commission, which

was denied on September 14, 2011. Appellant now appeals the matter to this Court pursuant to R.C. 119.12.

STANDARD OF REVIEW

It is well-established that, when reviewing an appeal from an agency decision, the Court may only reverse the decision when it is unlawful, unreasonable, or against the manifest weight of the evidence. *Geretz v. Ohio Dep't. of Job and Family Services*, 114 Ohio St.3d 89, 91, 2007 Ohio 2941, 868 N.E.2d 669 (2007). Where an agency decision is supported by “competent, credible evidence going to all essential elements of the case will not be reversed as being against the manifest weight of the evidence.” *City of Dublin v. Clark*, 10th Dist. No. 05AP-431 and 05AP-450, 2005 Ohio 5926, ¶22, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus. However, where the evidence weighs heavily against the agency decision, it must be reversed. *Id.*

LAW AND ANALYSIS

The sole issue before this Court is whether appellant meets the requirements for requalification of unemployment benefits under R.C. 4141.291. Subsection (A) states, in relevant part:

Notwithstanding section 4141.29 of the Revised Code, an individual who voluntarily quits work:

* * *

(2) * * * to accept other employment subject to this chapter * * * where the individual obtains such employment while still employed or commences such employment within seven calendar days after the last day of employment with the prior employer, and subsequent to the last day of the employment with the prior employer, works three weeks in

the new employment and earns wages equal to one and one-half times the individual's average weekly wage or one hundred eighty dollars, whichever is less;

(3) Shall, under the conditions specified in either division (A)(1) or (2) of this section, remove the disqualification imposed by division (D)(2)(a) of section 4141.29 of the Revised Code and shall be deemed to have fully complied with division (G) of this section.

Ohio Administrative Code 4146-25-03(B) provides for review by the Review Commission "whenever a material point is involved on which the record is silent or incomplete or appears to be erroneous".

Throughout the agency proceedings, ODJFS has consistently held that appellant met all of the requirements for removal of the disqualification except for the period of time between his last date of employment and first day of his new employment.¹ The Court has scoured the Director's File, the Review Commission's File and the transcript of the telephonic hearing. Nowhere is the October 8, 2010 date present. The Court cannot determine how, after a review of the evidence, the Hearing Officer was able to come to the conclusion that appellant terminated his employment with Knight Refrigerated on October 8, 2010. The Court can only assume that the error must be clerical. Albeit clerical, the error effectively foreclosed appellant from receiving unemployment benefits, a right that would otherwise arguably be bestowed upon him under R.C. 4141.291(A)(2). As such, appellant was entitled to review by the Review Commission pursuant to O.A.C. 4146-25-03(B).

¹ In its brief, Appellee makes much of the fact that appellant was terminated from his employment with Knight. However, at no point in the underlying proceedings did ODJFS find this fact to be dispositive and instead consistently held that appellant quit his job with Knight.

CONCLUSION

Upon review of the record, the Court finds that the Hearing Officer's findings of fact are unsupported by the manifest weight of the evidence contained in the record and that the Review Commission erred in denying appellant's request for review. Accordingly, the Review Commission's determination is reversed and remanded for further proceedings.

So Ordered.

Franklin County Court of Common Pleas

Date: 11-06-2012
Case Title: WAYNE BURROUGHS -VS- OHIO STATE DEPT JOB & FAMILY SERVICES DI
Case Number: 11CV012743
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "CLERK OF COURTS".

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 11CV012743

Case Style: WAYNE BURROUGHS -VS- OHIO STATE DEPT JOB &
FAMILY SERVICES DI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes