

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

COMMON PLEAS COURT
2013 APR 17 AM 11:12

HEATHER TANCAK,

CASE NO. 12CIV1197

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
SUPERIOR COURTS

Appellant,

vs.

JUDGE CHRISTOPHER J. COLLIER

UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION, et al.,

JOURNAL ENTRY

Appellees.

This matter is before the Court on the Appellant Heather Tancak's appeal of the decision of The Unemployment Compensation Review Commission (hereinafter, the "UCRC") dated July 19, 2012, wherein the UCRC found the Appellant was not eligible for benefits because the Appellant's new employment was not subject to unemployment compensation law. The UCRC further found that the Appellant was overpaid \$6,649.00 in benefits to which she was not entitled. The Appellant filed a timely appeal of the decision of the UCRC to this Court on August 16, 2012. On November 9, 2012, this Court adopted an agreed briefing/scheduling order whereby the parties agreed to have this matter fully briefed by March 8, 2013. Both the Appellant and Appellees have submitted their briefs on the issue.

The Appellant argues the decision of the UCRC was unlawful, unreasonable and against the weight of the evidence. The matter before the Court is an administrative appeal pursuant to Ohio Revised Code § 4141.282. The matter was scheduled for non-oral decision on March 11, 2013.

In conducting a review of this matter, the Court is limited to a review of the record below to determine whether there exists a preponderance of substantial, reliable and probative evidence to support the UCRC's decision. A reviewing Court is not permitted to substitute its judgment for that of the UCRC. Upon consideration of the pleadings, briefs, and upon careful independent review of the

complete record of proceedings provided to the Court in this matter, the Court finds as follows:

On March 3, 2011, the Appellant Heather Tancak (hereinafter, "Tancak") filed an application for the determination of benefit rights that related to her previous loss of employment with Dennison Manufacturing. The end date for that benefit year was February 25, 2012. The record reveals that subsequent to her employment with Dennison Manufacturing, Ms. Tancak was employed at The Learning Garden, Inc. until on or about July 21, 2011. Tancak was still receiving unemployment benefits while employed at The Learning Garden. At that point, Tancak quit her employment at The Learning Garden to accept other employment in the form of a work study program at Sanford Brown College. Tancak claims that before quitting The Learning Garden, she contacted the Ohio Department of Job and Family Services (hereinafter, "ODJFS") and was told by an ODJFS employee that she would still be eligible for unemployment benefits with the new employment.

During this same benefit year, Tancak filed an application for Federal extended unemployment benefits on December 6, 2011. On December 7, 2011, Tancak was approved for the Federal extended unemployment benefits. However, based on the information contained in the December 6, 2011 application, the ODJFS determined that Tancak listed a different employer than the one listed on the March 3, 2011 application. After some investigation, the ODJFS issued a determination on March 22, 2012. The ODJFS found that Tancak quit her previous employment with The Learning Center on July 22, 2011, as well as determined that the separation disqualified her from benefits and the new employment with Sanford Brown College did not remove the disqualification because it was not "covered" employment under the statute. The ODJFS further determined that Tancak was overpaid \$6,649.00 in benefits to which she was not entitled from July 22, 2011 until the date of the March 22, 2012 determination.

In the meantime, Ms. Tancak filed a new application for unemployment benefits on March 6,

2012, at the expiration of her prior benefit year. As to this application, the ODJFS determined that Ms. Tancak's previous separation from employment with The Learning Center disqualified her from receiving benefits, and that disqualification had not yet been removed. Ms. Tancak has appealed not only the ODJFS determination regarding the separation from employment during the 2011 benefit year, but also the ODJFS determination as to the March 6, 2012 application.

R.C. 4141.29 deals with eligibility and qualification for receiving unemployment benefits. R.C. 4141.291, which deals specifically with eligibility for continuing unemployment benefits when quitting employment to accept other employment, states: (A) Notwithstanding section 4141.29 of the Revised Code, an individual who voluntarily quits work:

(2) To accept a recall to employment from a prior employer and cannot establish that a substantial loss of employment rights, benefits, or pension was involved in the recall, or to accept other employment subject to this chapter, or the unemployment compensation act of another state, or of the United States, where the individual obtains such employment while still employed or commences such employment within seven calendar days after the last day of employment with the prior employer, and subsequent to the last day of the employment with the prior employer, works three weeks in the new employment and earns wages equal to one and one-half times the individual's average weekly wage or one hundred eighty dollars, whichever is less;

(3) Shall, under the conditions specified in either division (A)(1) or (2) of this section, remove the disqualification imposed by division (D)(2)(a) of section 4141.29 of the Revised Code and shall be deemed to have fully complied with division (G) of such section.

