COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

RITA ALLEN-BANKS,	:	
Appellant,	:	**CASE NO. 13 CV 993**
-vs-	:	**JUDGE KIMBERLY COCROFT**
	:	
DIRECTOR, OHIO DEPARTMENT OF JOB& FAMILY SERVICES, et al.,	:	
Appellees.	:	

DECISION AND ENTRY

COCROFT, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. § 4141.282(H) from a November 30, 2012 Decision of the Unemployment Compensation Review Commission ("review commission"). The claimant-appellant, Rita Allen-Banks, filed a claim for unemployment benefits on August 28, 2012. On September 17, 2012, the Director of the Ohio Department of Job and Family Services ("Director") issued an initial determination finding that the appellant was discharged with just cause by her employer, Leader Promotions, Inc. ("employer"), due to her unsatisfactory job performance. The appellant objected to this determination and filed an appeal with the Director. On October 9, 2012, the Director affirmed the initial determination. Thereafter, the appellant appealed and the Director transferred jurisdiction to the review commission.

Notice was sent to the appellant with general instructions attached. Notice of the evidentiary hearing to be held via telephone on was sent to the parties with appended instructions. See November 16, 2012 Notice of Hearing.

On November 30, 2012 at 9:30 a.m. appellant did not phone in to appear at the telephone

hearing and thus, did not appear. Since the appellant failed to call in for her hearing at the scheduled time, the hearing officer dismissed her appeal pursuant to R.C. 4141.281(D)(5). Thereafter, the appellant requested that the dismissal be vacated. On December 14, 2012, that request was denied, but the matter was set for a show cause hearing to determine whether appellant could demonstrate "good cause" for failing to appear at the scheduled November 30, 2012 hearing.

The "good cause" hearing was set for January 2, 2013. The appellant appeared and presented testimony regarding why she did not appear at the November 30, 2012 hearing. Hearing Officer Joseph Blaker issued the following findings of fact:

> Claimant received a Notice of Hearing for a hearing that was to be held by telephone on November 30, 2012 at 9:30 AM. Claimant received the Notice prior to the date of the hearing. Claimant received her Notice by regular and electronic mail. The Notice stated that parties were to call the Unemployment Compensation Review Commission (UCRC) fifteen minutes prior to the scheduled time to initiate the hearing. The Notice listed the numbers to call.
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> Claimant did not appear for the hearing and her appeal was dismissed in accordance with Ohio Law and UCRC policy. Claimant contacted the UCRC shortly after 9:50 AM and reported that she did not have the proper number to call in and had just located her notice. She further stated she was under the impression that the UCRC would call her. Claimant misplaced the Notice she received by mail and was unable to access the Notice electronically on that morning.
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> 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. Claimant did not appear for her hearing because she misplaced her hearing notice and did not properly read her notice. 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.
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> In view of the foregoing, the Dismissal of Appeal, mailed November 30, 2012, did become final.
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> See January 2, 2013 Decision.

The hearing officer concluded that the Dismissal of Appeal mailed to the appellant on November 30, 2012 was final. Thereafter, appellant filed the appeal now before this Court.

Standard of Review

This Court must uphold the decision of the review commission unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. See R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.,* (1995), 73 Ohio St. 3d 694. While a reviewing court is not permitted to make factual findings or determine the credibility of witnesses, it does have a duty to determine whether the decision of the review commission is supported by the evidence in the record.

The Unemployment Compensation Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he or she is no longer the victim of fortune's whims but instead is directly responsible for his/her own predicament. Fault on the employee's part separates him/her from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination. If the employer has been reasonable in finding fault on behalf of an employee, then the employer may terminate the employee with just cause. See R. C. 4141.29(D)(2)(a). Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

Additionally, this Court is statutorily bound to give the appellant a liberal interpretation of the statutes applicable to her case. See R.C. 4141.46; see also *Walton v. Ohio State Bureau of Emp. Serv.* 2002 Ohio App. LEXIS 722, and *Salzl v. Gibson Greeting Cards* 61 Ohio St.2d 35, 39 (1980). It is at the hearing officer level that a claimant must be accorded a hearing that is "consistent with the principles of due process" of law. *Cunningham v. Jerry Spears, Co.*, 119 Ohio App. 169, 175 (1963).

