

MIAMI COUNTY  
COMMON PLEAS COURT

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IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO

ANTHONY J. MORAN	*	CASE NO. 12 CV 478
PLAINTIFF-APPELLANT	*	JUDGE GEE
VS.	*	
UPPER VALLEY CAREER CENTER ET AL.	*	DECISION AND JUDGMENT ENTRY AFFIRMING THE ORDER OF THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
DEFENDANTS-APPELLEES	*	

Anthony Moran, ("Moran") has filed a timely notice of appeal of the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission"). In considering the appeal, the court reviewed the brief of appellant as well as the brief of the Ohio Department of Jobs and Family Services (ODJFS).

The Ohio Unemployment Compensation Act defines the scope of matters which can be considered by the common pleas court on appeal, and further specifies the standard of review to be applied by the court reviewing the record. R.C.

4141.282(H) 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission."

The standards set forth in the Revised Code do not contemplate proceedings de novo. The court is prohibited by law from considering any evidence other than that adduced before the administrative agency.<sup>1</sup>

The hearing officer and the Review Commission serve as trier of fact. When a party appeals from the Review Commission's final action, the scope of review of the Common Pleas Court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence.<sup>2</sup> The determination of factual questions is primarily a matter for the agency.<sup>3</sup> This Court should defer to the agency's determination of purely factual issues which concern the credibility of witnesses and the weight of conflicting evidence.<sup>4</sup>

In *Irvine v. Unemployment Compensation Board of Review*,<sup>5</sup> the Ohio Supreme Court reminded Common Pleas Courts that, where the agency might reasonably act either way, the courts have no authority to upset the agency's decision. A reviewing court may not reverse an otherwise lawful administrative order when reasonable minds might reach different conclusions based on the same evidence.<sup>6</sup> Under this standard, this court may review only the record as certified by the Unemployment Compensation Board of Review as filed.

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1 Hall v. American Brake Shoe Company, 13 Ohio St. 2d 11 (1968).

2 Id.

3 Brown-Brockmeyer Co. v. Roach, 148 Ohio St. 511 (1947)

4 Angelkovski v. Buckeye Potato Chips, 11 Ohio App. 3d 159 (1983)

5 19 Ohio St. 3d 15, 18, (1985)

6 Riley v. The Ohio Bureau of Employment Services 82 Ohio App. 3d 137, (1992), Hackworth v. Whirlpool 75 Ohio App. 3d 318 (1991); Sutton v. Star Bank N.A. Troy, et al, Unreported, No. 13905, Montgomery County (1/21/94), Clay v. Administrator, Ohio Bureau of Employment Services, Unreported, No. 14084, Montgomery County (2/23/94)

The Common Pleas Court is without jurisdiction to weigh the evidence or assess credibility.<sup>7</sup> If credible evidence supports the agency's conclusion, the law prohibits a reviewing court from substituting its judgment for that of the agency.<sup>8</sup> The court may not reverse merely because it may interpret the evidence differently than the Review Commission.<sup>9</sup>

There is no dispute that the appellant, Anthony J. Moran, falsely reported his earning for twenty-six weeks in order to receive unemployment compensation benefits. Moran became partially unemployed when he worked at a teaching position where the courses were ten weeks long. He did not always teach during the course offerings. Each week that he applied for benefits, Moran was required to report his earnings. Moran testified that he completed the weekly unemployment application online and certified that the income he reported was correct. The records from Moran's employer, Upper Valley Joint Vocational School District, showed that Moran earned more than he reported during the twenty six weeks in issue.

Moran also testified that the underreporting of his income was the result of a conversation that he had with an unknown employee of ODJFS at the Mansfield processing center. Moran testified he was told

"I could report inaccurate hours so that I didn't have waiting weeks every time because their classes are in 10 week intervals sometimes I taught sometimes I didn't. Ah when that would happen when I would either report too many hours or zero hours."

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7 Brown-Brockmeyer Co., *supra*

8 Simon v. Lake Geauga Printing Co., 69 Ohio St. 2d 41 (1982); Kilgore v. Board of Review, 2 Ohio App. 2d 69 (1965).

9 Fahl v. Board of Review, 2 Oh. App. 2d 286 (1965)

“...the Mansfield Processing Center told me I could do that. They told me that the allowed amount of that amount ah you know would get spread out over eight to ten to twelve months depending on the hours that I put in. Ah she made it sound like you know that money was allowed that’s my benefit I’ m allowed that money and that ah you know it was to my benefit to report as many hours as I could to spread it out as far as I could.”

Counsel for Moran points out that the hearing officer for the Review Commission found that Moran was instructed by an employee of ODJFS to falsely report his wages and Moran relied on that instruction. Notwithstanding, the hearing officer also found that the weekly false certification of his income by Moran was fraud since he knew that it would be relied upon by the ODJFS in determining his eligibility for his benefits.

Appellant argues that the factual finding that Moran relied upon erroneous instructions from an employee of ODJFS precludes a finding of fraudulent intent. The intent to commit fraud may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances.<sup>10</sup> Whether or not a party engaged in a fraudulent act is a factual determination and, therefore, if there is some credible proof upon which the board's decision was based, that finding may not be disturbed.<sup>11</sup>

As other courts have found, an employee’s good faith belief that they did not intend to violate the law does not preclude a finding of fraud.<sup>12</sup> In the context of worker’s compensation under R.C. 4141.35, a finding of fraud has been upheld where the court finds, from the surrounding facts and circumstances that there was a

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10 Salyers v. Director, Ohio Department of Jobs & Family Services, 2013-Ohio-1209, (10th Dist)

11 Johnson v. Admr., Ohio Bur. of Emp. Services, No. 73591, Cuyahoga Co. C.A. (8th Dist., 1998)

12 See Christie v. Administrator, Ohio Bureau of Employment Services, Case No. 95-L-152, Lake Co. C.Ca, (11th Dist, 1998)

“deliberate misrepresentation” which the applicant knew would result in the payment of benefits.<sup>13</sup>

This court finds that the decision of the Review Commission is supported by some credible evidence in the record, and concludes that reasonable minds might reach different conclusions based on the same evidence. For the foregoing reasons the decision of the Ohio Unemployment Compensation Review Commission is affirmed.

IT IS SO ORDERED.



JUDGE CHRISTOPHER GEE

cc: Andrew Johnston, Attorney for Appellant  
Robin Jarvis, Attorney for Appellees, Director, ODJFS

Pursuant to Civil Rule 52(B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgement and the date of entry upon the journal of its filing.



Judge

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<sup>13</sup> Johnson, supra