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IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

SOURCE PROVIDERS, INC.	)	CASE NO. 13 CV 1869
	)	COURTROOM NO. 4
	)	
APPELLANT	)	JUDGE JOHN M. DURKIN
	)	
VS.	)	
	)	JUDGMENT ENTRY
DIRECTOR, ODJFS, ET AL	)	
	)	
APPELLEES	)	

This matter has come before the Court pursuant to a timely appeal from a decision of the Ohio Unemployment Compensation Review Commission (“Review Commission”) pursuant to Ohio Revised Code Section 4141.282.

In this case, the record before the Review Commission establishes that the Claimant, James M. Salvatore (“Salvatore”) worked as an hourly employee for Source Providers, Inc. (“Source Providers”) from October 8, 2010 until he was discharged from employment on March 13, 2013.

Salvatore filed for unemployment benefits for the weeks ending January 12, 2013 through March 2, 2013. After determining that Salvatore was working full time while collecting unemployment benefits, Source Providers terminated Salvatore on March 13, 2013 for falsifying unemployment filings and for theft of funds from Source Providers’ unemployment account. Source Providers reasoned that there was just cause to terminate Salvatore because his acts of dishonesty violated of the Collective Bargaining Agreement (“CBA”) between Source Providers and United Steel Workers of America, Local 1-621.

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The CBA governs the terms and conditions of Source Providers' hourly employees' employment.

On March 25, 2013 Salvatore filed for unemployment benefits. The Director, Ohio Department of Job and Family Services ("Director") issued a determination on April 2, 2013 that Salvatore was totally unemployed due to lack of work and allowed Salvatore's claim for benefits. Source Providers timely appealed the Director's determination and on April 25, 2013 the Director affirmed the determination allowing Salvatore's claim for benefits. Thereafter, Source Providers filed a timely appeal of the Director's redetermination decision and the matter was transferred to the Review Commission on April 26, 2013.

A telephonic hearing was held before the Review Commission on May 21, 2013. The Review Commission issued a decision the same day, modifying the determination by the Director allowing Salvatore's claim for benefits. The Review Commission found that Salvatore was discharged from employment without just cause in connection with work and was therefore eligible for unemployment benefits. In reaching its decision, the Review Commission determined that the issue of fraud, as alleged by Source Providers, is between the State and Salvatore, concluding that the funds in question were state funds and the documentation that was falsified was not company records but state records. Further, the Hearing Officer held that the Director, had previously issued a determination that Salvatore committed fraud when filing unemployment claims for the weeks ending January 12, 2013 through March 2, 2013 and imposed penalty weeks upon his ability to receive benefits as a result of the overpayment.

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On May 21, 2013, Source Providers timely requested a further review by the Review Commission. The Review Commission denied the request on June 12, 2013. This appeal followed.

The procedure for reviewing a Review Commission's decision is set forth in R.C. 4141.282(H) which provides as follows:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

To reverse, vacate or remand the matter, this Court must find that the decision of the Review Commission was unlawful, unreasonable or against the manifest weight of the evidence. In conducting the review, it has long been established that the reviewing court is not permitted to substitute its judgment for that of the Review Commission. Rather, this Court is limited to determining whether there is evidence in the record to support the Review Commission's decision. *Kilgore v. Board of Review*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4<sup>th</sup> Dist. 1965); *Roberts v. Hays*, 9<sup>th</sup> Dist. No. 21550, 2003-Ohio-5903, paragraph 12.

The determination of factual questions is a matter primarily for the hearing officer and the Review Commission. *Brown-Brockmyer Co. v. Roach*, 148 Ohio St. 511, 76 N.E.2d 79 (1947). If some credible evidence supports the Review Commission's decision, the reviewing court must affirm. *C.E. Morris v. Foley Construction Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

In this case, Salvatore was found to be discharged without "just cause". The Seventh District Court of Appeals considered the "just cause" issue in *Kosky v. American*

*Gen. Corp.*, 7<sup>th</sup> Dist. No. 03-BE-31, 2004-Ohio-1541. The Court stated, at paragraph 14 as follows:

It is fundamental that the trier of fact is primarily responsible for weighing the evidence and determining the credibility of the witnesses...In unemployment compensation cases, the determination of whether just cause exists is a purely factual question which lies primarily within the province of the Review Commission.

Source Providers argues that it had just cause to terminate Salvatore for violations of the CBA and therefore, the Review Commission's decision allowing Salvatore's unemployment claim is contrary to law.

The certified record before the Review Commission does not contain a copy of the CBA. Since this Court's duty is to hear this appeal on the certified record, this Court cannot consider arguments advanced by Source Providers that Salvatore violated the CBA. Likewise, the certified record does not contain a fraud determination by the Director other than stating that any fraud issue is between Salvatore and the State. Therefore, Source Providers argument that Salvatore was terminated with just cause based on fraud is moot.

The certified record before the Review Commission does however, contain some credible evidence that Salvatore was discharged without just cause. The issue of fraud has already been dealt with by the Director when penalty weeks were imposed on Salvatore. Further, Source Providers' argument that Salvatore stole company property is misplaced. The Ohio Supreme Court has determined that unemployment contributions made by employers are excise taxes. *The State ex rel Youngstown Sheet & Tube Co. v. Leach*, 173 Ohio St. 397, 183 N.E.2d 369 (1962). Employer contributions are pooled and available to pay benefits regardless of the source of contributions. *See R.C. 4141.24*. Thus, the

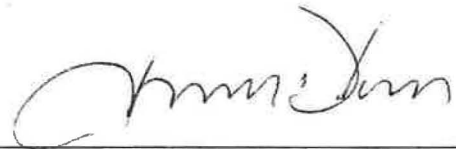
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funds that Source Providers is claiming Salvatore stole, do not specifically belong to Source Providers.

The hearing officer determined, after considering the testimony, that Salvatore was discharged without just cause. The hearing officer was responsible for weighing and considering the evidence to determine if just cause existed for Salvatore's termination. Thus, this Court is prohibited from substituting its judgment for that of the Review Commission. Accordingly, this Court finds that the Review Commission's factual determinations are supported by competent, credible evidence. The Court further finds that the Review Commission's Decision is not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the Decision of the Ohio Unemployment Compensation Board of Review is hereby affirmed.

DATE: \_\_\_\_\_

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JUDGE JOHN M. DURKIN

THE COURT SHALL SEND NOTICE  
TO THE CLERK OF COURT  
WITHIN 10 DAYS OF THE DATE OF THIS ORDER

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