

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

SCOTT A. MITCHELL,]	CASE NO. 12CV-12343
Appellant,]	JUDGE SHEERAN
vs.]	
KOTTE, LLC, et al.,]	
Appellees.]	

**DECISION AND JUDGMENT ENTRY AFFIRMING DECISION OF OHIO
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER**

SHEERAN, J.

This case is a Revised Code 4141.282 administrative appeal, by Scott A. Mitchell (Appellant), from a Decision issued by the Ohio Unemployment Compensation Review Commission on August 23, 2012. In that Decision, the Commission dismissed Appellant's appeal due to his failure to appear at a telephone hearing on July 24, 2012. The record that the Commission has certified to the Court reflects the following facts and procedural history.

**Proceedings Before Ohio Department of Job and Family Services and
Ohio Unemployment Compensation Review Commission**

On May 4, 2012, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning April 29, 2012. In a Determination issued on May 24, 2012, ODJFS disallowed Appellant's application, having found that he was discharged from his employment for just cause in connection with his work. On June 4, 2012, Appellant appealed the Determination.

In a Director's Redetermination issued on June 27, 2012, the Director of ODJFS affirmed the May 24, 2012 Determination. On June 30, 2012, Appellant appealed the Director's Redetermination to the Ohio Unemployment Compensation Review Commission. On July 5, 2012, the Director transferred jurisdiction of the appeal to the Commission.

On July 6, 2012, the Commission notified Appellant that his appeal had been transferred from ODJFS to the Commission, that the appeal would be scheduled for a telephone hearing, and that Appellant would receive a "notice setting forth the date, hour, and place of the telephone hearing[.]" In the July 6, 2012 notice, the Commission stated: "**Important instructions** about your rights and duties will be enclosed. Please read those instructions. (Emphasis in original.)" In the July 6, 2012 notice, the Commission further stated: "You will receive a hearing notice advising you of the date, time and location of your hearing. It is important that you read the notice carefully and do not miss your hearing. If you are the appealing party and you miss your hearing, your case will be dismissed. (Emphasis in original.)" In the July 6, 2012 notice, the Commission further stated: "You will receive a hearing notice that will instruct you to call a designated telephone number 15 minutes before your scheduled hearing. Provide the hearing assistant with your telephone number and the telephone numbers of your witnesses. The hearing officer will join the parties in a conference call. The telephone hearing will be recorded."

On July 11, 2012, the Commission notified Appellant that the telephone hearing on his appeal was scheduled for July 24, 2012 at 10:45 a.m. In the July 11, 2012 notice, the Commission stated:

Hearings are scheduled for 45 minutes or less, depending upon the issue(s). All efforts will be made to complete the hearing in the allotted time, please plan accordingly.

To begin the hearing, you will call one of the following toll-free numbers 15 minutes before the hearing is scheduled to begin.

Columbus, Ohio calling area - 614-387-3775

All other areas in Ohio - 1-800-848-7099

All areas outside of Ohio - 1-800-821-1588

The above numbers should not be used for any other purpose[.]
(Emphasis in original.)

In the July 11, 2012 notice, the Commission further stated: “**PAY CAREFUL ATTENTION TO THE INSTRUCTIONS FOR TELEPHONE HEARINGS WHICH SET FORTH THE TELEPHONE NUMBER YOU NEED TO CALL TO INITIATE THE HEARING, AS WELL AS INFORMATION ON TIME ZONES.** (Emphasis in original.)” In the July 11, 2012 notice, the Commission further stated: “Section 4141.281(D), Revised Code of Ohio, provides that if the party who filed the appeal fails to appear at the hearing, the Commission shall dismiss the appeal. *** A party who failed to appear has fourteen (14) days after the hearing to provide a written statement showing good cause for the non-appearance. Another hearing will be granted if good cause for the non-appearance is shown.” In the July 11, 2012 notice, the Commission further stated:

1. TO BEGIN THE HEARING, **YOU** WILL CALL ONE OF THE FOLLOWING TOLL-FREE NUMBERS 15 MINUTES **BEFORE** THE HEARING IS SCHEDULED TO BEGIN:

Columbus, Ohio calling area - 614-387-3775

All other areas in Ohio - 1-800-848-7099

All areas outside of Ohio - 1-800-821-1588

THE ABOVE NUMBERS SHOULD NOT BE USED FOR ANY OTHER PURPOSE[.]

2. A hearing assistant will answer at the above phone number. You must give the assistant the complete telephone number where you can be called when the hearing is scheduled to begin. Do not use a telephone number that will not take incoming telephone calls. Hang up your telephone and wait to be called back.

3. After the hearing assistant has received calls from all the parties to the hearing, **you will be called back** by the Hearing Officer and the hearing will begin. The Hearing Officer will give you further instructions about the hearing when he/she calls you back. (Emphasis in original.)