The concept of "good cause" is not defined under Ohio unemployment compensation law. In another context, the Ohio Supreme Court held that "good cause" for a change of payment request in a worker compensation case could be established through unforeseen or changed circumstances. *State ex rel. Hawkins v. Indus. Comm. of Ohio*, 2003 Ohio LEXIS 2423. In interpreting R.C. 4141.28(D)(5), the Tenth District Court of Appeals held that a claimant could establish "good cause" by demonstrating a lack of culpability for his/her failure to appear. See *Payton v. Bd. of Rev.*, 1997 Ohio App. LEXIS 2423; see also *Walton v. Ohio State Bureau of Emp. Servs.*, 2002 Ohio App. LEXIS 722 and *Furtado v. Getsay*, 1993 Ohio App. LEXIS 1099.

The basic philosophy of judicial procedure revolves around the principles of fairness, relevance, reliability and public policy. See 42 American Jurisprudence, 460 *et seq.,* Public Administrative Law, Section 129 *et seq.* The principles remain, even though their application as formal court rules may be inappropriate to the operation of an agency adjudication. Further, the rules themselves remain as a starting point in determining whether there has been a violation of fundamental principles. The common pleas court is limited to a judicial review of the record of the hearing and administrative adjudication. Thus, it is at the board level that a party must be accorded a hearing consistent with principles of due process.

Appellant's Argument

The appellant does not set forth any legal assignments of error in her brief. The appellant is representing herself *pro se*. Ohio case law continues to hold that *pro se* civil litigants are bound by the same rules and procedures as those litigants who retain counsel. *Copeland v. Rosario,* 1998 Ohio App. LEXIS 260. They are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore* , 111 Ohio App. 3d 357, 363 (1996). *Pro se* litigants are presumed to have knowledge of the law and of correct legal procedure and are held to the same

standard as all other litigants. *Meyers v. First Natl. Bank,* 3 Ohio App. 3d 209 (1981).

With respect to procedural rules, *pro se* litigants are held to the same standards as a practicing attorney. The *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules. If the court treats a *pro se* litigant differently, the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. See *Justice v. Lutheran Social Servs.,* 1993 Ohio App. LEXIS 2029.

Appellees' Argument

The appellee asserts that appellant was discharged with just cause from her employment with Leader Promotions, Inc. The employer asserts that appellant was terminated as an Accounting Assistant due to her unsatisfactory work performance. Moreover, the appellees' position is that the Review Commission's November 30, 2012 Decision was lawful, reasonable and not against the manifest weight of the evidence since appellant's appeal was properly dismissed pursuant to R.C.4141.281(D)(5). It is undisputed that appellant did not appear for the November 30, 2012 telephone hearing. At the show cause hearing held on January 2, 2013, the hearing officer concluded that appellant did not establish "good cause" for her failure to appear at the November 30, 2012 hearing.

Law and Analysis

Upon review, the record demonstrates that the appellant was sent a notice that her appeal had been transferred by the director to the review commission. On November 16, 2012, a Notice of Hearing and instructions were mailed to the appellant and she acknowledged receiving the notice. Tr. 5-6. As part of the instructions, the agency informs the claimant what he or she must do to request a continuance, or postponement, of the hearing that will be conducted via telephone. The

"**POSTPONEMENT**" paragraph states as follows:

> Federal regulations as found in 20 CFR Part 650 require that unemployment compensation appeals be heard as promptly as possible. Any request for postponement should be made immediately upon discovery of any conflict with the scheduled hearing date.
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> **A SCHEDULED HEARING WILL BE POSTPONED ONLY UNDER EXTREME CIRCUMSTANCES AND ONLY AFTER A PARTY HAS EXHAUSTED ALL EFFORTS TO RESOLVE ANY CONFLICT. POSTPONEMENTS CAN ONLY BE REQUESTED BY CALLING THE COMMISSION AT 1-866-833-8272. ANY REQUESTS TO POSTPONE, FILED BY LETTER, FAX, OR E-MAIL WILL NOT BE CONSIDERED. IF YOU DO NOT RECEIVE A RESPONSE TO A WRITTEN FAX OR E-MAIL REQUEST, ASSUME YOUR REQUEST HAS BEEN DENIED AND THAT THE HEARING WILL PROCEED AS SCHEDULED.**

See November 16, 2012 Notice of Hearing.

