

RECEIVED
PERRY COUNTY

IN THE COURT OF COMMON PLEAS, PERRY COUNTY, OHIO

2013 JAN 31 PM 1:01

STEVEN J. FRANCO,

:

TIMOTHY J. WOLLENBERG
CLERK OF COURTS

APPELLANT,

:

VS.

:

CASE NO. 12-CV-00132

STERLING AUTOMOTIVE, ET AL.,

:

ENTRY

APPELLEES.

:

THIS IS A TRUE & CERTIFIED
COPY OF ORIGINAL ON FILE
COMMON PLEAS COURT
PERRY COUNTY, OHIO

This matter is an appeal by the Claimant, Steven Franco, of the Decision of the Unemployment Compensation Review Commission. Mr. Franco had previously appealed the decision disallowing a request for review by the Unemployment Compensation Review Commission in Case No. 10-CV-00497 in this Court. Pursuant to Ohio Revised Code §4141.282(H), the undersigned remanded the matter to the Commission for the purpose of reconsidering the evidence.

This matter is now before the Court on the Notice of Appeal, which was filed herein April 12, 2012. The Appellant filed his Brief on September 13, 2012. The Brief of Appellee, Director, Ohio Department of Job and Family Services was filed on October 15, 2012 and a Reply Brief of Appellant Steven Franco was filed on December 20, 2012.

Upon remand, a telephone hearing was held by Senior Hearing Officer Robert S. Bush on February 9, 2012. The Hearing Officer did not hold a de novo hearing, but supplemented the record. The Hearing Officer clarified some of the evidence that was previously presented. Specifically, the Hearing Officer clarified the discrepancy between the invoice numbers and customer numbers on the parties' exhibits. Mr. Franco

submitted invoice numbers for customers of Sterling Automotive. He alleged the owner's exhibits regarding customer complaints had to be falsified because the invoice numbers did not match the numbers on her exhibits. However, the owner, Grace Jenkins, indicated that the customer number is different than the invoice number. Ms. Jenkins' exhibits provided evidence that Mr. Franco was not providing good customer service. These exhibits were bolstered by the testimony of Ms. Jenkins' witnesses.

The Commission found the employer's testimony to be more credible than the Claimant. The Claimant held his witness, Valerie Kish-Bell, out to his employer, the Commission, and the Court as his wife. Upon remand, the Hearing Officer determined that Mr. Franco and Miss Kish-Bell had never been married. He had previously testified they had been married for 9 years. In addition, the Claimant represented that his witness did not get to testify at the previous hearing. However, she was permitted to testify and Mr. Franco was given the opportunity to ask her questions as well.

Pursuant to Ohio Revised Code §4141.282(H):

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.

Upon a review of the Director's File, the Unemployment Compensation Review Commission's File and the Briefs of the parties, the Court finds the Decision of the Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The Decision of the Commission is, therefore, affirmed. Costs to Steven Franco. IT IS SO ORDERED.


JUDGE TINA M. BOYER