

management took over operation of AboutGolf. [Tr.11.] At that time, AboutGolf was losing \$2,000,000 annually, and the company began efforts to reduce labor costs in order to strengthen AboutGolf financially. [TR.16.] As part of these steps, AboutGolf required Mr. Dowdell to execute a new employment contract with a fixed salary of \$100,000. [Tr.11.] The new the contract no longer gave him commissions on sales. [Tr.11.]

At the end of 2012 and beginning of 2013, Mr. Dowdell believed that AboutGolf owed him \$96,781.70 in accrued but unpaid commissions. [See Tr.7; and see Hrg.Exh.C-1, ¶27.]² Based on the \$36,000 then-current salary and the \$96,781.70 in claimed but unpaid commissions, Mr. Dowdell calculated that his original annual compensation package was at least \$132,871.70 per year; thus, he believed that he would be taking at least a \$30,000 annual pay cut under the new contract. [See Tr.7-10.] Additionally, Mr. Dowdell believed that AboutGolf's new contract required him to waive any claim to the \$96,781.70 accrued commissions. [Id.] AboutGolf confirmed that the company would not pay him the total amount of commissions he claimed. The company told him that he would be terminated if he did not execute the new contract by January 14, 2013. Mr. Dowdell did not sign the contract and left the employ of AboutGolf.

Mr. Dowdell applied for unemployment benefits. He stated that he was terminated without just cause -- or in the alternative he quit for just cause -- claiming that AboutGolf terminated/forced-him-to-quit by requiring him to accept the \$100,000 proposed salary which was substantially less than his original combined salary and commission pay arrangement. In April 2013, the Director of ODJFS issued a redetermination concluding that Mr. Dowdell had quit AboutGolf with just cause. Thus, ODJFS allowed Mr. Dowdell's claim. ODJFS awarded him total benefits of \$10,738 which ODJFS calculated on a total base-period wage of \$130,796.43. AboutGolf appealed that allowance. The

² Hearing Exhibit C-1, is an unfiled copy of a breach-of-contract complaint (which, upon filing, became Lucas C.P. No. 0201302420). Mr. Dowdell filed that complaint ("contract-complaint") against aboutGolf, on April 9, 2013, after he left the company's employ, seeking to recover the \$96,781.70 in commissions. (Contract-complaint paras.15,27.)

company believed that Mr. Dowdell resigned from employment without just cause, and, accordingly, he was not entitled to benefits. The ODJFS transferred the appeal to the Unemployment Compensation Review Commission ("UCRC"). Mr. Dowdell submitted several documents to the UCRC to be included in the hearing record. One document was the unfiled copy of the contract-complaint he had filed in this Court -- Lucas C.P. No. 0201302420. (Hrg.Rcrd.Exh.C-1.)

After several postponements, the hearing officer conducted the telephonic hearing. The officer took testimony from Mr. Dowdell and the CEO for AboutGolf. The issued addressed was, "Did [Mr. Dowdell] quit without just cause?" (Hearing Officer Decision ["Decision"]p.4.) By decision mailed to the parties on July 12, 2013, the hearing officer reversed the ODJFS and determined that Mr. Dowdell had quit his employment with AboutGolf without just cause. (Decision p.4.) Several pertinent parts of the Decision follow:

"[Mr. Dowdell's original] salary was \$36,000. There was no guarantee of a commission.

"The employer was reorganizing the business as it had not been making Money. The claimant was offered a new business agreement whereas he would continue working at a salary of \$100,000 a year. There would be no commission, but there would be a bonus pool established for management whereby additional compensation would be awarded based upon the profitability of the business.

"Claimant rejected the new compensation package and quit employment with [AboutGolf.] [He] did not have another job at the time he resigned. * * *.

"* * *

"The claimant quit employment with [AboutGolf] when he rejected the new compensation package. The package increased his salary from \$36,000 to \$100,000. While it is true the package did away with commission, commission is never guaranteed. The claimant's rejection of a package which increased his salary by \$64,000.00 was unreasonable. Based upon the

credible evidence it is therefore held that the claimant quit employment with [AboutGolf] without just cause.

