

FULL  
COMMON PLEAS COURT  
DARKE COUNTY, OHIO

2014 AUG 21 PM 1 01

CINDY PIKE  
CLERK

**IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO**

<b>BUCKEYE OUTDOOR PERSONNEL,</b>	:	<b>CASE NO. 14-CV-00118</b>
	:	
<b>Appellant,</b>	:	<b>JONATHAN P. HEIN, Judge</b>
	:	
<b>vs.</b>	:	
	:	
<b>JAMES R. HAMMOND, et. al.</b>	:	
	:	
<b>Appellees.</b>	:	<b>JUDGMENT ENTRY – Employer Appeal of ODJFS Award for James Hammond</b>

This matter came before the Court pursuant to the appeal filed herein by Buckeye Outdoor personnel, LLC regarding the award of unemployment compensation to James R. Hammond. The Appellant is represented by Eric H. Brand, Esq. The Ohio Department of Job and Family Services is represented by Robin A. Jarvis, Assistant Attorney General. James R. Hammond has not appeared nor is represented by counsel.

**Case Facts**

The Appellant formerly employed James R. Hammond in its business of trimming trees near power lines and maintaining lawns, mostly for commercial entities, including Dayton Power and Light Company. The employment relationship existed from February 5, 2013 through September 13, 2013. The controversy concerns the Appellant’s decision to terminate Mr. Hammond for (1) possession of drug paraphernalia and (2) possession of knives with blades exceeding 3 ½ inches.

### Standard of Review

The current appeal is filed pursuant to Chapters 4141 of the Revised Code. With respect to an appeal, R.C. 4141.282(H) applies:

“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 decision in *Brooks v. Ohio State Department of Job & Family Services* 2009-Ohio-817 (10<sup>th</sup> Dist.) is instructive:

{¶7} In his assignment of error, appellant claims the trial court abused its discretion in affirming the commission's finding that he was terminated for just cause. Before reaching the merits of appellant's assignment of error, we must address a preliminary issue which necessarily involves a discussion as to the appropriate standard of review to be utilized in unemployment compensation benefits cases. Pursuant to R.C. 4141.28(A) and (B), an interested party may appeal the commission's decision to the common pleas court of the county where the party is a resident or was last employed. The common pleas court must hear the appeal upon the certified record provided by the commission. R.C. 4141.282(H). The court may reverse, vacate, modify, or remand the decision to the commission only if the court finds that the decision "was unlawful, unreasonable, or against the manifest weight of the evidence[.]" *Id.* Otherwise, the court must affirm the commission's decision. *Id.*

See also *Tzangas, Plakas & Mannos v. Admin., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694; 653 N.E.2d 1207, 1995-Ohio-206.

Central to the analysis of this case is the determination of whether the Appellant possessed “just cause” for terminating Mr. Copeland’s employment. There is no statutory definition of “just cause” which, instead, has been defined by the Supreme Court of Ohio as “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Irvine v. Unemployment Board of Review*, 19 Ohio St.3d 15, 482 N.E.2d 587 (1985).

With regard to the question of the burdens of proof, the claimant must establish his entitlement to benefits, which in this case is satisfied by proof of the existence of an employment relationship - and which is not in dispute.<sup>1</sup> Therefore, the Appellant must establish some fault or wrongdoing on the part of the employee to establish the just cause for termination. *Tzangas v. Administrator, supra.*; *Corbin v. O.B.E.S.*, 77 Ohio App.3d 626; 603 N.E. 2d 266 (10<sup>th</sup> Dist. 1991).

#### Case Decision

The dispute concerns an interpretation of whether just cause existed to terminate the employment relationship. The transcript of the testimony as presented to the district hearing officer has been reviewed along with the entire record, including the employment policies of Appellant.