Despite all of the foregoing instructions, which Appellant acknowledges receiving, he failed to call in to participate in the telephone hearing on July 24, 2012.

In a Dismissal Notice issued on July 25, 2012, the Commission dismissed Appellant's appeal due to his failure to appear at the telephone hearing on July 24, 2012.

On July 25, 2012, Appellant filed a request that the Commission vacate its Dismissal Notice, for the following reasons:

I am requesting that my appeal be reopened on the grounds of a miscommunication that forced me to miss my hearing for unemployment compensation. Within this lengthy process I was told that I would be contacted by someone from the unemployment office on my hearing date. It is vital that the hearing take place considering the terms in which I was terminated from my previous employer. Please consider my request and reopen this case for review.

In a Notice Denying Vacate of Dismissal of Appeal issued on August 3, 2012, the Commission notified Appellant that he had not shown good cause for his failure to appear at the telephone hearing on July 24, 2012, and the Commission denied Appellant's request to vacate the July 25, 2012 Dismissal Notice.

On August 6, 2012, Appellant filed a request for a hearing on the issue of whether he had good cause for his failure to appear at the telephone hearing on July 24, 2012. In the request, Appellant stated:

I am requesting a show cause hearing for my case based on a misunderstanding of the hearing process. I have since spoken to individuals in your office and understand the process. Please schedule a hearing for my case.

On August 22, 2012, a Hearing Officer appointed by the Commission conducted a telephone hearing on the sole issue of whether Appellant had good cause for his failure to appear at the telephone hearing on July 24, 2012. Appellant testified as follows:

Hearing Officer: *** The hearing was scheduled on July 24th, at 10:45 a.m. *** and it was dismissed when you did not call in within *** the specified time. [W]hat happened that caused you not to call in on that day?

Scott Mitchell: Well, I was actually traveling and also under the impression that I would be contacted by somebody from *** the unemployment office. I had prior . . .

Hearing Officer: Okay.

Scott Mitchell: I had a prior conversation with someone from ODJFS, (inaudible) correct *** governing body for Ohio Unemployment so complete misunderstanding. [A]nd called in and spoke with someone and then they directed me to reapply for a hearing on . . . on the (inaudible) to get it reclassified.

Hearing Officer: Okay. Did you get a *** copy of the *** hearing instructions at some point? [I]t would tell you when the hearing was and, and what steps you needed to take. Do you recall getting that?

Scott Mitchell: [W]hat she do . . . (inaudible) e-mail just like *** the rest of the notices.

Hearing Officer: Okay, did you, I take it you didn't notice that it listed several telephone numbers *** for in state and out of state *** that you needed to call. [Y]ou said you misunderstood. Was that a function of not noticing it in the, the hearing notice, or ***

Scott Mitchell: It absolutely was. (inaudible) a simple oversight.

Hearing Officer: Okay. I can't . . .

Scott Mitchell: On my part which prompted me to call back in.

Hearing Officer: *** As I stated earlier, the only issue I have before me is, is why you didn't appear at that hearing. *** [W]as there

anything else about your *** not calling in, Mr. Mitchell, that you wanted to bring out that we have not covered?

Scott Mitchell: Mmm, possible difficulty (inaudible). I was traveling at the time, actually out of the country because I'm now (inaudible) relieved from *** my prior (inaudible) now have to go back in to try and find another industry to work in because of the way I was locked out of my current one, and (inaudible), that one was *** playing professional football and I had a chance to go try out for *** (inaudible) in Canada, so . . .

Hearing Officer: Okay, well was that the reason you didn't call in on that day, that you were traveling . . . that you indicated that you thought that you would be called, *** is there another reason you didn't call in or is that . . .

Scott Mitchell: (inaudible).

Hearing Officer: . . . just something separate . . .

Scott Mitchell: It would be for both of those reasons. I was anticipating (inaudible) back and forth to Canada . . .

Hearing Officer: Okay.

Scott Mitchell: . . . during that time period.

Hearing Officer: Anything else, Mr. Mitchell, that, that you wanted to bring out. Like I said that's the only issue I have and I've asked my questions. Was there anything else you wanted to bring out?

Scott Mitchell: That was all. *Transcript pp. 5-7.*

In a Decision issued on August 23, 2012, the Commission affirmed the July 25, 2012

Dismissal Notice. The Commission provided the following reasoning:

FINDINGS OF FACT

The claimant failed to call for his hearing because he had misunderstood the hearing instructions and believed he would be contacted to start the hearing. The claimant received the hearing instructions which directed that he call to participate in the hearing.

ISSUE

Did the appellant have good cause for failure to appear at the scheduled hearing?