"The claimant argues that by signing the agreement he would [have] **given up his entitlement to more than \$90,000.00 in commissions** that he felt that he was owed. However, the Hearing Officer has **nothing in the record to document that he [Dowdell] was entitled to compensation other than what he had been paid to the date of his separation**. Therefore his argument is without merit." (Emphasis added.) (*Id.* at p.4.)

The hearing officer also concluded that Mr. Dowdell had received some unemployment benefits to which Dowdell was not entitled. Thus, the hearing officer has ordered Mr. Dowdell to repay the benefits he received.

Mr. Dowdell filed the instant administrative appeal. The parties have fully briefed the matter. And, the Court will now issue its decision.

II. DISCUSSION

In the instant appeal Mr. Dowdell asserts that he "left his employment with [AboutGolf], because the terms and conditions of his employment, particularly his pay, were unilaterally and **substantially changed** through no fault of his own, and therefore, he should not have been denied his benefits." (Emphasis added.) (Appellant's Brief p.2) Thus, he contends he left his employment for "just cause." (Appellant's Reply p.3.) Therefore, Mr. Dowdell argues that the Court "should reverse the decision of the UCRC because that decision was unlawful, unreasonable, or against the manifest weight of the evidence." (Appellant's Brief p.5.)

A. STANDARD OF REVIEW

Common Pleas Court. R.C. 4141.282(H) provides for the review by a common pleas court of a final decision by the Commission regarding benefits. *Whaley v. Unemployment Comp. Bd. of*

Rev., 11th Dist. No. 2005-T-0070, 2006-Ohio-7017, at ¶12. That section reads in pertinent part as

follows:

"[t]he 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." (Emphasis added.)

Thus, a court exercising appellate review "may only reverse an unemployment compensation eligibility decision by the Review Commission if the decision is unlawful, unreasonable, or against the manifest weight of the evidence." *Moore v. Comparison Mkt., Inc.*, 9th Dist. No. 23255, 2006-Ohio-6382, at ¶7.

The UCRC has the role of resolving factual questions, and the court has the limited role of determining if the Commission's decision is supported by evidence in the certified record. *Id.* at ¶9. "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. * * * *Where the board might reasonably decide either way, the courts have no authority to upset the board's decision.*" (Emphasis added.) *Robertson v. Dir., Ohio Dept. Job & Family Serv.*, 8th Dist. No. 86898, 2006-Ohio-3349, at ¶21 quoting *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). The reviewing court is not authorized to receive additional evidence; instead the court "is *limited to the record as certified* by the review commission." (Emphasis added.) *Abrams-Rodkey v. Summit Cty. Children Servs.*, 163 Ohio App.3d 1, 2005-Ohio-4359, at ¶32.

Just Cause. Pursuant to R.C. 4141.29(A), (D)(2)(a), and (E), an unemployment-compensation claimant is entitled to benefits if she quit work for just cause or if her employer discharged her without just cause.³ *Moore v. Comparison Mkt., Inc.*, 2006-Ohio-6382, at ¶10. The

³Revised Code 4141.29 provides in pertinent part as follows:

"(A) No individual is entitled to a waiting period or benefits for any week unless he:

"* * *

"(5) Is *unable to obtain suitable work*.

"* * *

"(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions: [continued on next page]

claimant bears the burden to establish "cause." *Id.* In this way, a claimant satisfies her burden of proving her entitlement to unemployment compensation benefits under R.C. 4141.29(D)(2)(a). *Briggs v. Cleveland Clinic Health Sys.*, 8th Dist No. 99654, 2013-Ohio-4045, at ¶9, citing *Shannon v. Bur. of Unemp. Comp.*, 155 Ohio St. 53, 97 N.E.2d 425, paragraph one of the syllabus (1951). "The determination of what constitutes 'just cause' within the context of unemployment compensation 'necessarily depends upon the unique factual considerations of the particular case' and involves a concurrent analysis of [whether the claimant] was temporarily without employment through no fault or agreement of his own." (Citations and quotation marks omitted; emphasis sic.) *Moore* at ¶10. "[J]ust cause, in the statutory sense, means that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." (Internal quotation marks omitted.) *Id.* at ¶11. "Fault on behalf of the employee remains an essential component of a just cause termination." *Tzangas, Plakas & Mannos v. Administrator, Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 698, 1995-Ohio-206, 653 N.E.2d 1207. A claimant need not be at "fault in a moral sense" for an employer to discharge her for just cause. *Id.* at 699.

