

IN THE LICKING COUNTY COMMON PLEAS COURT

LICKING COUNTY
COMMON PLEAS COURT

2014 FEB 26 P 4:00

Theresa DeMers,

Plaintiff,

vs.

Kelly Barnes, et al.,

Defendants.

FILED
GARY R. WALTERS
CLERK

Case No. 13 CV 867

Judge W. David Branstool

**DECISION AND ENTRY AFFIRMING
DECISION OF THE UNEMPLOYMENT REVIEW COMMISSION**

This case is an administrative appeal from the decision of the Unemployment Review Commission which determined that the Appellant, Theresa DeMers, made fraudulent misrepresentations by failing to disclose reported earnings while receiving unemployment compensation benefits. For the reasons set forth below, the Commission's decision is affirmed.

I. Standard of Review

R.C. 4141.282(H) sets forth the standard of review in this appeal. That provision states as follows:

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 remand the matter to the Commission. Otherwise, the Court shall affirm the decision of the Commission.

The Ohio Supreme Court has held that "the Board's role as fact finder is intact; a reviewing Court may reverse the Board's determination only if it is "unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas and Mannos v. Ohio Bureau of Employment Services*, 1995, 73 Ohio St. 3d 694. Thus, it is clear that the while the Review Commission's decision should not be rubber stamped, a

reviewing Court should not rewrite the Commission's decision merely because it would or could have interpreted the evidence differently. Moreover, the determination of factual questions is primarily a matter for the hearing officer and the Review Commission. The fact that reasonable minds might reach different conclusions is not a basis for reversal of the Review Commission's decision. If some credible evidence supports the Commission's decision, the reviewing Court must affirm.

II. Background

Appellant was employed by two separate parishes with the Diocese of Columbus. She was employed on a part time basis with the Parish of Sacred Heart of Coshocton, Ohio. Additionally, she held a full time position with St. Francis Parish. After her discharge from the full time position with the St. Francis Parish in 2010, Appellant applied for unemployment compensation benefits. When she submitted her weekly claims, Appellant answered "no" to the following question:

Did you work (full time or part time), or were you self-employed during the week claimed? (If you worked, you should answer yes even if you will be paid in another week.)

Appellant was awarded benefits, and filed weekly claims for benefits for weeks ending July 10, 2010, through April 7, 2012. Subsequently, it was discovered that Appellant was employed by the Diocese of Columbus earning \$1111.00 per week as compensation for the position she held with Sacred Heart of Coshocton, Ohio. It was determined below that the Appellant withheld this information with the intent to obtain unemployment benefits to which she was not entitled. Fraud was determined to be the cause of the overpayment.

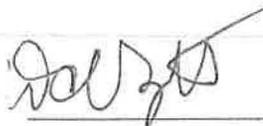
III. Arguments on Appeal

Appellant argues that she did not fraudulently misrepresent her employment during this period with the object of obtaining additional benefits to which she was not entitled. Rather, she argues that she misunderstood the nature of the information that the question sought. However, according to the fraud investigator, Appellant claimed that she did not think it was fair that her benefits would be reduced by the fact that she had additional part time employment. Further, the evidence presented below clearly established that Appellant never consulted with the Ohio Department of Job and Family Services in order to clarify the scope of the question she claimed she did not understand.

Based on the record, the Court finds that the Commission's decision is supported by sufficient, reliable, probative, and substantial evidence. Accordingly, Appellant's appeal is hereby denied and the Commission's decision is affirmed.

IT IS SO ORDERED.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



W. David Branstool, Judge

Copies to:

Theresa DeMers, Appellant
299 Merchant Street, Newark, OH 43055

Alan Schwepe, Esq., Senior Assistant Attorney General
Health and Human Services, 26th Floor, 30 East Broad Street, Columbus, OH 43215

Kelly Barnes, Appellee
Benefit Payment Control, 4020 East Fifth Avenue, Columbus, OH 43219-1811