

**IN THE COURT OF COMMON PLEAS
CLINTON COUNTY, OHIO**

**Erik L. Parker,
Claimant/Appellant,**

CASE NO. CVF ~~2012-9179~~

20120480

Final Appealable

JUDGMENT ENTRY

-vs-

Administrative Appeal

RC 4141.282 Unemployment Compensation

**Director, Ohio Job and Family Services,
Administrator/Appellee.**

Before the court for decision is Claimant/Appellant Erik L. Parker's appeal of an administrative decision. Mr. Parker is appealing a decision of the Ohio Unemployment Compensation Review Commission (Review Commission) mailed on June 28, 2012. Mr. Parker's right to appeal that decision to this court is found in R.C. 4141.282. The standard of review of that decision for this court is found in R.C. 4141.282(H) as follows:

If the court finds the decision 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.

Case law has interpreted that section to mean, although the Review Commission's decision should not be "rubber-stamped," a reviewing court may not rewrite the Review Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Rev.*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4th Dist. 1965). The parties are not entitled to a trial *de novo*. *Id.*

The court finds for the reasons outlined below, that the decision of the Review Commission mailed June 28, 2012 was not unlawful, unreasonable, or against the manifest weight of the evidence. The June 28, 2012 decision of the Review Commission is affirmed.

DISCUSSION

In reaching the above ruling, this court carefully reviewed: 1) the certified record of the Review Commission which included the Director's File and the Review Commission File (all filed in this court on September 5, 2012), 2) Appellant Parker's

October 29, 2012 brief in support of this appeal, and 3) the November 28, 2012 brief of Administrator/Appellee Director, Ohio Department of Job and Family Services (ODJFS).

Statement of the Case

In April of 2010 after being laid off from his \$60,445 a year job at ABX, Mr. Parker filed an Application for Determination of Unemployment Compensation Benefits with ODJFS. Mr. Parker was allowed unemployment benefits and received the sum of \$400.00 per week for the weeks ending May 15, 2010 through November 6, 2010. At some point during this period, ODJFS received information from Callos Professional Development II LLC (“Callos”) indicating that during those same weeks, Mr. Parker had been paid the sum of \$750.00 weekly as a result of services performed for Callos. Because of this, ODJFS opened an investigation as to why Mr. Parker was receiving benefits at the same time that he was receiving income that exceeded the weekly benefit that would have been otherwise payable to him.

On September 13, 2011, ODJFS issued a Determination finding that Mr. Parker had been overpaid benefits to which he was not entitled due to fraud totaling the sum of \$10,000. Mr. Parker was ordered to repay this sum and further was found to be ineligible for 50 valid weekly future claims. Upon appeal by Mr. Parker, the ODJFS issued a Redetermination on November 30, 2011 that affirmed the September 13, 2011 finding of fraud and erroneous overpayment. Mr. Parker appealed that ODJFS Redetermination and the proceedings were transferred to the Review Commission for a telephone hearing before a hearing officer.

A Review Commission telephone hearing was held on February 29, 2012 before Hearing Officer Phillip Wright. Mr. Parker was represented by Attorney Dennis Mattingly during that telephone hearing. Hearing Officer Wright reversed the ODJFS Redetermination as to the finding of fraud but affirmed it as to the issue of overpayment. ODJFS filed a Request for a new/second hearing with the Review Commission. A new/second Review Commission hearing was ordered and held on June 18, 2012 before Hearing Officer Robert Bush. At the new/second Review Commission telephone hearing, Mr. Parker was again represented by Attorney Dennis Mattingly. Following that second hearing, Hearing Officer Bush mailed the parties his decision on June 28, 2012 wherein he found that Mr. Parker had filed fraudulent claims. In the decision, Mr. Parker was ordered to repay unemployment benefits in the amount of \$10,000. Further due to the finding of fraud on Mr. Parker’s part, Mr. Parker was found to be ineligible for 50 valid claims filed during the period of September 12, 2011 through November 30, 2017.