Substantially Less Favorable. As a general proposition, in order to determine "just cause" within the ambit of R.C. 4141.29(D)(2), Ohio courts apply R.C. 4141.29(E)(4) -- is the pay for "the work offered * * * substantially less favorable to the individual than [the pay] prevailing for similar work in the locality." *See Feldman v. Loeb*, 37 Ohio App. 3d 188, 190, 525 N.E.2d 496 (1987) (citing paragraph

* * *

"(2) For the duration of the individual's unemployment if the director finds that:

"(a) The individual **quit work without just cause** or has been discharged for just cause in connection with the individual's work * * *

"(b) The individual has **refused without good cause to accept an offer of suitable work** when made by an employer * * *

"(E) No individual otherwise qualified to receive benefits shall **lose the right to benefits** by reason of a refusal to accept new work if:

* * *

"(4) The remuneration, hours, or other conditions of the work offered are **substantially less favorable** to the individual than those prevailing for **similar work in the locality**.

* * * " (Emphasis added.)

[E](4)]. Thus, "[t]he proper comparison to make under R.C. 4141.29(E)(4) is that between the work offered and 'similar work in the locality.'" *Guttek v. Keeping Track*, 10th Dist. No. 94APE06-795, 1995 Ohio App.Lexis 1014 *7 (Mar. 16, 1995). The claimant bears the burden to establish that the offered compensation was substantially less than the local prevailing rate for similar work. *Id.* See also *Trowbridge v. Bd. of Review*, 6th Dist. No. L-83-057, 1983 Ohio App.Lexis 12043 *6 (June 3, 1983) quoting *Nowak v. Board of Review*, 150 Ohio St. 535, 537-38, 83 N.E.2d 208 (1948) ("The purpose of * * * R.C. 4141.29(A)(5) and (E)(4) is to assist those who are unfortunate enough to be involuntarily unemployed, but it is not intended to benefit those who capriciously refuse similar work for which they are reasonably fitted and for which they can receive *wages prevailing for similar work in the community*" [emphasis added].)

Some Ohio courts, however, have omitted the prevailing-wage focus when making the substantial-reduction inquiry. See *Feldman v. Loeb*, 37 Ohio App.3d at 190.⁴ In cases that focus only on the substantial-reduction factor, reductions that are greater than 25 percent have been deemed "substantial." See *Feldman* (over 33 percent reduction); *Vitale v. Administrator*, 8th Dist. No. 51207, 1986 Ohio App.Lexis 8880 (Oct. 30, 1986) (over 25 percent reduction coupled with increased work load and elimination of break-time); *Watson v. Bd. of Rev.*, 1986 Ohio App.Lexis 5751 (Feb. 28, 1986) (50 percent reduction); *Bortz v. Lakewood Foods Serv.*, 8th Dist. No. 41010, 1980 Ohio App.Lexis 12202 (May 22, 1980) (over 33 percent reduction); *Richards v. Giles*, 7th Dist. No. 79 C.A. 78, 1980 Ohio App.Lexis 11606 (almost 50 percent reduction).

B. APPLYING STANDARDS

Mr. Dowdell argues he left AboutGolf with just cause because AboutGolf left him with no choice but to quit his employment. He contends that the new contract, with its salary of \$100,000,

⁴However, this Court finds that this approach, not considering the prevailing wage, is out of conformity with the statute. See *Trowbridge v. Bd. of Review*, supra, 1983 Ohio App.Lexis 12043 *6, quoting *Nowak v. Bd. of Review*, 150 Ohio St. at 537-38 (setting forth the prevailing-wage element).

required him to waive the \$96,781.70 which he claims AboutGolf owed to him. He claims that under the original contract he had an average annual income of \$130,000. Thus, he would have been forced to take a "substantial reduction" in his income had he continued his employment with AboutGolf.

