

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

SUSAN K DETERT,

CASE NO.: 2013 CV 01623

Plaintiff(s),

JUDGE FRANCES E. MCGEE

-vs-

DIRECTOR OHIO DEPARTMENT OF JOB
FAMILY SERVICE et al,

Defendant(s).

**DECISION, ORDER, AND ENTRY
OVERRULING
PLAINTIFF/APPELLANT SUSAN
K. DETERT'S ADMINISTRATIVE
APPEAL OF THE OHIO
UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION'S DECISION**

Appellant/ Plaintiff, Susan K. Detert appealed the February 13, 2013, Decision of the Director of the Ohio Unemployment Compensation Review Commission to this Court of Common Pleas. In this appeal, she moved the Court to overrule the Board's decision denying her claim of entitlement to unemployment compensation.

In the February decision, the Director affirmed a hearing officer's January 9, 2013, dismissal of an administrative appeal involving Detert. The hearing officer's January, 2013, decision found that based upon a calculation of the hours of work performed by the Plaintiff during the period immediately before she received an arbitration agreement concerning her employment status, she was not entitled to receive unemployment compensation.

The appeal was filed on March 13, 2013. The transcript of the proceedings was filed April 9, 2013. *Plaintiff's Administrative Appeal Brief* was filed May 23, 2013. The Brief of *Appellee, Director, Ohio Department of Job and Family Services* was filed on June 20, 2013. *Plaintiff's Rely Brief* was filed July 29, 2013.

The matter is properly before the Court.

I. FACTS

The Plaintiff was employed by the United States Postal Service for more than twenty years when she received a letter entitled "Notice of Removal" dated September 8, 2010. The letter advised the Plaintiff that after an internal investigation, she was to be discharged from the agency for cause. The letter further stated that the discharge was effective October 15, 2010. The letter concluded by giving the Plaintiff the opportunity to respond and file a grievance. The Plaintiff's response to this letter was received by a postal agency on September 29, 2010.

The matter was set for arbitration which concluded almost twenty-four (24) months later with an agreement stating that for the Postal Services' records, the reason for Detert's termination would not be listed as "for cause" but rather as "by mutual agreement by the parties." Thereafter, and on July 23, 2012, the Plaintiff filed an application with the Director of the Ohio Department of Job and Family Services for a determination of unemployment benefits. Her request for benefits for disallowed on August 2, 2012. Detert was advised that pursuant to the Ohio Revised Code, she did not have the minimum of twenty qualifying weeks of employment or in the alternative earn an average weekly wage of Two Hundred Twenty-Two Dollars (\$222.00) during the fifty-two weeks prior to her application.

The Plaintiff filed a timely appeal of this decision on August 23, 2012, thereby asking for a re-determination. The Director's initial decision was affirmed on October 26, 2012. In the letter affirming the initial decision, the Plaintiff was advised of her right to

appeal this ruling. She was given until November 16, 2012, to perfect this appeal. The Plaintiff then appealed the redetermination in a timely manner. Thereafter and on November 20, 2012, the Director transferred jurisdiction to the Review Commission.

A hearing before the Review Commission was conducted on January 8, 2013. Present at the hearing was the Hearing Officer Donald McElwee, the Plaintiff acting on her own behalf and Postal Representative Jeffrey Acker. Thereafter and on January 9, 2013, the hearing officer mailed the Plaintiff a letter overruling her appeal and affirming the Director's redetermination decision. The hearing officer found that the Plaintiff's application for unemployment benefits was properly denied because she could not show that she had amassed the appropriate qualifying weeks or wages for consideration.

On January 29, 2013, Ms. Detert filed an application for further appeal with the Review Commission. Based upon review of the record and without another hearing, the Plaintiff's appeal was again overruled. A letter affirming the determination of the hearing officer's decision was mailed to Detert on February 13, 2013. The Plaintiff made a timely appeal of this decision to the Montgomery County Court of Common Pleas on March 13, 2013.

II. STANDARD OF REVIEW

O.R.C. Chapter 119 governs the process and procedure for deciding administrative appeals. O.R.C. Sec. 119.12 outlines the standard of review for administrative appeals and states the following:

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.

This Court sits not as a trial court but as an appellate court and must perform a two-step review to determine if the administrative agency's Order (i) supported by reliable, probative and substantial evidence, and (ii) is in accordance with Ohio law. *See, Mathews*

v. Ohio State Liquor Control Comm'n, 10th District No. 04AP-46, 2004 Ohio 3726; *VFW Post 8586 v. Ohio Liquor Control Comm.*, 83 Ohio St. 3d 79, 697 N.E. 2d 655 (1998); *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 589 N.E. 2d 1303 (1992); *Harris v. Lewis*, 69 Ohio St. 2nd 577, 578, 433 N.E. 2d 223 (1982); *Arlen v. State*, 61 Ohio St. 2d 168, 175, 399 N.E. 2d 1251 (1980); *Henry's Café, Inc. v. Board of Liquor Control*, 170 Ohio St. 233, 235-236, 163 N.E. 2d 678 (1959).

