

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

**FRANK W. WRIGHT**

]]

**CASE NUMBER 13CV-7030**

□

**APPELLANT,**

]]

**JUDGE CAIN**

□

**vs.**

]]

**DIRECTOR, OHIO DEPARTMENT OF  
JOB AND FAMILY SERVICES**

□

]]

□

]]

□

]]

**APPELLEE**

□

**DECISION AND JUDGMENT TO AFFIRM**

**CAIN, J.**

This matter is now before the court on the merits of this administrative appeal. By way of factual background, appellant, Frank W. Wright, held positions of strenuous physical employment until February 1984. At that time it was medically determined that due to certain lung and heart maladies, he was unable to perform the vigorous work he formerly did. Appellant ceased such active vocational pursuits. For health reasons appellant then became enrolled in educational and vocational programs, and later reentered the workforce where he obtained employment in supervisory and sedentary roles.

In August 2010, appellant was let go from that employment due ostensibly to a lack of work. It was at that time he filed for unemployment compensation. That request was originally granted, but following a reconsideration in February 2012, it was determined appellant did not qualify for unemployment benefits because he was not able to return to work as required by law. That is to say, because he was

unable to return to work, he was concomitantly unable to collect unemployment compensation payments. Further, he was directed to repay appellee those benefits he received to which he was not qualified to receive.

Appellant appealed the denial of benefits to him and pursued the administrative procedure path, including an oral evidentiary hearing, with the result being a final administrative determination that appellant is ineligible for benefits beginning August 15, 2010, because he was not able to work at the relevant times. This administrative appeal results from that final administrative determination.

This appeal is governed by R.C. 119.12 which in pertinent part provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

In considering this matter on appeal, this court is limited to determining whether appellee's adjudication order is supported by sufficient evidence in the record and whether it is lawful. A court of common pleas is bound to uphold an order of an administrative board or commission if that order is supported by reliable, probative, and substantial evidence. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621, 614 N.E.2d 748; *Hayes v. State Med. Bd. of Ohio* (2000), 138 Ohio App. 3d 762, 767, 742 N.E.2d 238.

Further, and of notable importance in this case, a common pleas court should generally defer to administrative resolution of evidentiary conflicts. *Gen. Motors Corp. v. Joe O'Brien Chevrolet, Inc.* (1997), 118 Ohio App. 3d 470, 482,

693 N.E.2d 317. Thus, as long as there is reliable, probative, and substantial evidence that supports the director's findings, the common pleas court may not substitute its judgment as to disputed facts. *Id.* Whether any evidence supports the decision is a question of law. *Id.* at 483.

Appellee's construction and application of its regulations and requirements must be accomplished on a case-by-case basis. Due deference must be accorded to the decisions of an administrative agency. *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St. 3d 79. It has been noted that "an administrative agency's construction of a statute that the agency is empowered to enforce must be accorded due deference." *Ciriello v. Bd. of Embalmers and Funeral Directors of Ohio*, 105 Ohio App. 3d 213, 218, citing *Leon v. Bd. of Psychology* (1992), 63 Ohio St. 3d 683 and *Chaney v. Clark Cty. Agr. Soc., Inc.* (1993), 90 Ohio App. 3d 421. However, the findings of the agency are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111.

In support of his appeal, appellant raises issues involving a possible misunderstanding or mistake on the part of appellee. The crux of the parties' dispute implicates evidentiary issues concerning weight, credibility, clarity and understanding. It is the duty of the administrative hearing officer to consider the credibility or believability of the witnesses who testify before him and to determine the weight to be given to the evidence that is presented by the parties. It has been noted that persons such as hearing examiners, jury members and other finders of fact are generally best able to view and hear the witnesses and usually observe their demeanor, gestures, pauses and voice inflections, and use these

observations in weighing the credibility of the proffered testimony. See, e.g. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St. 3d 77, 1984 Ohio LEXIS 1068.

In this case, it could well be that an element of confusion penetrated the proceedings. Nevertheless, it is incumbent on the party seeking to acquire government-provided benefits to reasonably ensure that proper communication and resultant clear understanding is achieved throughout the administrative process.<sup>1</sup>

In this case, appellant testified at the hearing that he had not been cleared to return to work (that was asked twice) and, further, that at the time of the hearing he “was unable to work.” Additionally, the hearing officer focused on the critical issue when he queried: “When were you first told you were unable to work?” Appellant’s response was: “August 10, 2010.” “And you have been unable to work since that time?” Appellant’s response: “Correct.” That testimony was given by appellant in response to the neutral questioning by the hearing officer.

In contrast, however, during appellant’s direct examination conducted by his counsel largely utilizing leading questions, appellant was seemingly encouraged to relate that he actually was able to perform work of a light nature at the relevant times, but that during these times he was unable (as he had been for a long time) to perform the heavy or strenuous work. As acknowledged by appellant’s counsel, the appearance at that time of a closing argument was patent.

In addition to the evidence just mentioned, there also existed a paper form ostensibly submitted to appellee by appellant’s employer at the time appellant was discharged from his job. The form related that appellant had been let go for “lack

---

<sup>1</sup> This is not to say appellant bore a burden of proof in the traditional sense.

of work.” Certainly that evidence had some evidentiary weight, but in light of appellant’s insistent testimony that he was unable to work, the probative gravity of the item’s value must be left to the finder of fact, the hearing officer.

Upon a full consideration, the court finds the subject adjudication order is supported by reliable, probative, and substantial evidence and exists in accordance with law. Accordingly, the court finds in favor of appellee and against appellant. The adjudication order is **affirmed**. Judgment is rendered accordingly. Costs to be paid by appellant.

David E. Cain, Judge

Copies to:

Frederic A. Portman, Esq.  
Counsel for Appellant

Patria V. Hoskins, Esq.  
Counsel for Appellee

Franklin County Court of Common Pleas

**Date:** 11-25-2013  
**Case Title:** FRANK WRIGHT -VS- OHIO STATE DEP JOB & FAMILY SERVICES DIR  
**Case Number:** 13CV007030  
**Type:** DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 13CV007030

Case Style: FRANK WRIGHT -VS- OHIO STATE DEP JOB &  
FAMILY SERVICES DIR

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes