

**IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO**

FILED
COURT OF COMMON PLEAS
MAR 14 2014
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

GLENN M. WRIGHT,)	
)	CASE NO. 2012-CV-2605
Appellant,)	
)	
vs.)	JUDGE ANDREW D. LOGAN
)	
COMMERCIAL TRADES, INC., et al.,)	
)	
Appellees.)	
)	<u>JUDGMENT ENTRY</u>

I. INTRODUCTION

This case came to be heard on the administrative appeal filed by Plaintiff/Appellant Glenn M. Wright ("Claimant") from the Ohio Unemployment Compensation Review Commission ("Review Commission") pursuant to R.C. 4141.282. The Review Commission disallowed Glenn M. Wright's ("Claimant") application for determination of benefits rights because he failed to meet the monetary requirements necessary to establish a valid application for determination of benefit rights. This Court has jurisdiction pursuant to R.C. 4141.282. The Court has reviewed the pleadings, briefs, record, exhibits, and the applicable law. For the reasons set forth hereinafter, the Court finds that the decision of the Review Commission is not unlawful, unreasonable, or against the manifest weight of the evidence, and therefore, should be affirmed, and Claimant's appeal is hereby denied.

II. STATEMENT OF THE CASE AND FACTS

The material facts in this case are not in dispute; however, the interpretation of those facts is at issue. Claimant filed an application for determination of benefit rights on June 18, 2012. *See Exhibit A.* Based upon the filing date of his application, he established

a base period beginning January 1, 2011 and ending December 31, 2011, or the entire calendar year of 2011. *R.C. 4141.01 (Q) (1); Exhibit A.* Claimant was unemployed during the calendar year 2011. *See Transcript of September 19, 2012 hearing* (hereinafter, "*Tr.*"), at 5.

Based upon the filing date of his application, Claimant established an alternate base period beginning April 1, 2011 and ending March 31, 2012. *R.C. 4141.01 (Q)(2).* This encompasses the second, third and fourth quarters of 2011 and the first quarter of 2012. Claimant was unemployed during this time period. *Tr.*, at 5.

On June 28, 2012, the Director issued an initial determination which disallowed Claimant's application for unemployment compensation benefits because Claimant did not have at least twenty (20) qualifying weeks of employment or did not earn an average weekly wage of at least \$222.00 before taxes during the base period of April 1, 2011 and ending March 31, 2012, as required by *R.C. 4141.01(R) (1).*

Claimant filed an appeal of the determination, and on August 6, 2012, the Director issued a redetermination which affirmed the determination.

Claimant filed a timely appeal from the redetermination. On August 28, 2012, the Director transferred jurisdiction to the Review Commission. On September 19, 2012, a hearing was held before Hearing Officer Jeffery Schaffner. After considering the evidence in the record, Hearing Officer Schaffner affirmed the Director's redetermination finding that Claimant had not met the monetary requirements necessary to establish a valid application.

Claimant filed a timely appeal, but the Review Commission disallowed Claimant's request for further review, mailing its decision on October 17, 2012. From this decision, Claimant has appealed to this Court.

III. LAW AND ARGUMENT

THE REVIEW COMMISSION'S DECISION THAT CLAIMANT DID NOT FILE A VALID APPLICATION FOR DETERMINATION OF BENEFIT RIGHTS IS NOT UNLAWFUL, UNREASONABLE, OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

A. The Standard of Review

This Court is required to observe the standard of review set forth in R.C. 4141.282 (H), when considering appeals of decisions rendered by the Review Commission. That section states:

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

This strict standard of review was reiterated in the leading case on Ohio unemployment compensation law, *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694. In *Tzangas*, the Ohio Supreme Court specified that: "[t]he 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." *Id.* At 697. The standard of review in *Tzangas* has been affirmed by the Ohio Supreme Court. *Williams v. Ohio Department of Job & Family Services*, 2011-Ohio-2897 (Ohio Sup. Ct.), at ¶ 19.

Although the Review Commission's decision should not be "rubber-stamped," a reviewing court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. The parties are not entitled to a trial *de novo*. *Id.* "Rather, the courts' role is to

determine whether the decision of the review commission is supported by evidence in the certified record." *Roberts v. Hayes*, 2003-Ohio-5903, at ¶ 12. "If the court finds that such support is found, then the court cannot substitute its judgment for that of the Review Commission. *Id.*

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

Accordingly, the Court must defer to the Review Commission's determination of purely factual issues that concern the credibility of witnesses and the weight of any conflicting evidence. *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159, 162.

