

Determination notes that the Claimant was “totally unemployed from DIEBOLD INCORPORATED due to a lack of work.” The ODJFS ruled in favor of Appellant Suteu.

On April 16, 2014, Appellee-Employer Diebold appealed the March 26, 2014, Determination and requested a redetermination stating that “The claimant voluntarily quit, accepted company offer of early retirement. Work was available.”

On April 30, 2014, the ODJFS issued a Director’s Redetermination affirming the March 26, 2014, Determination allowing the claim for benefits.

On May 6, 2014, Appellee-Employer Diebold appealed the Director’s Redetermination.

On May 9, 2014, the UCRC notified Appellant Suteu of the appeal. The UCRC issued a Notice of Hearing on May 13, 2014, informing the parties of a telephone hearing would be held on May 27, 2014, at 8:45 a.m. The hearing notice states that the issue to be considered at the hearing was, “Was the claimant separated from employment due to lack of work?”

Appellant Suteu missed the telephone hearing because he “overlooked the date that was scheduled for the phone conference.” (Appellant’s Exhibit 1). LeRon Tibbs, Senior HR Business Partner for Diebold, appeared and offered testimony at the telephone hearing.

On May 28, 2014, the UCRC issued its Decision, reversing the Director’s Redetermination dated April 30, 2014. The UCRC found that Claimant quit employment with Diebold without just cause, therefore, “[C]laimant received benefits to which he was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services.” The amount of the benefits paid totaled \$6,000.00.

On May 30, 2014, Appellant Suteu filed a Request for Review, which indicates that he overlooked the date of the telephone hearing and requested the UCRC to reconsider its findings.

On July 9, 2014, the Request for Review was disallowed.

On August 7, 2014, Appellant Suteu filed the instant action.

Review Commission Decision

The UCRC issued the following decision with regard to Appellant Suteu's claim:

FINDINGS OF FACT

The claimant was employed by Diebold Incorporated from January 2, 2009, through November 29, 2013. Claimant was a Senior Mechanical Designer for Diebold Incorporated.

Diebold Incorporated offered an early retirement incentive to all employees who qualified based on age and years of service. Claimant qualified for this early retirement incentive. The early retirement incentive was not part of a reduction in workforce. The early retirement incentive was offered to increase Diebold's profitability. Claimant accepted the early retirement incentive. Claimant was not forced or coerced to accept the early retirement incentive. Had the claimant not accepted the early retirement incentive, he would have remained employed by Diebold Incorporated. In return for accepting the early retirement incentive, claimant received severance pay which was calculated based on his years of service.

Approximately 30% of the employees who were offered the early retirement incentive accepted the early retirement incentive. Some of the employees who accepted the early retirement incentive were replaced by new employees.

ISSUE

Did claimant quit employment with Diebold Incorporated without just cause?

LAW

An individual is not eligible for benefits if the individual quits work without just cause. The individual will remain ineligible until the individual obtains another job covered by an unemployment compensation law, works at least six weeks and earns \$1,398.00 or more, and is otherwise eligible. *Sections 4141.29(D)(2)(a) and 4141.29(G) O.R.C.* For applications filed on and after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application. *Section 4141.01(R)(2) O.R.C.*

An individual is not disqualified from receiving benefits if the individual is separated from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment. *Section 4141.29(D)(2)(a)(ii) O.R.C.*

REASONING

The early retirement incentive was not offered as a reduction in force. Also, claimant could have rejected the retirement incentive and, if he would have done so, he would have remained an employee of Diebold Incorporated. Instead, claimant accepted the early retirement incentive and thereby voluntarily ended his employment with Diebold Incorporated. Under these circumstances, it will be held that the claimant quit employment with Diebold Incorporated without just cause.

It should be noted that, under Section 4141.29(D)(2)(a)(ii) of the Ohio Revised Code, an individual who accepts a buyout has a non-disqualifying separation from employment if that buyout was offered by the employer as a plan to reduce its workforce due to a lack of work, even if the individual was not personally at risk of being laid off. The courts have held that, when "[n]either the purpose nor the effect of the 'buy-out' provision was to effectuate a layoff," employees who quit to accept a buyout are not entitled to unemployment compensation benefits. See Bindas v. Administrator (1990) WL 125456 (Cuyahoga App. 1990). In this case, the Hearing Officer finds that neither the purpose nor the effect of the employer's buyout was to effectuate a layoff, and therefore this was not a qualifying separation from employment under Section 4141.29(D)(2)(a)(ii) of the Ohio Revised Code.

