



## **FACTUAL BACKGROUND**

Appellee Durst is an employee of Appellant Thomas Limousine. Durst has worked for Thomas Limousine since November of 2012, on a part-time, as needed basis. Durst's employment as a driver requires that she be able to lift fifty pounds and operate a vehicle.

On June 3, 2013, Durst reported to Thomas Limousine that she had fractured her finger. The parties acknowledged that this restricted her ability to lift objects over fifty pounds and maneuver a vehicle, thus restricting her ability to perform any work for Thomas Limousine while still suffering her injury. Thomas Limousine did not have work for Durst within her restrictions.

Additionally, and unrelated to the injury, Durst had submitted to Thomas Limousine a schedule indicating her limited availability to work. Durst also works in the carnival industry, which would occupy most of her availability during late spring through early fall. Her last date worked for Thomas Limousine was June 2, 2013, just prior to her injury.

Previously, ODJFS had issued an initial determination that Durst was totally unemployed from employment with G & B Concessions due to lack of work, and allowed benefits. She filed an additional claim application on June 5, 2013. Durst filed subsequent claims for benefits for the weeks ending June 29, 2013 and July 6, 2013. Thomas Limousine did not have work within her restrictions during those weeks.

The Director allowed the application, and Thomas Limousine appealed. On July 16, 2013 the Director issued a Redetermination which held that claimant was separated from Thomas Limousine due to a lack of work. On August 6, 2013 Thomas Limousine filed an appeal from the redetermination. ODJFS transferred jurisdiction to the Unemployment Compensation review Commission on August 6, 2013.

A telephone hearing took place on August 29, 2013. Durst did not appear. Thomas Limousine appeared by counsel and with its personnel director as a witness. The Hearing Officer affirmed the July 16, 2013 Director's Redetermination, finding that Durst was separated by Thomas Limousine due to lack of work.

Thomas Limousine filed a request for review of the Hearing Officer's Decision on September 19, 2013. The Review Commission disallowed the Request for Review on October 9, 2013. Thomas Limousine filed this current appeal.

The issue central to this administrative appeal is whether Durst was separated from her employer due to lack of work. Thomas Limousine contends that Durst was still employed when she filed for benefits, and that Thomas Limousine was waiting for Durst to provide them with notice and documentation that she was available to return to work and resume the duties associated with her position without limitation or restriction. Thomas Limousine further asserts that it was against the manifest weight of the evidence for the Hearing Officer to find a lack of work, because there was no evidence of lack of work in the record.

ODJFS contends that the evidence in the record supports the Hearing Officer's decision. Specifically, that the Hearing Officer was correct in finding that Durst was separated from employment with Thomas Limousine due to lack of work. ODJFS maintains that the decision was correct because the record reflects that she was available for work, but turned it down due to her restrictions brought about by her injured finger, and there was no work available within her restrictions.

### **LAW & ANALYSIS**

The role of the Court of Common Pleas upon appeal from the Unemployment Compensation Review Commission is limited to determining whether the Review Commission's

decision is supported by evidence in the record. A decision supported by competent, credible evidence going to all essential elements of the dispute will not be reversed as being against the manifest weight of the evidence. See Ohio Revised Code § 4141.282(H); *Angelkovski v Buckeye Potato Chips Co.* (1983), 11 Ohio App. 3d 159. The jurisdiction of the Court is limited to a determination of whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. Ohio Revised Code § 4141.282(H); *Tzangas, Plakkas & Mannos v Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St. 3d 694 at 696-697; *Irvine v Unemp. Comp. Bd. Of Review* (1985), 19 Ohio St. 3d 15 at 17; *DiGiannantoni v Wedgewater Animal Hospital, Inc.* (1996), 109 Ohio App.3d 300 at 305. The common pleas court must give due deference to the Commission's resolution of evidentiary conflicts and the court may not substitute its judgment for that of the Commission. If, at the agency level, a preponderance of reliable, probative, and substantial evidence exists, the common pleas court must affirm the agency's decision. *Budd Co. v Mercer* (1984), 14 Ohio App.3d 269.

After a thorough review of the record, the Court finds that there was competent, credible evidence to support the Hearing Officer's conclusions. The record reflects that Durst had filed her additional claim on June 5, 2013, two days after she informed Thomas Limousine of her injured finger. The record also reflects that, while Durst was unable to perform all of the duties of her regular job, she was physically able to work, within the legal definition. Additionally, Durst was available to work, albeit within the confines of her limited schedule. The record also reflects that Thomas Limousine did not have any work available to her within her restrictions.

The record contains sufficient credible evidence to support the Hearing Officer's decision that Durst was separated from work by Thomas Limousine due to a lack of work. In considering

whether the Review Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence, this Court finds that the decision was supported by the record.

The decision of the Ohio Unemployment Compensation Review Commission is  
**AFFIRMED.**

This shall serve as a final appealable order. There is no just cause for delay.

**IT IS SO ORDERED.**

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**JUDGE ALISON MCCARTY**

cc: Attorney Robert F. Mcnamara  
Attorney Jenna M. Mckean  
Attorney Susan M. Sheffield