The record clearly demonstrates appellant did not request a postponement. Thus, when the appellant did not call in at the appointed time to participate in the hearing set for November 30, 2012, at 9:30 a.m., the hearing officer dismissed the appeal pursuant to R.C. 4141.281(D)(5). In the event that the claimant does not appear at the hearing before the hearing officer, R.C. 4141.281(D)(5) provides, in pertinent part:

> 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.
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> If the commission finds that the appealing party's reason for failing to appear does not constitute good cause for failing to appear, the commission shall send written notice of that finding, and the appealing party may request a hearing to present testimony on the issue of good cause for failing to appear. The appealing party shall file a request for a hearing on the issue of good cause for failing to appear within ten days after the commission sends written notice indicating a finding of no good cause for failing to appear.

Upon review, appellant asserts that she didn't wake up the morning of November 30, 2012 until 9:30 a.m., which was the appointed time of the hearing. The appellant was instructed to call in 15 minutes prior to that time. She stated that in the next 24 minutes she got in touch with three

different people, plus the agency. Tr. 8. She testified that she misplaced the Notice of Hearing and could not find the number to call, and couldn't access her e-mail account to locate the phone number. Tr. 7-8. Based on these facts and the testimony of the appellant, the hearing officer concluded that the appellant had failed to establish "good cause."

The appellant requested that the review commission vacate its November 30, 2012 Decision. On December 14, 2012, the review commission denied her request to vacate the dismissal of her case. R.C. 4141.281(C)(5) provides:

> The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. The commission may allow or disallow the request for review. The disallowance of a request for review constitutes a final decision by the commission. (Emphasis added).

Although R.C. 4141.281(C)(5) mandates that the review commission shall consider a request for review, or in the case, a request to vacate a decision, it clearly states that it is within the review commission's discretion to allow or disallow the request for review. Upon a review of the record, it is clear that the review commission complied with R.C. 4141.281(C)(5). Accordingly, the review commission did not abuse its discretion when it disallowed further review.

The matter herein is similar to the facts and decision reached by the Tenth District Court of Appeals in *Walton*, *supra*. In affirming the decision to deny unemployment benefits after the appellant failed to attend a review commission hearing, the Tenth District found that "[A]ppellant made no attempt to show the Review Commission good cause for her failure to appear within fourteen days after the hearing". *Id*. at *7. The *Walton* court further found that, in the appellant's initial request for review, she "stated only that she disagreed with the decision of the hearing officer and that should would like an appeal" but "did not mention any previous attempt to contact the Review Commission regarding her inability to attend the hearing, any conversation with an agency

employee, or any reason for her absence." *Id*. at *8.

In the present case, appellant did not follow the review commission's instructions for participating in the November 30, 2012 hearing. Moreover, the evidence supports that it was appellant's own dilatory conduct which caused her to fail to appear for the scheduled hearing on November 30, 2012. This Court concludes that the holding in *Payton* requires a demonstration of a lack of culpability and, in this case, a showing of at least some minimal effort by appellant to communicate with the agency prior to the hearing since notice was not raised as an issue. See *Payton*, at *8.

Thus, there was no error in the Review Commission's dismissal of the unemployment claim because appellant had not established "good cause" for failing to appear at the hearing. Had the appellant read and followed the unambiguous instructions plainly stated in the hearing notice, she would not have missed appearing at the hearing. See *Dodridge v. Adm'r, Ohio Dep't of Jobs and Family Servs.*, 2010-Ohio-696.

The appellant has the burden of proving that she is entitled to employment compensation benefits. See *Vickers v. Ohio State Bur. of Emp. Serv.*, 1999 Ohio App. LEXIS 1794. Accordingly, this Court concludes as a matter of law that the November 30, 2012 Decision of the review commission is lawful, reasonable and is not against the manifest weight of the evidence. Thus, the review commission's decision is hereby **AFFIRMED**. Appellee, Ohio Department of Job and Family Services' motion to dismiss filed May 29, 2013, and Appellee, Leader Promotions, Inc.'s motion to dismiss filed May 30, 2013 are moot.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

> **(B) Notice of filing.** When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

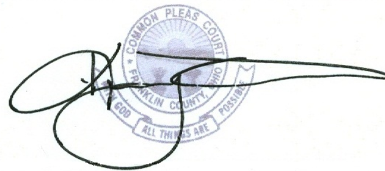
Date: 08-29-2013

Case Title: RITA ALLEN-BANKS -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICE ET AL

Case Number: 13CV000993

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 13CV000993

Case Style: RITA ALLEN-BANKS -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICE ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes