

STATE OF OHIO, COUNTY OF BELMONT  
COURT OF COMMON PLEAS

FILED  
COMM. PLEAS COURT  
BELMONT CO., OHIO

2014 JAN 30 PM 3 39

CYNTHIA K. MCCOY  
CLERK OF COURT

DOCKET AND JOURNAL ENTRY

Marietta Coal Co., Inc.,

**Appellant**

**Case No.:** 13 CV 55

Vs.

**Dated:** January 27, 2014

James E. Kirkbride and  
Ohio Department of Job & Family Services  
Office of Unemployment Compensation

**Appellees**

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This matter comes before this Court on Appeal of questions of law from an **Administrative Decision** of the **Unemployment Compensation Board of Review**, mailed January 17, 2013, which decision found claimant, James E. Kirkbride, quit his job at Marietta Coal Co., with just cause, and that Claimant was, therefore, entitled to receipt of Unemployment Compensation benefits.

Appellant has exhausted its Administrative remedies and this Court has jurisdiction to entertain the Appeal.

**The Appeal filed by Appellant, Marietta Coal Co., on February 12, 2013, is Overruled and the Decision of the Unemployment Compensation Board of Review is Affirmed. Appellant's benefits are entitled to be paid in accord with law.**

**The Court specifically finds that the decision of the Hearing Officer, mailed December 5, 2012, was not unlawful, unreasonable or against the manifest weight of the evidence, but was otherwise based on competent, credible evidence in the record that would support the decision of the Unemployment Compensation Board of Review in accord with Irvine v. Bd. Of Rev., 19 Ohio St. 3d 15.**

**This is a Final Appealable Order.**

**"Special Entry"**

JOHN M SOLOVAN, II

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**JOHN M. SOLOVAN, II - JUDGE**

pc: **Gerald P. Duff**, Atty./Pl.  
**Yvonne Tertel**, Atty./Def.

STATE OF OHIO, COUNTY OF BELMONT  
COURT OF COMMON PLEAS

FILED  
COMMON PLEAS COURT  
BELMONT CO., OHIO

2014 JAN 30 PM 3 40

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**Appellant**

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Vs.

**JUDGMENT ENTRY**

CYNTHIA K. Mc GEE  
CLERK OF COURT

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## **FINDINGS OF COURT**

The Ohio Unemployment Act defines and limits the scope of review to be utilized by the Court of Common Pleas in Appeals from the Commission and specifies the standard of review to be applied in reviewing the record. **R.C. §4141.28 (0)(1)** provides in part:

If the Court finds that the decision was unlawful, unreasonable or against the manifest weight of the evidence, it shall reverse and vacate such decision or it may modify such decision and enter final judgment in accordance with such modification; otherwise, the Court shall affirm such decision.

Accordingly, proceedings in the Court of Common Pleas arising under R.C. §4141.28 (0)(1) are error proceedings, not proceedings de novo. **Tzangas Plaskas & Munnos v. Ohio Bur. Of Emp. Serv. (1995), 73 Ohio St. 3d 694** **The Commission is the trier of fact and reviewing courts cannot infringe on that primary jurisdiction by weighing evidence or assessing credibility from afar. Simon v. Lake Geauga Printing Co. (1982), 69 Ohio St. 2d 41** Therefore, reviewing courts are without jurisdiction to overturn a decision of the Commission merely on the basis that reasonable minds might differ as to factual conclusions. **Charles Livingston & Sons v. Constance (1965) 115 Ohio App. 437**

In light of the above-mentioned precedent, this Court has carefully reviewed the entire transcript of proceedings, including the testimony of Claimant, James E. Kirkbride and Paul Gill, Superintendent for Marietta Coal Co., at the Hearing on December 3, 2012 and **finds that the decision of the Hearing Officer**, which decision was affirmed by the Unemployment Compensation Board of Review, **was not unlawful, unreasonable or against the manifest weight of the evidence.**

The Court specifically finds that the Hearing Officer, based upon competent, credible evidence in the record, and after judging the credibility of the witnesses and the weight of conflicting evidence (**Irvine v. Unemp. Comp. Bd. Of Review (1985), 19 Ohio St. 3d 15**), determined that Claimant, James E. Kirkbride, remained eligible to receive Unemployment Compensation Benefits because he quit his employment with just cause.

In spite of Appellant's insistence that Mr. Kirkbride knew what the job requirements were before he voluntarily returned to work in 2012, the Hearing Officer, based upon the testimony and the credibility of the witnesses, **found that a change in terms of employment occurred based upon Mr. Kirkbride's understanding, when he accepted re-employment with Marietta, that he would be commuting to St. Clairsville every day and taking the company truck for purposes of work. See, Myers v. Garson, 66 Ohio St. 3d 610, 614, 615; See also, Irvine v. Bd. Of Rev., 19 Ohio St. 3d 15** While Appellant has raised an issue as to what Claimant's understanding of his job obligations should have been, based upon his previous employment with Marietta, the Hearing Officer specifically found that Marietta changed the terms of Claimant's re-employment by requiring him to drive his personal vehicle to various job sites, thus increasing his travel expenses significantly, after having promised his use of the company truck at the time he was employed. This Court simply cannot find the decision of the Hearing Officer to be "so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice...." **Sambunjak v. Bd. Of Rev., 14 Ohio App. 3d 432, 433.**

The record reflects that the Hearing Officer's decision rested upon the uncontroverted facts that Kirkbride, (1) was provided a company truck when he first returned to employment; and (2) that later, he was required to use his personal vehicle for work purposes. The Hearing Officer went on to find that the reassignment of the company vehicle to another constituted a change in employment terms sufficient to support the finding the Kirkbride quit his job with just cause. **Sachs Corp. of U.S.A v. Rossman, 9 Ohio App. 3d 188.**

The Hearing Officer further found that Kirkbride had attempted to discuss the matter with his employer prior to quitting by advising that the change in the use of his personal vehicle to travel from job to job had a significant impact upon him financially. **Id.; See also, DiGiannantoni v. Wedgewater Animal Hospital, 109 Ohio App. 3d 300.**

This Court agrees with Appellee's argument that the facts contained in **Adm., Ohio Bur. Of Emp. Serv. v. Hill, 4<sup>th</sup> Dist. No. 98CA662 (Jan. 25, 1999)** are distinguished from the facts herein. When employees, in **Hill**, hired in, it could be inferred from the facts that the employees were aware of the type of business parameters in which they would be engaging and those parameters never changed. In this case, the Hearing Officer found that Kirkbride was hired in and provided with a company truck, which was subsequently taken away. In spite of what Kirkbride might have known to be his previous job requirements concerning transportation to and

from work, it was not improper or unreasonable for the Hearing Officer to infer, from the evidence presented (testimony of Kirkbride and Paul Gill), that Kirkbride believed that his new hire included the use of the company truck. Rather than continue to lose money working at Marietta Coal due to the change in conditions set forth unilaterally by his employer, he chose to quit, which "quit" meets the legal standard by which the case is analyzed under **Irvine, Supra**.

It is obvious that the Hearing Officer found Kirkbride's testimony more credible than that of his employer relating to the requirements of Kirkbride's re-employment at Marietta Coal, a function attributable to the Hearing Officer as the judge of the credibility of witnesses. **Shaffer-Goggin v. Review Commission, Richland App. No. 03-CA-2, 2003-Ohio-6907 at ¶26; See also, Hall v. American Brake Shoe Co. (1968), 13 Ohio St. 2d 11.**

Based upon the above, this Court must uphold the decision of the Ohio Unemployment Compensation Board of Review, as said decision was not unlawful, unreasonable or against the manifest weight of the evidence.

This is Final, Appealable Order.

**Dated:** January 29, 2014

JOHN M SOLOVAN, II  
**JOHN M. SOLOVAN, II - JUDGE**

pc: ***Gerald P. Duff***, Atty./Pl.  
***Yvonne Tertel***, Atty./Def.