Generally, under R.C. 4141.291, an individual who is currently receiving unemployment benefits while employed can continue to receive benefits when quitting their employment to take new employment as long as the new employment is "covered" and certain other criteria are met. Under R.C. 4141.01(B)(3), "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," and if the services are not required to be included under division (B)(2)(j) of this section. Relevant for the purposes of analysis here is subsection (e), which states employment does not include:

(e) Service performed after December 31, 1971:

(i) Service in the employ of an educational institution or institution of higher education, including those operated by the state or a political subdivision, if such service is performed by a student who is enrolled and is regularly attending classes at the educational institution or institution of higher education; or

(ii) By an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, provided that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

The Court notes for the purpose of analysis that Ms. Tancak does not dispute that her employment at Sanford Brown was not “covered” employment under R.C. 4141.01(B)(3)(e). While Tancak does seemingly argue in the merit brief that the UCRC never supported its position that the new employment was not covered, the Court does not agree. The UCRC decisions specifically found that Tancak’s new employment was not “covered.” And while the decisions do not cite R.C. 4141.01(B)(3)(e) specifically, it is clear from the decisions that R.C. 4141.01, *et seq.*, was considered for purposes of analysis. Therefore, under R.C. 4141.291, Ms. Tancak was not eligible for continuing unemployment benefits following her voluntarily quitting her employment at The Learning Garden on July 22, 2011 and obtaining subsequent employment that was not “covered.” Instead, Ms. Tancak argues that she relied on the incorrect advice of an ODJFS staff member who told her that quitting her job at The Learning Garden to accept employment at Sanford Brown would not affect her unemployment benefits.

The Ohio Supreme Court held that equitable estoppel principles cannot be applied against the state, its agencies or its agents, under circumstances involving an exercise of governmental functions. *Griffith v. J.C. Penney Co.*, 24 Ohio St. 3d 112, 113, 493 N.E.2d 959 (1986). Even assuming the

ODJFS employee gave Ms. Tancak the alleged incorrect advice, the advice would be from an employee or agent of a state agency involving the exercise of a governmental function. As such, estoppel principles cannot be applied and even Ms. Tancak's good faith reliance on that advice could not form the basis for reversing the decision of the UCRC on estoppel principals.

While Ms. Tancak's appeal to this Court states that "the Commission erroneously contends that the Appellant had a disqualifying separation from her employment," it is clear from Ms. Tancak's merit brief that the argument on appeal is solely based on estoppel principles (as to the incorrect advice given by the ODJFS staff member) and alleged reliance on an ODJFS determination (allowing the Federal extended unemployment benefits) that was issued five (5) months after Ms. Tancak quit her job with The Learning Garden. Having already dealt with the estoppel argument as to the incorrect advice, the Court will turn to Ms. Tancak's supposed reliance on the ODJFS determination which granted her Federal extended unemployment benefits. Specifically, Ms. Tancak argues that she was "approved in writing, by the Commission, in December of 2011, under the exact employment status she had specifically asked the Commission about in July of 2011, and the exact same facts and employment status under which she was denied benefits in March of 2012."

The Court is not persuaded by Ms. Tancak's argument on this issue. The approval Ms. Tancak received in December of 2011 related to Federal extended unemployment benefits, not the other unemployment benefits which she was receiving. Further, the approval for the federal funds was not issued until five (5) months after Ms. Tancak quit The Learning Garden. Ms. Tancak could not have detrimentally relied on a determination that was not made until months after she quit. In fact, it was the December 2011 application that led to the investigation and subsequent March 22, 2012 determination that Ms. Tancak received benefits to which she was not entitled. Clearly, Ms. Tancak is upset about the incorrect advice she received and according to the merit brief, feels she should not have

to “repay a huge sum [of money] due to [the ODJFS’s] incompetence.” However, the Ohio Supreme Court, in refusing to apply equitable estoppel principles to situations such as this, placed the burden on the individual seeking unemployment benefits to ensure that any advice they receive from an employee of the ODJFS is accurate and in accordance with the statutory regulations. In other words, it was Ms. Tancak’s individual responsibility to ensure that her new employment was “covered” employment under the statute in order to continue receiving unemployment benefits.

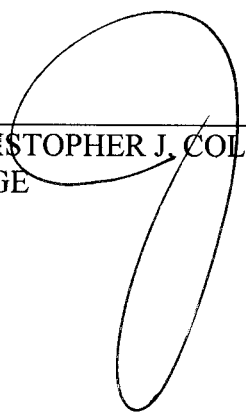
Upon consideration of the pleadings, briefs, and upon careful independent review of the complete record of proceedings provided to the Court in this matter, the Court finds no error of law or fact. The administrative decision, when considered as a whole, is properly based upon consideration of all the evidence and law presented. Furthermore, the Court cannot substitute its judgment for that of the UCRC. The UCRC was not required under the law to reach a particular decision with regard to this particular application for unemployment benefits. The UCRC was only required to support its decision with substantial, reliable and probative evidence. The record and content of the UCRC Hearing transcript establishes that the UCRC’s decision was not unlawful, unreasonable or against the weight of the evidence. Under the facts of this case, the Court finds the decision was supported with substantial, reliable and probative evidence. Therefore, this Court is required to affirm the decision in full.

Accordingly, the Court hereby affirms the decision of the UCRC. The decision of the ODJFS and the UCRC to deny Ms. Tancak’s claim for unemployment benefits due to the finding that Ms. Tancak’s new employment was not “covered” employment is affirmed in full. Ms. Tancak was therefore overpaid \$6,649.00 in benefits to which she was not entitled and must repay.

Costs to the Appellant.

IT IS SO ORDERED.

CHRISTOPHER J. COLLIER
JUDGE



Copies to:

Atty. Raso
Atty. Sheffield
The Learning Garden, Inc.

"FINAL APPEALABLE ORDER"