IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO

OXFORD WATER TOWER, INC.	*	**Case Number: CV 2012-06-2234**
	*	
Plaintiff,	*	**JUDGE MICHAEL J. SAGE**
	*	**Magistrate Ronald B. James**
	*	
-V-	*	**MAGISTRATE'S ENTRY**
	*	**AND ORDER**
	*	
DUCKETT, TIARA, et al *		
	*	
Defendant.	*	

PROCEDURAL POSTURE

This matter came before the Court on April 9, 2013 on Plaintiff's Motion for Oral Argument in this Unemployment Compensation Appeal following an Unemployment Compensation Review Commission telephone hearing on April 24, 2012, that resulted in a reversal of the initial decision in favor of the employer. The Court notes the State of Ohio waived its presence at arguments via a Notice of Waiver filed March 22, 2013.

DECISION

Plaintiff relies heavily upon an argument the Hearing Officer, Paulette Johnson, was "arbitrary" and "biased" against the employer citing "unfair questions" and commentary referring to "door number three . . . . door number four . . . ." Tt. p. 37 as examples of her "pre-made decision." Plaintiff also cites to the requirement in Ohio for an employee to not create "just cause" for leaving a position voluntarily. *Irvine v. Unemp. Comp. Bd. Of Rev.* (1985), 19 Ohio St. 3d 15, as a basis for reversing the Hearing Officer's decision.

Defense counsel countered the business created the situation to manufacture a basis for unjustly terminating Plaintiff, when Ms. Duckett was not paid for her labors and

received tacit approval to take off work to try and resolve the payroll decision. The Defense also claims representatives of the employer provided "contradictory" testimony before the Hearing Officer.

Unfortunately, neither of these arguments goes to the core issue, was the ultimate decision, ". . . .unlawful, unreasonable, or against the manifest weight of the evidence. . . ."? R.C. §4141.282(H)

Courts, in reviewing the decision, may not substitute their evaluations of facts and credibility for that of the hearing officer. *Tzangas, Plakas, & Manos v. Ohio Bur. Of Emp. Serv.* (1995), 75 Ohio St. 3d 694

A careful reading of the hearing shows the hearing officer applied equal restrictions on behavior to both sides, particularly admonishing Defense Counsel on two separate occasions. Tt. P.p. 18 & 33

The administrative officer also repeatedly brought both sides back to the core issue for the hearing, i.e. did Ms. Duckett quit or was she fired? This is not to say there were no mistakes, e.g. the Hearing Officer swore in a witness after their testimony.

In her decision, the Hearing Officer specifically found Ms. Duckett to be more credible than the employer's representatives who she believed offered, "contradictory and . . . .confusing" testimony D. p. 4 The Hearing Officer went on to say Ms. Duckett presented "reliable, substantial and probative evidence" she was fired on December 24, 2013. Based on this, the Court cannot find the decision to be unreasonable.

Neither can the Court hold the decision to be unlawful as the issue of "just cause" lacks relevancy in this matter. Whether or not it was reasonable to initiate individual action to resolve a payroll issue near Christmas time, or whether the employer did enough to correct a problem does not resolve the central question, did Ms. Duckett quit on December 22 or was she fired on December 24? The Court may only rely upon evidence in the record in answering this question and need only determine if the decision was supported by that evidence. *Id 696*

udge Michael J. Sage
Common Pleas Court
Butler County, Ohio

"The Ohio Supreme Court recently reiterated the distinction between a manifest-weight-of-the-evidence analysis within a civil context as opposed to a criminal context. In *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, the high court reiterated the distinction between the civil and criminal manifest-weight-of-the-evidence standards of review. The *Wilson* court stated that the civil manifest-weight-of-the-evidence standard was enunciated in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 8 O.O.3d 261, 376 N.E.2d 578, syllabus, which held that " [j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Wilson* at ¶ 24. Further, the court stated,when reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81, 10 OBR 408, 461 N.E.2d 1273. This presumption arises because the trial judge had an opportunity " to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Id.* at 80, 10 OBR 408, 461 N.E.2d 1273. " A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted Before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *Id.* at 81, 10 OBR 408, 461 N.E.2d 1273." Quoted in *The Hunington National Bank v. Chappell,* 183 Ohio App.3d 1, 915 N.E.2d 665, 2007-Ohio-4344 (2007)

This Court does not find any testimony directly refuting Ms. Duckett's claim she was given permission to resolve her payroll problem. In fact, the manager on duty testified three different ways before the Hearing Officer Tt. P. 36 as to whether or not permission was granted and to whom. The owner also provided conflicting testimony in both the first and second hearings. Accordingly, the Hearing Officer's determination of credibility cannot be said to be against the manifest weight of the evidence and neither can her decision.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED the Hearing Officer's decision in this matter is sustained and judgment is rendered for the Defendant.

udge Michael J. Sage
Common Pleas Court
Butler County, Ohio

SO ORDERED.

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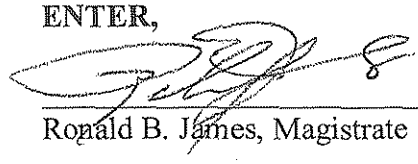

Ronald B. James, Magistrate

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(d)(3)(b).

JUDGMENT ENTRY

The Court determines there is no error of law or other defect evident on the face of the Magistrate's Decision. Therefore, the Court adopts the Magistrate's Decision and recommendations as its own, including the findings of fact and conclusions of law contained therein *Civ. R. 53(D)(4)(e)(i).*

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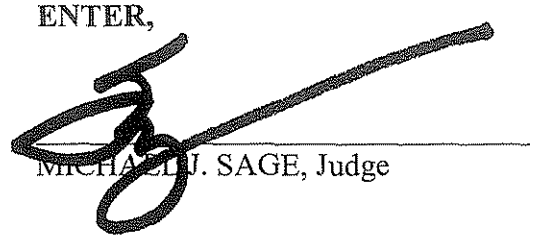

MICHAEL J. SAGE, Judge

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