B. Competent, credible evidence in the record supports the Review Commission's decision that Claimant did not meet the monetary requirements necessary to establish a valid application for determination of benefit rights.

The Review Commission found that Claimant had not met the monetary requirements necessary to establish a valid application for determination of benefit rights under R.C. 4141.01, which provides that an individual does not qualify for a valid application for determination of benefit rights if the individual did not work in 20 qualifying weeks of covered employment in the individual's base period and if the individual does not average at least \$222.00 for all qualifying weeks.

R.C. 4141.01(Q)(1) defines an individual's "base period" as the first four of the last five completed calendar quarters and immediately preceding the first day of the individual's benefit year, except as provided in division (Q)(2).

R.C. 4141.01(Q)(2) provides that if an individual does not have sufficient qualifying weeks and wages in the base period to qualify for benefit rights, the individual's base period shall be the four most recently completed calendar quarters preceding the first day of the individual's benefit year. Such base period shall be known as the "alternate base period."

R.C. 4141.01 (R) defines an individual's "benefit year" as the fifty-two week period beginning with the first day of the week in which the individual files his application for unemployment benefits.

Thus, an individual must have a minimum of 20 qualifying weeks of covered employment in either his regular or alternate base period, and meet the wages requirement. In the matter herein, Claimant filed his application for the determination of benefit rights on June 18, 2012, and therefore, his benefit year began June 17, 2012. R.C. 4141.01(R). The Review Commission found that Claimant's base period began January 1, 2011 and ended December 31, 2011. R.C. 4141.01(Q)(1). This encompassed the entire calendar year of 2011. The Review Commission further found that Claimant's alternate base period began April 1, 2011 and ended March 31, 2012. R.C. 4141.01(Q)(2). This encompassed the second, third and fourth quarters of 2011 and the first quarter of 2012.

Claimant testified at the September 19, 2012 hearing that he was not employed in all of calendar year 2011 and the first quarter of 2012. *Tr.*, at 5. However, he testified that he received payments comprised of workers' compensation benefits during that entire time period as a result of a work injury on April 23, 2010. *Tr.*, at 5-6. Claimant testified that while his inability to work ended in January, 2012, he received workers' compensation

payments until June, 2012. *Tr.*, at 6. He further testified that when his inability to work ended he tried to contact his employer and found that the company had closed. *Tr.*, at 7.

Claimant argues in his brief that while Claimant was not "technically employed during 2011 or 2012," he received workers' compensation benefits during that time. *Claimant's Brief*, at 2 of 3 pages. Claimant writes that R.C. 4141.01 (O)(1) "defines a 'Qualifying Week' as any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration." *Claimant's Brief*, at 2 of 3 pages. That much is true. However, he also states that R.C. 4141.01 (H)(1) "defines remuneration as 'all compensation for personal services', which would clearly include workers' compensation benefits." *Claimant's Brief*, at 2 of 3 pages.

The Review Commission found, and this Court agrees, that Claimant's argument is deficient under the law. R.C. 4141.01 (H)(1) also states that **remuneration does not**

include:

(a) Payments as provided in divisions (b) (2) to (b) (16) of section 3306 of the Federal Unemployment Tax Act, 85 Stat. 713, 26 U.S.C.A. 3301 to 3311, as amended...

(Emphasis added.)

The Federal Unemployment Tax Act ("FUTA") provides the following:

26 U.S.C. § 3306

(b) **Wages**

For purposes of this chapter, **the term "wages" means all remuneration for employment**, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include -

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of -

(A) sickness or accident disability **(but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law)**, or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

(Emphasis added.)

R.C. 4141.01 (H)(1)(a) states that certain payments under FUTA do not constitute remuneration. FUTA, 26 USCA 3306 (b)(2)(A), states that workers' compensation payments are excluded from the term "wages." Therefore, Review Commission determined, and this Court agrees, that both Ohio and Federal statutes clearly exclude workers' compensation payments from being considered as remuneration or wages. *See also Shepherd v. Wearever-Proctor Silex, Inc., et al.*, Ohio App.3d 414 (Ohio App. 4th District No. 462), 1991, at 418-419. In *Shepherd*, the question was whether an employer's disability payments to a Claimant were excluded from "remuneration" for purposes of the determination of unemployment compensation benefits. The Fourth District Court of Appeals held that they were not excluded because the prohibition under Ohio and Federal statutes covered only workers' compensation payments, not those of a private employer's disability plan. *Id.*, at 419. Implicit in that Court's decision is the recognition that workers' compensation payments do not qualify as wages or remuneration for unemployment compensation entitlement purposes.