Regarding the possession of marijuana and paraphernalia in Mr. Hammond's lunch box, the record is clear that the box was outside Mr. Hammond's possession from September 5, 2013 until September 13, 2013. While some of his personal effects were still inside the box when it was recovered, there is not conclusive evidence that Mr. Hammond possessed the contraband while employed - especially since there were intervening days when others had access to it.

Regarding possession of knives with blades greater than 3 ½ inches, Mr. Hammond again consistently denied ownership of these items. At the time the decision was made to terminate his employment, the evidence against him was merely the location of the knives in the lunch box. His taking the knives after being terminated does not conclusively prove possession during his employment. Due to the time when the box was outside Mr. Hammond's possession, there is no conclusive evidence that he possessed the knives during the employment relationship.

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<sup>1</sup>The Court is cognizant of the state's position that R.C. 4141.281(C)(2) places no burden on a claimant. While not relevant for this matter, the Court nonetheless disagrees with the State's position with regard to proof of entitlement to unemployment benefits subscribing to its belief that the claimant must prove existence of an employment relationship.

As stated above, the evidence to justify termination was circumstantial. In such cases, scrutiny of the conclusions should be heightened and the evidence opposing the conclusions should take on increased importance. In this case, the evidence opposing these circumstances is primarily the statements by Mr. Hammond which may rightly be viewed as subject to being self-serving and economically motivated. However, the credibility of his denials is bolstered in various ways. First, that Mr. Hammond passed a drug screen after the discovery increases the credibility of his consistent denial of possession of the contraband. Second, his action to take the knives after being terminated in order to sell them for gas money is plausible – especially since he had already been terminated at the time his possession occurred. Finally, Mr. Hammond offered plausible testimony of improper motives by a co-worker to construct a case to cause his termination.

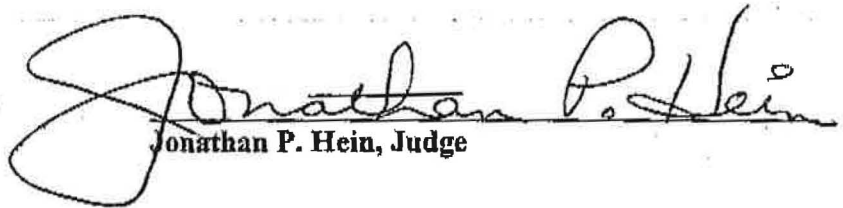
When determining administrative appeals, the Court is not to substitute its judgment for that of the Hearing Officer. *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159, 463 N.E.2d 1280 (10<sup>th</sup> Dist. 1983). The importance of hearing the testimony of witnesses and the weighing of credibility based on such process cannot be understated. Clearly, the Hearing Officer discounted the credibility of circumstantial conclusions based on Appellant's witness and exhibits. Similarly, The Hearing Officer increased the credibility of Mr. Hammond after hearing his testimony.

Further, the Court should presume that the agency's decision was reasonable and valid and should give deference to the decision, *Amser Corp. v. Village of Brooklyn Heights*, Cuyahoga. App. No. 62140 (May 6, 1993); *In Re: Application of Watkins*, Montgomery App. No. 17723 (February 18, 2000), although "the findings of the agency are by no means conclusive." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980).

**Conclusion**

Substitution of judgment based on credibility of the evidence is not within the prerogative of the Court when considering an administrative appeal. The Court cannot find that the decision of the Hearing Officer was unreasonable, arbitrary or not supported by the evidence. The Court cannot find that the decision of the Review Commission was unreasonable, arbitrary or not supported by the evidence.

**IT IS THEREFORE ORDERED AND DECREED** that the decision of the Unemployment Compensation Review Commission is affirmed and the employer appeal is denied. This matter is dismissed. FINAL APPEALABLE ORDER. Costs to the Appellant.



Jonathan P. Hein, Judge

cc: Eric H. Brand, Attorney for Appellant (via fax)  
Robin A. Jarvis Ass't. Attorney General for ODJFS (via fax)  
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