As a preliminary matter, the Court notes that Mr. Dowdell submitted no argument nor evidence as to the prevailing wages in the local community in order to establish a "substantial reduction." Neither did the hearing officer expressly address this fundamental prevailing-wage element. *See Trowbridge v. Bd. of Review, supra, 1983 Ohio App.Lexis 12043 *6, quoting Nowak v. Bd. of Review, 150 Ohio St. at 537-38, 83 N.E.2d 208.* On this issue alone, the Court finds that Mr. Dowdell failed to meet his burden, and thus he has failed to establish a substantial reduction. Accordingly, the Court finds that the hearing officer's decision is not unlawful nor against the manifest weight of the evidence.

Further, the Court finds that the hearing officer based his Decision on the finding of no evidence in the certified record to establish that AboutGolf owed Mr. Dowdell any unpaid commission. Mr. Dowdell argues that the hearing officer erred in making this finding because Dowdell had submitted the contract-complaint into the record, and that complaint alleged \$96,781.70 in commissions remained unpaid. The Court finds that Mr. Dowdell did submit the unfiled copy of the contract-complaint into the record, and, in that pleading, Mr. Dowdell does allege that AboutGolf retained commissions and he specifies the amount owed. At paragraph 15, Mr. Dowdell alleges that AboutGolf instructed him to "produce[] **a list** of commissions that were owed to him as of December 4, 2012. **This list** has been attached hereto as Exhibit A." (Emphasis added.) At paragraph 27, Mr. Dowdell alleges that "Plaintiff also attached the **updated commissions spreadsheet * * *** showing in detail, the commissions owed to Plaintiff, which totaled \$96,781.70. **This spreadsheet** has been attached hereto as Exhibit D." (Emphasis added.) The Court finds, however, that the unfiled copy of the contract-complaint, which is in the administrative record, did not have Exhibits A and B attached. The Court finds that the absence of these documents supports the hearing officer's observation that there was "nothing in the record to

document that he [Mr. Dowdell] was entitled to compensation other than what he had been paid to the date of his separation." (Decision p.4.)

Additionally, the Court notes that, even if the exhibits had been attached, their description in the contract-complaint by Mr. Dowdell indicates that they were merely a "list" and a "spreadsheet." The Court finds that documents of such types ordinarily do not disclose how the commissions were calculated, gross sales figures, and/or other relevant factors that would allow the hearing officer to make a reliable determination of the amounts due.⁵

The Court also finds that, even if the record did contain proper and reliable evidence of unpaid commissions or a precise base-period wage, the \$100,000 proposed new salary was not a substantial reduction as contemplated in the case-authority cited above. A reduction in compensation from \$132,871.70⁶ to \$100,000 -- a reduction of \$33,000 -- is barely a 25 percent reduction. And, given that the \$100,000 proposed salary was a \$64,000 increase in essentially guaranteed income, such an assured salary, coming at a time when AboutGolf was attempting to restructure itself, would have ensured Mr. Dowdell relative financial security when compared to the original compensation system.⁷

Based on the foregoing, the Court finds that the decisions below were not unlawful, unreasonable, or against the manifest weight of the evidence, and accordingly the Court must affirm the decisions of the UCRC.

(The Court intentionally leaves the remainder of this page blank.)

⁵ Mr. Dowdell also cites to the determination by the ODJFS that his base-period wages were over \$130,000. However, that figure is unsupported. Thus, the Court finds that the hearing officer did not err in omitting that figure from the evidence upon which he relied.

⁶ Mr. Dowdell calculated that his original annual compensation package was at least \$132,871.70 per year based on his \$36,000 then-current salary and the \$96,781.70 in claimed but unpaid commissions.

⁷ Mr. Dowdell asserts that he believed that AboutGolf was intending to fire him without cause as soon as he were to sign the new employment agreement -- under which he would have waived any claim to unpaid commissions. However, the Court finds that hearing officer did not err in ignoring that argument because the record supported the officer's decision in that regard. The hearing officer was able to judge the credibility of both Mr. Dowdell and AboutGolf -- thus, finding no evidence of such intent on the part of AboutGolf.

JUDGMENT ENTRY

The Court hereby ORDERS that the decisions of the Unemployment Compensation Review Commission below are AFFIRMED in all respects. The Court finds no just reason for delay.

5/9/14

M. Duhart
Myron C. Duhart, Judge

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