

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

ACE TRANSFER COMPANY INC,

Appellant,

v.

KENNETH E BRENEBORG, et al.,

Appellee.

CASE NO. 09CV1257

JUDGE RICHARD J. O'NEILL

DECISION, ENTRY & ORDER

FINAL JUDGMENT

FILED
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HON. VINCENT CLERK
COMMON PLEAS COURT
CLARK COUNTY, OHIO

INTRODUCTION

This matter is before the Court on Appellant, Ace Transfer Co. Inc.'s Notice of Appeal, the Certified Transcript of the Ohio Unemployment Compensation Review Commission's hearing, the Brief of the Appellant filed August 1, 2011; the Brief of the Appellee filed August 31, 2011; and the Appellant's Reply filed September 4, 2011.

STANDARD OF REVIEW

The standard of review required of a court in reviewing decisions of the Review Commission is codified in R.C. 4141.282(H). That section states:

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

This standard of review was review was reiterated by the Ohio Supreme Court in *Tzangas*:

The board's role as factfinder is intact; a reviewing court may reverse the board's determination only if it is *unlawful, unreasonable, or against the manifest weight of the evidence*.

Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv., 1995-Ohio-206, 73 Ohio St. 3d 694, 697, 653 N.E.2d 1207, 1210 (emphasis added)

In other words, the reviewing court may not reverse the Review Commission's decision merely because the reviewing court might have reached a different conclusion. Rather, the Review Commission's decision is only subject to reversal if it is "unlawful, unreasonable, or against the manifest weight of the evidence." *Id.* Exactly when these conditions are met is not spelled out in R.C. 4141.282(H), but it seems that they are not met where "[t]here is credible evidence in the record [...] [which] supports the findings of the hearing officers." *Giles v. F & P Am. Mfg., Inc.*, Court of Appeals of Ohio, Second District, Miami County, September 15 2010, not reported in N.E.2d, 2005-Ohio-4833.

FACTS

Claimant was employed by Ace Transfer Company between April 7, 2008 and February 26, 2009. Claimant worked doing outside sales. At the time of hire, Claimant reached an agreement with his employer that he was to be paid \$700.00 per week salary plus a 10% commission on supply sales and a 5% commission on equipment sales with those commissions to begin after Claimant had made \$900.00 per week in total sales. Later, during the course of Claimant's employment, commission was adjusted to a flat 9% across the board on ~~all sales after the \$900.00 per week had been reached.~~ After January 1, 2009, Claimant no longer received commission in his check. On his check of February 9, 2009, Claimant saw his pay reduced in salary from \$700.00 per week to \$500.00 per week. Claimant attempted, on several occasions, to speak with the President of Ace Transfer Company Inc., David Shaw. Claimant's intention was to try to determine what was going on. The only time Claimant spoke with Mr. Shaw, Mr. Shaw indicated that he was unaware of any problems with Claimant's pay. On February 26, 2009, Claimant stopped in to see Mr. Shaw. Mr. Shaw left, late for a medical visit. As Claimant had not yet received any satisfaction to his inquires, claimant chose to quit employment with Ace Transfer Company.

At the review commission hearing Appellant Ace Transfer Company, Inc. presented testimony from company president David Shaw that Claimant's commissions had been deducted from Claimant's pay to make up for funds Claimant had obtained making sales, but had not turned over to Ace Transfer. Mr. Shaw also

testified that Claimant had agreed to these deductions, though the extent to which Claimant had agreed was disputed. Mr. Shaw testified that Claimant had caused significant non-business related charges on a company cell-phone. The manner in which the Claimant had used the phone was disputed. Mr. Shaw testified that Claimant had claimed miles without accounting for them as per Ace Transfer policy. Whether or not Claimant had followed the proper method of accounting was disputed. Finally, Mr. Shaw testified that Claimant had stopped at his office unannounced on February 26, 2009, and had brought with him company property to return. Based on this Mr. Shaw testified that Claimant had already decided to quit prior to not being able to speak with Mr. Shaw on that day. However, the issue of whether Claimant had decided to quit before not being able to speak with Mr. Shaw on February 26 was disputed.

Based on all the evidence presented, the Review Commission Hearing Officer held that the Claimant had quit his job for just cause in connection with work.

Ace Transfer Company, Inc. filed a timely request for review before the Review Commission. On September 2, 2009, the Review Commission denied Ace Transfer Company, Inc.'s request for review.

Thereafter, Ace Transfer Company, Inc. appealed to this Court, seeking reversal of the Review Commission's decision to allow the Claimant to receive unemployment compensation benefits.

DISCUSSION

Here, there was credible evidence that the Claimant had quit his job only after his employer had materially breached the employment agreement, and only after the Claimant had made several attempts to work out the problem with his employer. While there was also testimony that suggested that no breach had occurred, as well as testimony that the Claimant had not attempted in good faith to speak with the employer before resigning, this evidence was assigned little weight by the Review Commission.

It is not this Court's role to re-weigh the evidence or assign different levels of credibility to the evidence that was presented to the Review Commission. Rather, this Court's role is closer to asking whether no rational

trier-of-fact, viewing the evidence in the light most favorable to the Review Commission's decision, could agree with the Review Commission's decision. Here, it must be said, viewing the evidence in the light most favorable to the Review Commission's decision, a reasonable trier-of-fact could agree with the Review Commission's decision. As such, the decision of the Review Commission was not "unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 653 N.E.2d 1207, 1210.

CONCLUSION

Based on the foregoing, the Court hereby affirms the decision of the Review Commission and DENIES the appeal of Ace Transfer.

JUDGE RICHARD J. O'NEILL

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