LAW

If the appealing party fails to appear at the scheduled hearing, the appeal shall be dismissed provided notice was mailed to the party's last known address. Unless good cause for failure to appear is shown within fourteen (14) days, the dismissal becomes final. 4141.281(D)(5) O.R.C.

REASONING

The Ohio Unemployment Compensation Law does not define the term, "good cause." However, in this context, the Review Commission considers good cause to mean a substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create a reasonable excuse for an act or a failure to act. In this case the facts show that the appellant did not have such a substantial reason for failure to appear at the hearing and good cause has not been established.

DECISION

In view of the foregoing, the Dismissal of Appeal, mailed July 25, 2012, did become final.

On September 28, 2012, Appellant filed this appeal.

Standards of Appellate Review

A party who is dissatisfied with the Commission's final decision may appeal to the common pleas court, which shall hear the appeal on the record certified by the Commission. *Salyers v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-576, 2013-Ohio-1209, ¶14, citing *Henderson v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-154, 2012-Ohio-5382, ¶6. "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).

In reviewing a Commission decision, a reviewing court may not make factual findings or determine a witness's credibility and must affirm the Commission's findings if some competent, credible evidence in the record supports them. *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, ¶20, citing *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). In other words, a reviewing court may not reverse the Commission's decision simply because "reasonable minds might reach different conclusions." *Id.*

Analysis

Appellant has argued, in his notice of appeal and in both of his briefs, that ODJFS erred in disallowing Appellant's application for unemployment compensation benefits. That is not the issue on appeal, however. The issue on appeal is whether the Commission's August 23, 2012 Decision, dismissing Appellant's appeal for his failure to appear at the telephone hearing on July 24, 2012, was unlawful, unreasonable, or against the manifest weight of the evidence. See R.C. 4141.282(H). More precisely, the narrow issue before the Court is whether there is competent, credible evidence in the record to support the Commission's determination that Appellant lacked good cause for his failure to appear at the telephone hearing on July 24, 2012.

Appellant testified that his failure to appear at the telephone hearing on July 24, 2012 was due to a "simple oversight," because he misunderstood the hearing process and was under the mistaken impression that someone from the Commission would contact him to initiate the telephone hearing. Appellant also admitted, however, that he received the prior notices from the Commission, which explained, in great detail and in boldface type, the process by which Appellant was to initiate the telephone hearing by calling one of several telephone numbers prior to the scheduled hearing.

Revised Code 4141.281(D)(5) provides:

For hearings at either the hearing officer or review level, if the appealing party fails to appear at the hearing, the hearing officer shall dismiss the appeal. **The commission shall vacate the dismissal** upon a showing that written notice of the hearing was not sent to that party's last known address, or **good cause for the appellant's failure to appear is shown to the commission** within fourteen days after the hearing date. (Emphasis added.)

“Good cause” is not defined in R.C. 4141.281(D)(5). However, the Tenth District Court of Appeals has held that, when a party demonstrates a lack of culpability on his part in failing to appear for a hearing, good cause has been demonstrated. *Payton v. Bd. of Review*, 10th Dist. No. 96APE09-1266 (June 5, 1997), 1997 Ohio App. LEXIS 2423, unreported.

The Court cannot say that the Commission’s August 23, 2012 Decision was unlawful, unreasonable, or against the manifest weight of the evidence. Had Appellant read and followed the unambiguous instructions that were plainly (and boldly) set forth in the hearing notices, he would not have missed the telephone hearing on July 24, 2012. Regardless of any possible misinformation he may have received, Appellant was at least partially culpable in not reading and following the written instructions that the Commission provided to him. Inasmuch as Appellant was at least partially culpable for his failure to appear at the telephone hearing on July 24, 2012, he did not demonstrate good cause for his failure to appear.

Conclusion

Upon consideration of the certified record, the Court finds that the Commission’s August 23, 2012 Decision, dismissing Appellant’s appeal for his failure to appear at the telephone hearing on July 24, 2012, is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Decision is hereby **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry.

It is so **ORDERED**.

Copies electronically to:

SCOTT A. MITCHELL, Appellant *Pro Se*

PATRIA V. HOSKINS, AAG (0034661), Counsel for Appellee Director, Ohio Department of Job and Family Services

Franklin County Court of Common Pleas

Date: 05-28-2013
Case Title: SCOTT MITCHELL -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV ET AL
Case Number: 12CV012343
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Patrick E. Sheeran". The signature is written over a blue circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "THINGS ARE" at the bottom. The center of the seal features a stylized figure, possibly a Native American, holding a bow and arrow.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 12CV012343

Case Style: SCOTT MITCHELL -VS- OHIO STATE
UNEMPLOYMENT COMPENSATION REV ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes