

IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

WILLIAM B. COOK

Appellant

vs.

CUYAHOGA COMMUNITY  
COLLEGE, *et al.*

Appellees

2013 JAN 29 P 1:35 CASE NO. 12CV001461

MAUREEN G. KELLY  
LAKE CO. CLERK OF COURT

JUDGE EUGENE A. LUCCI

ORDER GRANTING MOTION  
TO DISMISS AND AFFIRMING  
REVIEW COMMISSION  
DECISION

{¶1} The court has considered: (1) the notice of appeal, filed May 29, 2012; (2) the appellant’s response to the order granting the motion for more definite statement, filed July 20, 2012; (3) the certified transcript of the record, filed July 25, 2012; (4) the appellant’s “response to defense submission,” filed August 20, 2012; (5) the appellant’s brief, filed October 15, 2012; (6) Appellee Director, Ohio Department of Job and Family Services’ (ODJFS) brief, filed October 26, 2012; (7) Appellee Catherine Bush’s motion to dismiss, filed November 1, 2012; (8) Appellant’s response to ODJFS’s brief, filed November 2, 2012; and (9) Appellant’s response to the motion to dismiss, filed November 26, 2012.<sup>1</sup>

**MOTION TO DISMISS**

{¶2} The appellant’s notice of appeal names Catherine Bush as a party “in her personal and individual: [sic] capacity.” Ms. Bush is the Director of Human Resources at Lakeland Community College. Transcript of November 1, 2011 telephone hearing, p. 15. Catherine Bush is not an interested party to this appeal. R.C. 4141.282(D). The notice of appeal alleges that Ms. Bush retaliated against the appellant, and makes a prayer for monetary damages. However, this is an appeal from an administrative agency, specifically, the denial of unemployment benefits. On an appeal such as this, the court is limited to reviewing the certified record and can only affirm, modify, vacate, or remand the decision of the Ohio Unemployment Compensation Review Commission (Review Commission), or remand the matter to the Review Commission. R.C. 4141.282(H).

<sup>1</sup> The court notes that items attached to these filings that were not included in the certified record were not considered.

Thus, the court cannot consider a civil complaint seeking monetary damages raised within a notice of appeal. For these reasons, the court finds the motion to dismiss to be well-taken and the motion is hereby granted. Catherine Bush is hereby dismissed as a party to this appeal.

### APPEAL OF REVIEW COMMISSION DECISION

{¶3} The Review Commission decision found that the appellant works as an adjunct professor for both Cuyahoga Community College and Lakeland Community College. The decision further found that in 2011 both colleges had summer breaks that began in May. The decision also determined that Lakeland Community College had offered employment to the appellant to teach during the summer break. Finally, the decision concluded that although he initially accepted the offer to teach summer classes, the appellant ultimately refused to teach summer classes because he wanted to withdraw funds from the State Teachers Retirement System (STRS). Based on these findings, the Review Commission held that the appellant refused legitimate and suitable work without good cause. Correspondingly, the Review Commission found that the appellant had received benefits to which he was not entitled for the weeks ending May 21, 2011 to June 18, 2011.<sup>2</sup>

{¶4} R.C. 4141.282(H) limits the scope of review by the court on appeal from a Review Commission decision. 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.” R.C. 4141.282(H).

{¶5} A decision supported by some competent, credible evidence going to all essential elements of the dispute will not be reversed on appeal as being against the manifest weight of the evidence. *Shavers v. Administrator, Ohio Bureau of Unemployment Services*, 11<sup>th</sup> Dist. No. 3738, 1987 WL 26702 (Dec. 4, 1987). Accordingly, the duty of the reviewing court is to determine whether the Board of Review’s decision is supported

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<sup>2</sup> The Review Commission also found that the appellant was separated from employment with Cuyahoga Community College due to lack of work. This finding does not appear to be at issue in this appeal.

by the evidence in the record. *Fredon Corp v. Zelenek*, 124 Ohio App. 3d 103, 109, 705 N.E.2d 703 (11<sup>th</sup> Dist. 1997).

{¶6} A person is not eligible to receive unemployment benefits if he has refused without good cause to accept an offer of suitable work. R.C. 4141.29(D)(2)(b).

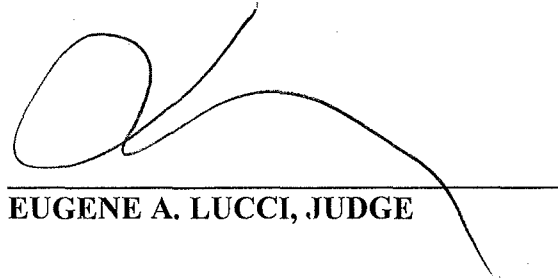
{¶7} Evidence was presented that Lakeland Community College offered classes to teach in the summer session, which was followed up with a proffer letter dated April 18, 2011, and that the classes offered to Mr. Cook were the same type of classes he normally taught with his customary salary structure. Transcript of November 1, 2011 telephone hearing, pp. 32-33. Lakeland Community College further presented testimony that the appellant initially accepted this offer of employment, but subsequently informed the department chair that he would not be able to teach those classes. *Id.* Further evidence was presented that he declined to teach over the summer because he wished to withdraw funds from STRS, and could not withdraw said funds while employed as a teacher. *Id.* at 35-38. Thus, competent credible evidence was offered to support the Review Commission decision.

{¶8} The appellant argues, and testified, that he was unaware of the offer to teach summer classes until he had already submitted the request to withdraw funds from STRS. Transcript of December 1, 2011 telephone hearing, p. 20. He further argues, and testified, that he was then told that he could not work at Lakeland Community College because of the pending request to withdraw funds from STRS. *Id.* at 23-24.

{¶9} The court must give deference to the Review Commission in its role as the finder of fact. *Fisher v. Bill Lake Buick* (Feb. 2, 2006), Cuyahoga App. No. 86338, 2006-Ohio-457, 2006 WL 250726 at ¶ 24, citing *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 482 N.E.2d 587. The court “is not permitted to make factual findings or to determine the credibility of witnesses.” *Irvine* at 18. Nor can the court reverse a decision simply because “reasonable minds might reach different conclusions.” *Id.* In fact, if an issue is close and the Review Commission could conceivably decide either way, courts must affirm the commission. *Fisher* at ¶ 24. Thus, that the appellant presents evidence which, if believed, could result in a different finding does not make the Review Commission’s decision unlawful, unreasonable, or against the manifest weight of the evidence.

{¶10} The record contains competent, credible evidence supporting each of the findings of the Review Commission. Accordingly, the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Review Commission is affirmed. Court costs are assessed to the appellant.

{¶11} **IT IS SO ORDERED.**



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**EUGENE A. LUCCI, JUDGE**

c: William B. Cook, Appellant  
Cynthia A. Kravitz, Esq., Attorney for Appellees Catherine Bush and Lakeland Community College  
Laurence R. Snyder, Esq., Attorney for Appellee Director, ODJFS

FINAL APPEALABLE ORDER  
Clerk to serve pursuant  
To Civ.R. 58(B)