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



DAVID HAMILTON
Plaintiff

Case No: CV-13-798945

Judge: KATHLEEN ANN SUTULA

DIRECTOR OHIO DEPT OF JOB & FAMILY
SERVICES, ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

A REVIEWING COURT MAY REVERSE THE COMMISSION'S DECISION ONLY IF IT IS "UNLAWFUL, UNREASONABLE, OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE." BANKS V. NATURAL ESSENTIALS, INC., 2011 OHIO 3063, P22, 2011 OHIO APP. LEXIS 2599, UNEMPLOYMENT INS. REP. (CCH) P10,286, 2011 WL 2518630 (OHIO CT. APP., CUYAHOGA COUNTY JUNE 23, 2011). THEREFORE, THE REVIEWING COURT HAS THE DUTY TO DETERMINE WHETHER THE AGENCY'S DECISION IS SUPPORTED BY THE EVIDENCE IN THE RECORD. SEE IRVINE V. UNEMPLOYMENT COMP. BD. OF REV. (1985), 19 OHIO ST.3D 15, 19 OHIO B. 12, 482 N.E.2D 587. FURTHERMORE, THE REVIEWING COURT CANNOT MAKE FACTUAL FINDINGS OR DETERMINE THE CREDIBILITY OF WITNESSES. SEE BANKS V. NATURAL ESSENTIALS, INC., 2011 OHIO 3063. "EVERY REASONABLE PRESUMPTION SHOULD BE MADE IN FAVOR OF THE COMMISSION'S DECISION AND FINDINGS OF FACT." BANKS V. NATURAL ESSENTIALS, INC., 2011 OHIO 3063 CITING KARCHES V. CINCINNATI (1988), 38 OHIO ST.3D 12, 19, 526 N.E.2D 1350.

DESPITE THE OBJECTIONS OF APPELLANT THAT THE DECISION OF THE HEARING OFFICER OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION WAS NOT SUPPORTED BY ANY EVIDENCE OR DIRECT TESTIMONY, THIS COURT FINDS THE DETERMINATION THAT THE APPELLANT RESIGNED FROM B. MCDERMOTT ENTERPRISES, INC. WITHOUT JUST CAUSE WAS SUPPORTED BY SUFFICIENT EVIDENCE. THE COURT HAVING REVIEWED THE ENTIRE RECORD AND THE BRIEFS OF THE APPELLANT AND THE APPELLEE, AFFIRMS THE ORDER OF THE HEARING OFFICER OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION, FINDING THE ORDER IS LAWFUL, REASONABLE AND SUPPORTED BY A PREPONDERANCE OF SUBSTANTIAL, RELIABLE, AND PROBATIVE EVIDENCE ON THE WHOLE OF THE RECORD.

FINAL.

COURT COST ASSESSED TO THE PLAINTIFF(S).

K.A. Sutula

5-16-13

Judge Signature

Date

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MAY 16 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By *[Signature]* Deputy