Based upon this finding, claimant received benefits to which he was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services.

DECISION

The Director's Redetermination, issued on April 30, 2014, is reversed with respect to the ruling on claimant's separation from Diebold Incorporated.

Claimant's Application for Determination of Benefit Rights, which was filed on February 14, 2014, is disallowed as claimant was separated from employment under disqualifying conditions. Specifically, claimant quit employment with Diebold Incorporated, effective November 29, 2013, without just cause. No benefits will be payable until claimant becomes reemployed in covered employment, works at least six weeks and earns \$1,398.00 or more, and is otherwise eligible.

Standard Of Review

The standard of review by the Court is set forth in R.C. §4141.282 as follows:

(H) REVIEW BY THE COURT OF COMMON PLEAS

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 courts' scope of review thus is limited. A court may not make factual determinations or substitute its judgment for that of the commission. *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587. Where the commission might reasonably decide either way, the courts have no authority to change the commission's decision. *Id.* Therefore, even if the Court were to disagree with the decision of the commission, the Court must affirm the decision if it supported by the record.

Due Process Argument

Appellant Suteu argues that the ODJFS violated his procedural due process rights by terminating his unemployment compensation benefits without obtaining the sufficient facts necessary to make a determination.

The Court finds that this issue is not properly before this Court, as the issue of constitutional due process was never raised before the UCRC.

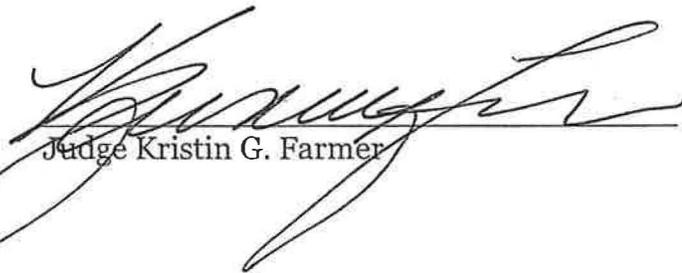
Notwithstanding the Court's finding that the constitutional due process issue is not properly before the Court, even if the Court were to consider the issue of whether Appellant Suteu's due process rights were violated, the Court finds that said issue is without merit. The Court finds that Appellant Suteu was provided with the opportunity for a hearing and failed to participate. Further, the Court does not find that Appellant Suteu's due process rights were violated based upon the UCRC's failure to pursue additional information from Appellant Suteu. The Court finds that the UCRC was not required to request additional information from Appellant Suteu. Further, Appellant

Suteu was provided with the opportunity to submit additional information to the Director, or to the UCRC for consideration.

Conclusion

Upon review of the complete record in this matter, the Court finds that the decision of the Hearing Officer was not unlawful, unreasonable, or against the manifest weight of the evidence, therefore, the Court hereby affirms the decision of the Hearing Officer that Appellant quit his employment with Diebold Incorporated without just cause.

IT IS SO ORDERED.

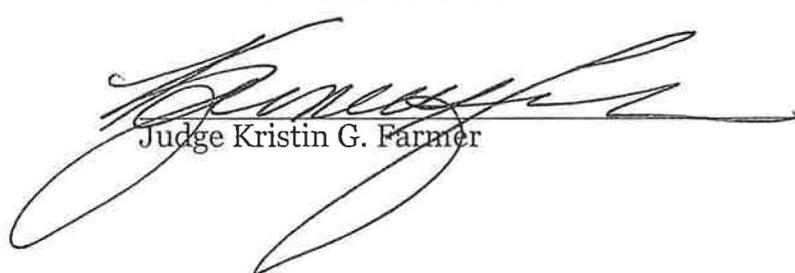


Judge Kristin G. Farmer

Copies: Gregory A. Beck, Esq.
Gust Callas, Esq.
Susan M. Sheffield, Esq.

**NOTICE TO THE CLERK:
FINAL APPEALABLE ORDER**

IT IS HEREBY ORDERED that **notice and a copy** of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



Judge Kristin G. Farmer