

FILED IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

2014 FEB 28 P 1:40

MARION L. PONGRASS,)
Plaintiff)
vs.)
WAL MART ASSOCIATES, INC., et al.,)
Defendants)

CASE NO. 13CV001730
JUDGE VINCENT A. CULOTTA
JUDGMENT ENTRY

This matter comes before the Court for consideration of the timely Notice of Appeal filed by Marion L. Pongrass following a July 10, 2013, decision of the Ohio Department of Unemployment Compensation Review Commission (hereinafter, Review Commission) affirming the hearing officer's May 14, 2013, decision which reversed the Director's redetermination issued on April 12, 2013, and thereby denied Appellant unemployment benefits which had previously been awarded to her.

STATEMENT OF THE CASE

Initially, Appellant's application for unemployment benefits was allowed and the Employer, Walmart, appealed. The Director's Redetermination dated April 12, 2013, also allowed benefits to the Appellant. Thereafter, Walmart appealed and the Unemployment hearing officer issued a Decision on May 14, 2013, reversing the Director's redetermination. The hearing officer found that the Appellant started work for Walmart on August 2, 2012, and on August 20, 2012, she walked off of the job thereby abandoning her employment with Walmart. Therefore, the hearing officer reasoned that the Appellant is not eligible for unemployment benefits because she quit work without just cause. Appellant appealed this decision and the Unemployment Compensation Review Commission issued a ruling on July 10, 2013, concluding that the decision of the hearing officer should be affirmed. Appellant then filed the instant appeal.

APPELLANT'S BRIEF

Appellant asserts that the hearing officer's failure to give reasoning for the decision that Appellant voluntarily quit her job was unlawful, unreasonable and against the manifest weight of the evidence. In support of her position, Appellant refers to the portion of the May 14, 2013, decision wherein the hearing officer stated that he was not persuaded by the claimant's contention that she was discharged from her employment and instead found that she quit work without just cause. It is Appellant's position that this is a conclusion without factual support and therefore the decision is unlawful, unreasonable, and against the manifest weight of the evidence.

APPELLEE, DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, BRIEF

Appellee, Director, Ohio Department of Job and Family Services (hereinafter, Director) filed a brief in response to Appellant's brief. Appellee Director contends that the decision of the Review Commission that Appellant quit her employment at Walmart without just cause under R.C. §4141.29(D)(2)(a) is not unlawful, unreasonable, or against the manifest weight of the evidence and should be affirmed under R.C. §4141.282(H). Appellee notes that the determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and not the Court and relies upon a plethora of law in this regard. Appellee further argues that the decision of the Review Commission that Appellant voluntarily quit her employment at Walmart without just cause under R.C. §4141.29(D)(2)(a) is not unlawful, unreasonable, or against the manifest weight of the evidence and should be affirmed under R.C. §4141.282(H). Appellee maintains that the evidence in the record supports a finding that Appellant quit her employment, and even if there is conflicting testimony from the parties in the record of the telephone hearing, the Court must defer any factual determinations to the administrative agency and Appellant is not entitled to a trial de novo.

APPELLANT'S REPLY

In reply, Appellant asserts that while she agrees that she is not entitled to a trial de novo, the statutory language of R.C. §4141.281(C)(2) requires that the hearing officer set forth facts as the hearing officer finds them and give reasoning for the decision. Appellant maintains that

since the hearing officer did not do so in this case, the matter should be remanded back to the Review Commission.

COURT'S ANALYSIS AND CONCLUSION

Pursuant to R.C. §4141.282(H):

The Court shall hear the appeal upon receipt of the certified record provided by the commission. If the Court finds that the decision 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.

The Court cannot substitute its own judgment for that of the Board of Review. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947). Ordinarily, the court should defer to the agency's resolution of purely factual issues which depend on the credibility of witnesses or the relative weight of conflicting evidence. *Angekovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159 at 161 (1983); *Brown-Brockmeyer*, 148 Ohio St. at 518. For such issues, the common pleas court should affirm the agency's findings if they have support from some competent, credible evidence. *Id.*; *Bernard v. Administrator*, 9 Ohio App.3d 277, 279 (1983).

In this case, the Court disagrees with Appellant's position that the hearing officer did not set forth any findings of fact. Rather, a review of the record reveals that in the "Findings of Fact" section of the Decision the hearing officer clearly found:

The claimant started to work for the employer on August 2, 2012. On August 20, 2012, the claimant walked off the job. She abandoned her employment with Wal-Mart Associates, Inc.

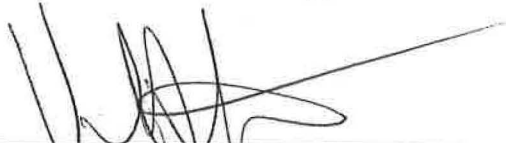
The hearing officer then reasoned that he was not persuaded by the claimant's contention that she had been discharged by Wal-Mart Associates, Inc. Rather, the hearing officer found that the claimant quit work with Wal-Mart Associates, Inc. and that it was without just cause.

Reading the findings of fact in conjunction with the transcript of the telephone hearing, the Court finds that the hearing officer resolved the facts based upon the credibility of the witnesses as he experienced them, and the Court may not substitute its own judgment now. Furthermore, the Court finds that it is unnecessary to order that the matter be remanded back to the Review Commission.

The Court finds that the decision of the Review Commission that Appellant voluntarily quit her employment at Walmart without just cause under R.C. §4141.29(D)(2)(a) is supported by the manifest weight of the evidence and is not contrary to law or unreasonable.

WHEREFORE, the decision of the Ohio Department of Unemployment Compensation Review Commission dated July 10, 2013, is hereby affirmed. Costs to the Appellant.

IT IS SO ORDERED.



VINCENT A. CULOTTA, JUDGE

Copies:

Jerald A. Schneiberg, Esq.
V. Patrick MacQueeney, Esq.

FINAL APPEALABLE ORDER
Clerk to serve pursuant
to Civ.R. 58 (B)