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 ETHNA M. COOPER, Judge

**COURT OF COMMON PLEAS  
 HAMILTON COUNTY, OHIO**

BLACKSTONE HEALTHCARE, INC.,	:	Case No.: A1303149
	:	
Plaintiff,	:	Judge Ethna M. Cooper
	:	
v.	:	<b>ENTRY SUSTAINING</b>
	:	<b>OBJECTIONS AND</b>
DOMINIQUE SANDERS, et. al.,	:	<b>REVERSING</b>
	:	<b>MAGISTRATE'S DECISION</b>
Defendants.	:	

This matter is before the Court on Director, Ohio Department of Job and Family Services' ("ODJFS") Objections to the Magistrate's April 21, 2014 Decision reversing the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission"), and Appellant's Response to Director, Ohio Department of Job and Family Services' ("ODJFS") Objections to the Magistrate's Decision.

ODJFS objects to the Magistrate's Decision finding that Appellant Blackstone Healthcare, Inc. ("Blackstone") was entitled to have its charges paid to Appellee Dominique Sanders ("Claimant") for unemployment benefits mutualized. ODJFS argues that the Magistrate incorrectly applied the unemployment statute and exceeded his authority by independently deciding that the Claimant was ineligible for employment as a matter of law at the time of her application for benefits.

**BACKGROUND**

Claimant applied for unemployment benefits on October 31, 2012, after she was separated from her last employer, CBS Personnel Services, LLC ("CBS"). On November 19, 2012, ODJFS allowed Claimant's application based upon lack of work from CBS. From July 7, 2011 through June 30, 2012, the applicable base period, CBS and Blackstone were Claimant's only employers. Blackstone appealed the decision on December 11, 2012 and upon redetermination, ODJFS held that Blackstone would be charged under R.C. § 4141.29(H) as the facts established that Claimant's separation from the employer was non-disqualifying. Blackstone appealed the Redetermination decision and the claim was then transferred to the Review Commission. Following a hearing on February 12, 2013, the hearing officer affirmed ODJFS' Redetermination decision. Blackstone again appealed, this time to full Review Commission and the Commission disallowed Blackstone's Request for Review. Blackstone appealed the Review Commission's decision to this Court. The appeal was submitted on the briefs to

the Magistrate, who subsequently reversed the decision of the Review Commission finding that Blackstone was entitled to have its charges paid to Claimant for unemployment benefits mutualized. ODJFS has filed Objections to the Magistrate's Decision arguing that the Magistrate misapplied the unemployment statute and exceeded his authority by finding that the Claimant was ineligible for employment as a matter of law when she applied for benefits and was therefore ineligible for benefits.

## ANALYSIS

Under R.C. §4141.282(H), a reviewing court may reverse and vacate or modify and enter final judgment on a decision of the Review Commission if it finds that the decision was "unlawful, unreasonable, or against the manifest weight of the evidence." While a reviewing court must determine if the Review Commission's decision is supported by the evidence in the record, it may not substitute its judgment for that of the administrator or Board of Review merely because it interprets the evidence differently.<sup>1</sup>

The Ohio Unemployment Compensation Statute provides that "no individual may ... be paid benefits for the duration of the individual's unemployment if the director finds that: [t]he individual quit work without just cause or has been discharged for just cause in connection with the individual's work."<sup>2</sup> Blackstone argues that, but for, Claimant's failure to apprise it of her conviction, Claimant would have been discharged for just cause on July 30, 2012, the date of her conviction. Blackstone contends that such a conviction rendered Claimant ineligible for employment with Blackstone as a matter of law.<sup>3</sup> Thus, Blackstone contends that Claimant was precluded from employment three months prior to her application for unemployment benefits. ODJFS, in contrast argues that the evidence clearly shows that, at the time of her application for benefits, Claimant had neither quit nor been terminated pursuant to the unemployment statute. It is undisputed that the Court must defer to the Review Commission's determination of factual issues, reversing the board's determination only if it is "unlawful, unreasonable, or against the manifest weight of the evidence."<sup>4</sup> Moreover, the fact that Blackstone had not terminated Claimant is not in dispute. The transcript is clear. The witness for Blackstone stated definitively that Claimant was not officially separated but was only on suspension as of the date of the Review hearing.<sup>5</sup> As such, Blackstone cannot meet the first part of the unemployment statute and the issue of whether Claimant's termination *would have been* supported by just cause is irrelevant.

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<sup>1</sup> *Kilgore v. Board of Review* (Ohio Ct. App. 4<sup>th</sup> Dist. 1965), 2 Ohio App.2d 69, 72.

<sup>2</sup> R.C. §4141.29(D)(2)(a).

<sup>3</sup> Blackstone is a home health agency engaged in providing home health services to individuals. Ohio law prohibits an agency such as Blackstone from employing persons convicted of certain crimes. See R.C. §3701.881(B); O.A.C. §3701-60-06, §3701-60-07, and Ohio Department of Aging Reg. 173-9-07(A)(2)(a)(xxvii).

<sup>4</sup> *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694, 697 (citing *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18).

<sup>5</sup> Blackstone's Response to ODJFS' Objections, Ex. A, Tr. 6:3-6.

Additionally, ODJFS argues that the Magistrate exceeded his authority and erred as a matter of law in finding that Claimant's eligibility was predicated on her silence about material facts related to her employment and thus the Review Commission's decision cannot be upheld. Only ODJFS is authorized to determine a claimant's rights to benefits.<sup>6</sup> Moreover, a claimant's eligibility for benefits is determined based upon his or her most recent separation.<sup>7</sup> The Determination of Unemployment Compensation Benefits clearly states that Claimant's eligibility for benefits was based upon her separation from CBS Personnel for lack of work.<sup>8</sup> Whether it would be "unfair" to charge Blackstone's account after July 2, 2012 is immaterial. Such a determination is not for the Magistrate or this Court to make. The Court's only duty is to determine if the Review Commission's decision was supported by the evidence in the record. It was. The record establishes that Claimant neither quit nor was terminated, with or without just cause, prior to her application for benefits. Blackstone was aware of the pending charges for which it suspended Claimant. It is undisputed that Claimant failed to inform Blackstone of her conviction. It is equally undisputed that Blackstone made no effort to track the status of Claimant's criminal case, as it could have easily done through the Clerk of Court. Furthermore, Claimant's eligibility was based upon her most recent separation from CBS Personnel. Thus, Claimant's ineligibility for employment with Blackstone as of July 2, 2012 is irrelevant.

For this reason, the Court hereby sustains ODJFS' Objections to the Magistrate's Decision. The Magistrate's Decision is therefore reversed and the decision of the Review Commission that Blackstone is not entitled to have its charges paid to Claimant for unemployment benefits mutualized is hereby affirmed.

There is no just cause for delay.

IT IS SO ORDERED.



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<sup>6</sup> R.C. §4141.28.

<sup>7</sup> R.C. §4141.28(E); Ohio Admin. Code 4141-27-01.

<sup>8</sup> ODJFS' Objections to Magistrate's Decision, Ex. 1.