

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

NEIL R. COWDERY,	:	
	:	CASE NO. 12CVF-15826
Appellant	:	
vs.	:	JUDGE BEATTY
	:	
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB & FAMILY SERVICES,	:	
	:	
Appellee	:	

**DECISION AND JUDGMENT ENTRY REVERSING THE DECISION OF
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER**

BEATTY, JUDGE

This is an appeal pursuant to R.C. 4141.282 from a December 6, 2012 Decision of the Unemployment Compensation Review Commission (the “Commission”).

I. FACTS

Appellant Neil R. Cowdery was paid unemployment compensation for the weeks ending May 7, 2011 through July 14, 2012. On September 19, 2012, Appellee Director, Ohio Department of Job and Family Services, issued a redetermination that Mr. Cowdery was not able to work beginning May 1, 2011. Mr. Cowdery was ordered to repay the benefits for the specified weeks, in the amount of \$15,102.00. Mr. Cowdery filed an appeal, and the matter was transferred to the Commission.

On October 29, 2012, a hearing was held before a Hearing Officer of the Commission. Evidence was presented as follows.

The Hearing Officer noted that Mr. Cowdery had been receiving Social Security disability benefits since May, 2011. (T. 7.) The Hearing Officer asked Mr. Cowdery

whether he was able to work a 40 hour week, and Mr. Cowdery responded: “this would depend upon I need a sit down job or something like this. I can’t be out here doing manual heavy you know.” (*Id.*) Mr. Cowdery stated that he had back and hip problems and had had hip replacement surgery on October 4, 2012. (*Id.*) He stated that he was currently recuperating from the surgery. (*Id.*)

The record includes Mr. Cowdery’s disability determination from the Social Security Administration. (R. 149-158.) The determination states that Mr. Cowdery “became disabled under our rules on January 1, 2010.” (R. 24.) The residual functional capacity assessment in the determination states that Mr. Cowdery can occasionally lift 20 pounds, frequently lift 10 pounds, stand or walk for 6 hours in an 8-hour workday, and sit for 6 hours in an 8-hour workday. (R. 155.) The assessment states that Mr. Cowdery’s residual functional capacity is for light work. (R. 156, 157.)

On November 5, 2012, the Hearing Officer issued a Decision finding as follows:

The facts establish claimant was not able to work effective the day he began receiving social security disability. While the claimant may be able to perform some duties, it has not been established that he is able to work full time. Therefore, he does not meet one of the criteria for filing a valid claim. As is the case, the claimant would be ineligible to collect benefits for the period beginning May 1, 2011.

On December 6, 2012, the Commission disallowed Mr. Cowdery’s request for further review. On December 28, 2012, Mr. Cowdery filed this appeal.

II. STANDARD OF REVIEW

This Court must affirm the Commission’s Decision unless the Decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H).

III. FINDINGS AND CONCLUSIONS

Ohio Rev. Code 4141.29 addresses eligibility for unemployment benefits and provides as follows:

(A) No individual is entitled to ... benefits for any week unless the individual:

...

(4)(a)(i) Is able to work and available for suitable work ...

Mr. Cowdery argues that the Commission's Decision is erroneous because individuals receiving Social Security disability benefits can still be physically able to work under the above statute. He cites to the Commission's Law Abstract on its website, which discusses Social Security law permitting individuals to perform certain work while still qualifying for disability benefits and states as follows:

In light of the changes to Social Security law, the Commission has held that receipt of Social Security Disability Benefits now creates a rebuttable presumption that the individual is not physically able to work under Ohio Revised Code Section 4141.29(A)(4)(a). (UC Law Abstract, VI C.)

The Hearing Officer determined that Mr. Cowdery was ineligible for benefits because he was not able to work as of May 1, 2011. The Hearing Officer stated that "The claimant would argue that he was able to perform other light duties. He has however, not been able to establish that he was able to perform full time work."

The Hearing Officer's determination that Mr. Cowdery was not able to perform full time work is not supported by the evidence in the record. The only witness at the hearing was Mr. Cowdery, who, when asked if he could work full time, responded that he would need a sit-down job. (T. 7.) The only other evidence in the record regarding Mr. Cowdery's ability to work is the disability determination from the Social Security

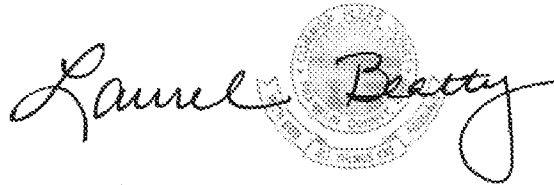
Administration. (R. 149-158.) As noted, the residual functional capacity assessment in that determination states that Mr. Cowdery's residual functional capacity is for light work. (R. 156, 157.) The Hearing Officer's decision does not state a basis for the finding that even though Mr. Cowdery could perform light duties, he was not able to do so on a full-time basis, and the record does not provide support for such a finding.

For the foregoing reasons, the Court finds that the Commission's Decision is unlawful, unreasonable, and against the manifest weight of the evidence. The Commission's Decision is hereby REVERSED. This is a final, appealable Order.

Franklin County Court of Common Pleas

Date: 04-22-2013
Case Title: NEIL R COWDERY -VS- OHIO STATE DEPARTMENT JOB &
FAMILY SERVI
Case Number: 12CV015826
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, reading "Laurel Beatty", is written over a circular official seal. The seal is partially obscured by the signature but appears to be the official seal of the Franklin County Court of Common Pleas.

/s/ Judge Laurel A. Beatty

Court Disposition

Case Number: 12CV015826

Case Style: NEIL R COWDERY -VS- OHIO STATE DEPARTMENT
JOB & FAMILY SERVI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes