

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO

RICHLAND COUNTY
CLERK OF COURTS
FILED

2014 MAR 31 A 10:17

LINDA H. FRARY
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SUSAN KUBU,)
)
Plaintiff-Appellant,)
)
v.)
)
DIRECTOR, OHIO DEPARTMENT OF)
JOB AND FAMILY SERVICES,)
)
Defendant-Appellee.)

CASE NO. 12 CV 1330

Decision on Administrative
Appeal

Journalized on the court's
docket on 4-3-14


Deputy Clerk

This administrative case was brought before the court by Ms. Kubu's appeal from the decisions of the Unemployment Compensation Review Commission (the Commission) finding that Ms. Kubu had fraudulently misrepresented her income with the object of obtaining benefits to which she was not entitled and ordering Ms. Kubu to repay the full amount of unemployment benefits awarded to her from September 2009 through October 2011 in the sum of \$20,684.00.

This case concerns Ms. Kubu's claims for unemployment compensation following her layoff from Power Flo Technologies in 2009. On June 11, 2012, the Director of the Department of Job and Family Services (ODJFS) issued four decisions (Determination Numbers 224545318-2, 224545569-2, 224551275-2, and 224546082-2) disallowing Ms. Kubu's requested unemployment benefits because she had unreported earnings from North Central State College and "withheld this information with the intent of obtaining benefits to which he/she was not entitled." After Ms. Kubu's appeal and a transfer of jurisdiction from ODJFS to the Unemployment Compensation Review Commission, a consolidated hearing was held on all four appeals on August 20, 2012. The hearing

officer issued a decision on each of the four appeals finding that Ms. Kubu “made fraudulent misrepresentations with the object of obtaining benefits to which the claimant was not entitled” and ordering Ms. Kubu to repay those benefits to ODJFS.

The court has reviewed the factual record, the arguments of the parties, and the relevant Ohio law in considering this appeal.

Background:

Ms. Kubu first began applying for unemployment benefits in January 2009 following her layoff from her full-time employment at Power Flo Technologies. It is undisputed that following her layoff from her full-time employment, Ms. Kubu worked as an adjunct professor at North Central State College on a contract basis. It is also not disputed that, beginning in September of 2009, Ms. Kubu reported income to the ODJFS that was incorrect and in fact was less than her actual earnings from NCSC. According to Ms. Kubu, her underreporting was the result of an attempt to average her teaching income weekly rather than to report the actual weekly figures which stopped and started due to the quarter system at NCSC. It was Ms. Kubu’s testimony at the Commission hearing that she was told by an ODJFS representative to report an average weekly wage to prevent the closing and opening of new claims each time her quarter of teaching ended at NSCS.

Analysis:

Ohio Rev. Code § 4141.35(A) provides for the cancellation of benefits, among other penalties, for a claimant’s fraudulent misrepresentation “with the object of obtaining benefits to which the applicant or recipient was not entitled.” In his decisions, the hearing officer relied on a Ninth District case in which the court stated that for

purposes of Ohio Rev. Code § 4141.35(A), subjective intent is irrelevant to a determination of fraudulent misrepresentation.¹ However, other districts have emphasized that, rather than being irrelevant, intent must be part of the determination, but it “may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances.”² The statute on its face requires a showing of intent, in that the potential penalties arise when the claimant makes a fraudulent misrepresentation “with the object of obtaining benefits to which the applicant or recipient was not entitled.”³ That language “unambiguously requires more than simply a misrepresentation The claimant must have the subjective ‘object’ to take from the State that which he realizes he is not entitled to have.”⁴

In his August 22, 2012 decisions, the hearing officer made the factual conclusion that Ms. Kubu “made false statements that she at least should have known were false” (emphasis omitted) and that accordingly “the claimant made fraudulent misrepresentations with the object of obtaining benefits to which the claimant was not entitled.” However, the hearing officer made no conclusion regarding Ms. Kubu’s intent. Because the hearing officer relied on *Barilla*’s holding that subjective intent is irrelevant, it appears that the hearing officer did not make a finding regarding Ms. Kubu’s intent and did not infer intent from intrinsic or extrinsic evidence or from surrounding circumstances.

¹ *Barilla v. Ohio Dept. of Job & Family Svcs.*, 2002 Ohio App. LEXIS 5416, *18 (Lorain Cty., Oct. 9, 2002).

² *Johnson v. Ohio Bureau of Empl. Svcs.*, 1998 Ohio App. LEXIS 2177, *11 (Cuyahoga Cty., May 14, 1998); *Salyers v. Ohio Dept. of Job & Family Svcs.*, 2013 Ohio App. LEXIS 1140, *11 (Franklin Cty., Mar. 28, 2013); *Nichols v. Ohio Bureau of Empl. Svcs.*, 1989 Ohio App. LEXIS 914, *7-8 (Jefferson Cty., Mar. 14, 1989).

³ Ohio Rev. Code § 4141.35(A).

⁴ *Tatman v. Bureau of Unempl. Comp.*, 1983 Ohio App. LEXIS 11952, *7 (Clermont Cty., July 13, 1983).

This Court may not disturb the Commission's decision below unless the Court finds it to be unlawful, unreasonable, or against the manifest weight of the evidence.⁵ Ohio Rev. Code § 4141.35(A) requires intent to be either found or inferred. Therefore, this Court finds the Commission's decision unreasonable, because, without assessing Ms. Kubu's intent based on direct evidence or on inference, the Commission concludes that Ms. Kubu made a fraudulent misrepresentation with the object of obtaining benefits to which she was not entitled.

Judgment Entry

It is therefore ordered that:

1. The August 22, 2012 decisions of the Commission are hereby reversed and remanded with instructions to apply the language of Ohio Rev. Code § 4141.35(A) and assess Ms. Kubu's intent, by reliance on direct evidence or inference, in order to determine whether or not Ms. Kubu made fraudulent misrepresentations with the object of obtaining benefits to which she was not entitled;
2. Costs are taxed to appellee;
3. The clerk shall serve copies of this order on Attorneys John A. Boyd and Laurence R. Snyder telling them the date it was entered on the court's journal.



Judge Brent N. Robinson

⁵ Ohio Rev. Code § 4141.282 (H).