Claimant testified that he was unemployed in all of 2011 and the first quarter of 2012. He further testified that during that time period, he received weekly payments from the Ohio workers' compensation program related to a work injury which occurred in 2010. Therefore, pursuant to Ohio and Federal statutes as discussed *supra*, Claimant's weekly workers' compensation payments are to be excluded from the calculation of monetary requirements for the determination of whether Claimant had filed a valid application for unemployment compensation benefits. As a result, Claimant had no income during his base period or alternate base period which could be utilized to determine whether Claimant had met the statutory requirements for the filing of a valid application for unemployment compensation benefits.

Accordingly, the Review Commission properly concluded that Claimant had not met the statutory requirements for establishing a valid application for determination of benefit rights. As Claimant had not met the statutory requirements for establishing monetary rights to a valid application, his application for determination of benefit rights was properly disallowed.

The Review Commission, the fact finder in this matter, issued its decision based upon testimony provided at the September 19, 2012 hearing, and upon all the Exhibits that have been made a part of the official record, the Hearing Officer having given each the weight he believed it warranted. Based upon all the information about this case at its disposal, the Commission arrived at its findings of fact, its decision, and reasoning which supported that decision. There is support in the record for the determination that Claimant did not meet the requirement for benefits that he make an average at least \$222.00 for all qualifying weeks. This Court is without jurisdiction to weigh the evidence or assess

credibility. *Brown-Brockmeyer, supra*. If credible evidence supports the Review Commission's conclusion, the law prohibits a reviewing court from substituting its judgment for that of the Review Commission. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41; *Kilgore, supra*.

Merely because there is a possibility that the Review Commission could have reached the opposite conclusion does not mean that this Court should reverse the Commission's decision. *Craig v. Bureau of Unemployment compensation* (1948), 83 Ohio App. 248. Quite the contrary. In the present case, there was sufficient evidence, certainly more than "some credible evidence" supportive of the Commission's decision, and therefore, this Court must defer to the fact finder's decision. *C.E. Morris, supra*. Further, "all reasonable presumptions must be made in favor of the UCRC's ruling and findings of fact." *McCarthy v. Connectronics Corp., et al*, 2009-Ohio-3392 (6th District), at ¶11, *citing Karches v. Cincinnati*, (1988), 38 Ohio St. 3d 12, 19.

C. The Review Commission's interpretation and determination that workers' compensation payments are not "remuneration" or "wages" for unemployment compensation entitlement purposes is not unlawful or unreasonable.

For the reasons hereinabove stated, the Review Commission interpreted R.C. 4141.01 (H)(1) as excluding from the definition of "remuneration" and "wages" any payments made under the state's workers' compensation law. This Court finds the Review Commission's interpretation is reasonable and that its determination and decision based upon that interpretation, is not unlawful or unreasonable.

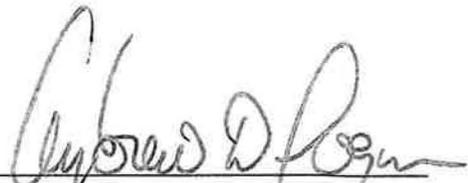
IV. CONCLUSION

The Hearing Officer specifically found that the Claimant did not file a valid application for benefits, and was therefore, ineligible for unemployment compensation benefits. Evidence presented during the administrative process and application of the relevant statutory provisions support the Hearing Officer's decision.

Even if this Court would interpret the evidence differently than the Hearing Officer, a reviewing court may not rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore, supra*. This Court may not reverse the Commission's decision merely because different minds might different conclusions. *Roberts, supra*. The Review Commission's interpretation is not unreasonable, and its decision, which is based on that interpretation, is not unlawful or unreasonable.

Accordingly, this Court finds that the decision of the Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the decision of the Review Commission must be affirmed, and the instant appeal is denied.

March 14, 2014
DATE



JUDGE ANDREW D. LOGAN

3.18.14
Copies to:
Commercial
S. Sheffield
J. Chaney
Pros.

**TO THE CLERK OF COURTS:
YOU ARE ORDERED TO SEND COPIES OF THIS JUDGMENT TO ALL
COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE
UNREPRESENTED WITHIN THREE (3) DAYS PURSUANT TO CIV. R. 5**