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LINDA H. FRARY
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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

CITY OF SHELBY,

Appellant/Plaintiff,

v.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES, et al.,

Appellees/Defendants.

Case No. 2014-CV- 0405 D

**DECISION ON
ADMINISTRATIVE APPEAL**

Journalized on the court's
docket on 1-26-15

W. Miller
Deputy Clerk

This employment termination case is before the court of common pleas upon the administrative appeal of Appellant/Plaintiff City of Shelby, filed April 23, 2014. On November 18, 2014, this appeal was transferred from Judge Robinson to Judge DeWeese due to a prior knowledge of the case conflict.

The court has reviewed the February 14, 2014 decision of the Unemployment Compensation Review Commission upon the certified record and transcript provided by the commission, and pursuant to O.R.C. § 4141.282(H). Appellant City of Shelby and Appellee Director, Ohio Department of Job and Family Services (hereinafter "ODJFS") have submitted briefs upon the issues to be considered. This court has reviewed the notice of appeal, the briefs, the transcript of the hearing testimony, and the

administrative record filed in this case.

PROCEDURAL HISTORY

The instant appeal is brought before the court to review the Decision of the Unemployment Compensation Review Commission, mailed February 14, 2014. The following Case History appears in the Decision:

The claimant, Craig Stover, filed an Application for Determination of Benefit Rights.

On October 17, 2013, the Director issued a Redetermination which held that any benefits that may become payable to the claimant would be charged to the employer's account.

On November 14, 2013, the City of Shelby filed a timely appeal from the Redetermination.

On December 17, 2013, the Ohio Department of Job and Family Services transferred jurisdiction to the Unemployment Compensation Review Commission.

On February 13, 2014, a hearing was held before Hearing Officer Leanne Colton, by telephone. The City of Shelby was represented by Attorney John Boyd, with Bob Lafferty, director of finance, appearing and offering testimony.

The Decision was mailed to all interested parties on February 14, 2014. On March 6, 2014, Appellant City of Shelby submitted a Request for Review to the Unemployment Review Commission. A Decision Disallowing Request for Review was mailed to all interested parties on March 26, 2014. This appeal was timely filed on April 23, 2014.

FINDINGS OF FACT

In the February 14, 2014 Decision, the Review Commission made the following Findings of Fact:

The City of Shelby is a public employer. Mr. Lafferty testified that they are

a reimbursing employer for Ohio Unemployment Compensation purposes. Claimant was not separated from the employer due to dishonesty as that term is used for Unemployment Compensation purposes.

LEGAL DISCUSSION

In an administrative appeal of a decision for the Unemployment Compensation Review Commission, the common pleas court shall hear the appeal on the certified record provided by the commission.¹ 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.²

On December 6, 2013 the City of Shelby filed its appeal from the Director's October 17, 2013 Redetermination. The City of Shelby alleged two prongs of appeal: 1) timeliness; that is, that the City of Shelby had never received notice of the determination in order to file a timely appeal; and, 2) ineligibility; that is, that the Unemployment Compensation Director failed to consider that the claimant himself does not qualify for unemployment compensation. On January 29, 2014 a hearing was held on the issue of timeliness only before the Unemployment Compensation Review Commission Hearing Officer Paulette Johnson. By order mailed January 30, 2014, the timeliness prong was resolved in favor of the City of Shelby.

The hearing on the merits of the ineligibility prong of the appeal was set for February 13, 2014. Hearing Officer Leanne Colton elicited testimony from Robert Lafferty, the City of Shelby's witness, regarding the reasons for claimant Craig Stover's separation from employment. Her questioning of Mr. Lafferty ended with the following

¹ O.R.C. § 4141.282(H).

² *Id.*

exchange:

Hearing Officer: As the director of finance, do you know if the City of Shelby is a reimbursable or contributory employer for unemployment purposes?

Bob Lafferty: We are reimbursable.

Hearing Officer: So you only pay when you're charged? You don't contribute to the fund, correct?

Bob Lafferty: Correct.

Hearing Officer: I do not have any other questions, Mr. Boyd, do you have any questions?³

Attorney Boyd proceeded to question Mr. Lafferty about claimant Craig Stover's eligibility for unemployment compensation, the City of Shelby's approximately \$12,770.00 worth of payments already made on Mr. Stover's claims during 2012 and 2013, and the City of Shelby's error in reporting Mr. Stover's dates of employment for 2012. Attorney Boyd's questioning of Mr. Lafferty was abruptly terminated by the Hearing Officer in the following exchange:

John Boyd: Okay, so if I may, you represented, erroneously, due to I'd say (inaudible) error to unemployment that Mr. Stover was employed after his termination.

Bob Lafferty: That's correct.

John Boyd: Okay. And his termination date was September 11th of 2012, as opposed to some later date that you represented at one point in July of 2013, is that correct?

Bob Lafferty: That is correct.

John Boyd: Okay. And, uh, Mr. Stover filed a new claim for unemployment. . .

Hearing Officer: Okay, wait, wait, let me stop you there, cause the issue

³ Transcript of February 13, 2014 Hearing, page 5, lines 15-23.

before us is, there is a part of the ORC, section 4141.241(B)(1)(b) that states that reimbursable employers, their charges can't be mutualized even if it's a (inaudible) separation. So regardless of any of this information, since it's a reimbursable public employer you can't technically have a mutualization decision so that's the issue before us today is whether or not your charges can be mutualized.⁴

It is apparent from the transcript that the Hearing Officer had made her decision in this case as soon as Mr. Lafferty stated that City of Shelby is a reimbursable employer. By identifying mutualization as the only issue under consideration, she failed to address the eligibility issue upon which the appeal was based. If an employer has a responsibility to pay unemployment, then due process requires it to have an opportunity to question the former employee's eligibility.

This court finds that Plaintiff/Appellant City of Shelby was denied a fair hearing and findings on the specific eligibility issue that was raised as the second prong of its appeal. The court expressly makes no finding regarding the weight or credibility of the evidence. The court finds that the February 14, 2014 Decision of the Unemployment Compensation Review Commission was unlawful and unreasonable for the reasons stated above.

IT IS THEREFORE ORDERED that:

1. The February 14, 2014 Decision of the Unemployment Compensation Review Commission is hereby reversed and the matter is remanded to the Unemployment Compensation Review Commission for a fair hearing on the issue alleged as the second prong of City of Shelby's December 6,

⁴ Transcript of February 13, 2014 Hearing, page 6, lines 20-26, page 7 lines 1-10.

2013 appeal, that is, whether claimant, Craig Stover, was eligible for the unemployment compensation charged to the City of Shelby on October 17, 2013.

2. The Clerks of Courts shall serve copies of this order on attorneys John Boyd and Laurence R. Snyder, telling them the date it was entered in the Court's journal.


JUDGE JAMES DEWEESE