A reviewing court may not substitute its judgment for that of an administrative agency. *Bingham v. Ohio Veterinary Med. Licensing Bd.*, 9th Dist. C.A. No. 18510, 198 Ohio App. LEXIS 532, 6-7 (February 11, 1998); *Kisil v. Sandusky*, 12 Ohio St. 3d 30, 34, 465 N.E.2d 848 (1984). As long as the administrative agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law, it is immaterial that the reviewing, court, if it were the original trier of fact, may have reached a different conclusion. *See Farrao v. Bureau of Motor Vehicles*, 46 Ohio App. 2d 120, 122-3 (syllabus), 346 N.E. 2d 337 (5th Distr. 1975). Regarding the penalty imposed through an administrative order, the Supreme Court has held that "the court of common pleas has no authority to modify a penalty that an agency was authorized to and did impose, on the grounds that the agency abused its discretion." *Henry's Café, Inc. v. Board of Liquor Control*, 170 Ohio St. 233, 236, 163 N.E. 2d 678 (1959).

More specifically, the standard of review for an appeal of a decision of a review commission is found in O.R.C. Sec. 4141.282 (H). That section holds:

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.

Under this standard of review, the court of common pleas is neither giving the parties a trial *de novo* nor making a rubber stamp decision of the board of review. *Kilgore*

v. Board of Rev., 2 Ohio App. 2d 69, 206 N.E. 2d 423 (4th Dist. 1965). If the reviewing court finds that the administrative agency's order is supported by the law and evidence, then the court cannot substitute its judgment for that of the commission. *Roberts v. Hays*, 2003 Ohio 5903. See *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St. 3d 694, 653 N.E. 2d 1207 (1995).

III. REVIEW OF THE RECORD

As part of its review of this administrative appeal, the Court has read all of the documents filed by the parties including the decisions of the administrative agency, its rules, appropriate transcripts and arguments of the parties at the various stages of administrative review. Pursuant to O.R.C. Sec. 119.12, the Court finds as a matter of law that the Order of the Director of the Department of Job and Family Services in this matter is supported by reliable, probative and substantive evidence.

IV. LAW AND ANALYSIS

The gist of the Plaintiff's complaint and her numerous administrative appeals is that the administrative agency unfairly applied O.R.C. Sections 4141.01 (O),(Q), and (R) when she applied for unemployment compensation after successfully obtaining a decision in an arbitration dispute. It has been Ms. Detert's steadfast argument that the base period, that is the twenty (20) qualifying weeks within a fifty-two (52) week time-frame, listed in the calculation for unemployment benefits should begin as of the date she received her termination letter from the U.S. Postal Service and run during that fifty-two week period (or from September 8, 2010) rather than the fifty-two weeks preceding her application date or (July 23, 2012).

The Plaintiff argues that the lengthy period of time taken to resolve her grievance via the arbitration process is the sole reason her claim for unemployment compensation was denied. The Court disagrees.

As noted previously, a court of common pleas is required to affirm the decision of the administrative commission unless said court can make a finding that the administrative commission has abused its powers. *See O.R.C. Sec. 4141.282 (H), Supra.* The Court is specifically precluded from substituting its judgment from that of the commission. *See Roberts v. Hayes, Supra* and *Tzangas, Plaka & Mannos v. Ohio Bur. Of Emp. Serv., Supra.*

Upon a careful review of the evidence in this case, this Court cannot find that either the Director or the numerous review boards lost their way when deciding this case. The Court finds that the law applicable to this case is clear with regard to the timeframes used to calculate the time period and/or money earned by a claimant. The Court cannot find that director abused his discretion in the law cited or its application.

The Court makes a further finding based upon a review of the record that the Plaintiff provided no evidence to substantiate a claim that she made “a reasonable effort to obtain alternate employment during the potential back pay period.” Of particular interest to the Court was the “Notice of Termination” letter sent to the Plaintiff and dated September 8, 2010. (This letter is listed in the Transcript filed April 9, 2013, as (D), (E), (F) and an undesignated signature page; and as Exhibit A in the Appellee’s Brief.) Of particular interest to this Court is the letter’s signature page. The second paragraph on the page states the following:

If this action is reversed or modified on appeal, back pay may be allowed unless the appropriate award of decision specifies otherwise, only if you have made reasonable efforts to obtain alternate employment during the potential back pay period. The documentation which you must maintain and present to support a back pay claim is described in Part 436 of the Employee and Labor Relations Manual.

The Court finds a dearth of evidence in support of Ms. Detert. The record does contain excuses from the Plaintiff stating that she could not find alternate employment; however, these bald assertions do not meet the requirement of showing reasonable efforts

to find an alternate job. If the record had been supplemented with copies of applications that the Plaintiff had filed or a log of specific things that Ms. Detert had done in her unsuccessful attempt to find work, it may have been possible for the Director and/or the Court to find that Ms. Detert was treated unfairly. Applying the law to the statutes, the Court is not persuaded by the Plaintiff's argument.

As a matter of law, the Court finds that the Plaintiff failed to meet her burden of persuasion in her appeal of the decision of the Director of Job and Family Services. Ms. Detert's failure to supplement the record with her reasonable attempts to find alternate employment doomed her efforts to obtain a favorable ruling in her case.

V. CONCLUSION

WHEREFORE, in the Administrative Appeal filed by Susan Detert against the Director of the Ohio Department of Job and Family Services, upon consideration of the entire record and briefs submitted by the parties, the Court finds that the Director's Order to dismiss the Plaintiff's appeal is supported by reliable, probative and substantial evidence. Further the Court finds that this Order was made in accordance with law. Thus as a matter of law, this Court finds that the Plaintiff's appeal is NOT WELL-TAKEN and must render a Verdict in favor of the Defendant. Plaintiff's appeal is DISMISSED WITH PREJUDICE.

SO ORDERED:

JUDGE FRANCES E. MCGEE

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So Ordered

Frances S. McGehee