Mr. Parker filed an appeal to the June 28, 2012 decision in this court on July 24, 2012.

Record Evidence

- 1) In April of 2010 after being laid off from his \$60,445 a year job at ABX, Mr. Erik L. Parker filed an application for unemployment benefits with the ODJFS Office of Unemployment Compensation Benefits. In the application Mr. Parker stated that he had been and still was employed by a second employer, Callos, but that his hours at Callos had been reduced.
- 2) Based upon his application and communications with ODJFS, Mr. Parker began receiving unemployment benefits in the amount of \$400 per week for the weeks ending May 15, 2010 through November 6, 2010. During that time period, Mr. Parker continued working for a second employer, Callos, making approximately \$750 a week.
- 3) The first one or two weeks of unemployment compensation payments made to Mr. Parker were based upon his in person telephone conversations with employees of ODJFS.
- 4) Mr. Parker alleged he told ODJFS employees, Maria and Scott, that he was working for Callos when applying for benefits and that they told him he was still eligible for benefits.
- 5) All unemployment compensation payments made to Mr. Parker after the first two weeks were based upon a weekly application made by Mr. Parker via an automated phone system known as Interactive Voice Response Lite ("IVR Lite").
- 6) One of the phone statements that a claimant is asked to confirm by IVR Lite regarding the week for which the claimant is seeking unemployment benefits is, "You did not work full time or part time nor were you self employed." Week after week when applying for benefits Mr. Parker confirmed that statement via the IVR Lite automated system.
- 7) Mr. Parker testified he did not understand his IVR Lite telephone response to mean he did not work full time or part time during the week for which he was requesting benefits.

Findings and Conclusions

Mr. Parker's testimony in isolation could possibly be interpreted in a manner that might obviate a finding of fraudulent intent. But, in his decision finding that Mr. Parker had the requisite fraudulent intent in this matter, the hearing officer noted that he considered the answers Mr. Parker gave when filing claims from May 15, 2010 through November 6, 2010 (to ODJFS via the automated IVR Lite application for benefits). The hearing officer found that Mr. Parker "reported that he was unemployed and had no earnings." The decision of Hearing Officer Bush was supported by the record and was not against the manifest weight of the evidence. There was sufficient evidence of intentional untruthful communication by Mr. Parker to support the hearing officer's finding regarding fraud and the rest of his decision. Further, there is no evidence that would support a finding that the June 28, 2012 decision was unlawful or unreasonable.

Again as noted above, this court may not rewrite the Review Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Rev.*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4th Dist. 1965). The parties are not entitled to a trial *de novo*. Id.

Mr. Parker's Claims of Material Error

Mr. Parker's argument that the testimony of ODJFS witness, Switzer, was hearsay with no probative value is not well taken. Hearsay evidence is admissible in an unemployment compensation hearing. (See R.C. 4141.281(C)(2)). Switzer's testimony was primarily based upon ODJFS records and is found to be relevant, reliable and probative of facts to be determined.

Mr. Parker's second argument that the June 28, 2012 decision should be reversed due to the fact that he did not receive some documents until the record in this case was filed on September 5, 2012 is also not well taken. Although it may have been error for Mr. Parker not to receive such documents, Mr. Parker has not demonstrated that such an error was prejudicial or affected any substantial right belonging to him. The court therefore finds any error caused by not receiving particular documents was harmless error.


Ruling

Again, the court finds for the foregoing reasons that the decision of the Review Commission mailed on June 28, 2012 was not unlawful, unreasonable, or against the manifest weight of the evidence. The decision of the Review Commission mailed on June 28, 2012 is affirmed.

Mr. Parker shall pay the costs of this action.

This is a final appealable order.

Enter this 16th day of January 2013.



Judge John W. Rudduck

Journalized this 18th day of January 2013.

Cindy Bailey, Clerk of Court

BY: Bohlie O. Hatcher, Deputy Clerk