

Officer Kevin Thornton conducted a telephone hearing on behalf of the Review Commission. AWL Transport, Inc. was represented by Attorney Jonathan Blakely, who presented Patrick Fojas as a witness. Appellee was represented by Attorney Megan Robinson.

The Decision mailed September 17, 2014, includes the following Findings of Fact:

AWL Transport, Inc. filed a request for reconsideration of the Director's determination that it is the successor in interest to Triple Ladies (sic) Agency, Inc. AWL Transfer, (sic) Inc. is appealing the assigned contribution rates. Triple Ladies (sic) Agency, Inc. operated a trucking company. The company had approximately 200 tractors and flatbed trucks. It also operated a van business and owned a number of vans. Triple Ladies (sic) Agency, Inc. was operating at a loss and dissolved in December, 2010. Jerry Carlton was the Chief Executive Officer of the company. Jerry's Wife, Heather Carlton, and his daughters, Linda Carlton and Gloria Carter were Vice presidents. Patrick Fojas was the Chief Financial Officer.

In October, 2010, Jerry Carlton started AWL Transport, Inc. Mr. Carlton was the sole member and Chief Executive Officer. Mr. Fojas was Chief Financial Officer of the new company.

In January, 2011, AWL purchased approximately 50 tractors from Triple Ladies Agency. The remaining tractors, trailers and vans were surrendered by Triple Ladies (sic) Agency to its creditors.

During the fourth quarter of 2010 nineteen of the Triple Ladies (sic) Agency's employees transferred to AWL Transport, Inc. In the first quarter of 2011 AWL Transfer, (sic) Inc. hired most of the remaining employees of Triple Ladies Agency.

September 17, 2014 Decision.

Although not labeled as assignments of error, Appellant asserts the following in its brief:

- A. The Commission's Decision Applied the Wrong Law**
- B. The Decision is NOT supported by reliable, probative and substantial evidence**
- C. Triple Lady's asset Transfer was mandated by the USDA**

Standard of Review

R.C. 4141.26(D) provides, in relevant part:

The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order *or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law.* (Emphasis added).

“Reliable evidence” is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. “Probative evidence” is evidence that tends to prove the issue in question; it must be relevant in determining the issue. “Substantial evidence” is evidence with some weight; it must have importance and value. *Our Place v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, (1992). In reviewing the decision of the Review Commission, the Court may not weigh or judge the credibility of the witnesses. This Court must give due deference to the administrative resolution of evidentiary conflicts. *All Star Personnel v. State of Ohio*, 2006-Ohio-1302, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St. 2d 108 (1980); see also *Kathmandu, Inc. v. Bowland*, 1999 Ohio App. LEXIS 4499. Additionally, a reviewing Court must give due deference to statutory interpretations by an administrative agency that has substantial experience and has been delegated enforcement responsibility. *Resources Title National Agency v. Ohio Dept. of Job & Family Services*, 2014-Ohio-3427.

Law and Analysis

R.C. 4141.24(F) provides, in pertinent part:

If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer’s account, and continue the payment of all contributions, or payments in lieu of contributions, due under this chapter.

Additionally, O.A.C. 4141-17-04 describes a successor in interest by operation of law:

(A) The transferee shall become the successor in interest by operation of law where:

(1) There is a transfer of all of the transferor's trade or business located in the state of Ohio: and

(2) At the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code.

(B) The transferee, as successor in interest, shall assume all of the resources and liabilities of the transferor's account. The director shall revise the contribution rates of the transferee to reflect the result of the successorship.

(C) The director shall not approve a transfer of experience or contribution rates of the transferee or transferor for any contribution period with respect to which the director has determined contribution rates for the transferee or transferor pursuant to division (G) of section 4141.24 or section 4141.48 of the Revised Code.

Appellant asserts that (1) Appellee applied the wrong law; (2) Appellee's decision is not supported by reliable, probative and substantial evidence; and (3) Triple Lady's Agency, Inc. asset transfer was mandated by USDA. This Court first will address whether there is reliable, probative and substantial evidence to support Appellee's September 17, 2014 Decision.

AWL Transport, Inc. was incorporated in 2003 as a warehousing and logistics company. Tr. 10. In October 2010, the company began operation as a trucking company. Tr. 6. Jerry Carlton was the sole member and Chief Executive Officer. Tr. 6-7. The evidence demonstrates that common management existed between Triple Lady's Agency, Inc. and AWL Transport Inc. Tr. 15.

Triple Lady's Agency, Inc. derived its name from Heather Carlton, Jerry Carlton's wife, and his two daughters and operated as a female minority entity. Tr. 4-7. Patrick Fojas, the bookkeeper for both Triple Lady's Agency, Inc. and AWL Transport, Inc. testified that both companies were trucking companies and that AWL Transport, Inc. picked up the remainder of Triple Lady's Agency Inc.'s business and remaining assets that had not been taken by creditors. Tr. 13-19. Because of financial difficulties, Triple Lady's Agency, Inc. was dissolved in

December 2010, and by January 2011, most of its vehicles were surrendered to its creditors. Tr. 11-12. Additionally, by January 2011, AWL Transport, Inc. had purchased approximately forty (40) trucks that Triple Lady's Agency, Inc. had not surrendered to its creditors. Tr. 15. The testimony of Mr. Fojas also demonstrates that between the last quarter of 2010 and the first quarter of 2011, most of the employees of Triple Lady's Agency, Inc. were transferred to AWL Transport, Inc. Tr. 8-9. Based on an audit, Appellee determined that AWL Transport, Inc. was the successor in interest of Triple Lady's Agency, Inc. by operation of law, and thus, inherited Triple Lady's Agency, Inc.'s compensation rates. Tr. 6-7.

R.C. 4141.09 mandates that every employer in the state make contributions to the unemployment compensation fund. Furthermore, the Ohio Department of Job and Family Services must determine each employer's contribution or experience rate. There are three methods of acquiring status as a successor in interest. Two of those methods require both the predecessor employer and acquiring employer to submit an application for successor in interest status. The remaining method, the one that is applicable to this case, is obtaining successor in interest status by operation of law. R.C. 4141.24(F); O.A.C. 4141-17-04.

The May 30, 2014 Decision states as follows, in pertinent part:

Based on the foregoing information and Audit, **AWL Transport Inc. was correctly determined to be a successor in interest by operation of law.** (Emphasis added).

Likewise, the September 17, 2014 Decision states, in relevant part:

The Directors Reconsidered Decision, mailed May 30th, 2014, is hereby modified

AWL Transport, Inc. is a successor in interest to Triple Ladies (sic) Agency, Inc. (Emphasis added). The matter is remanded to the Director to determine AWL Transport Inc.'s liability rates in accordance with this decision.

The record demonstrates that Appellee has consistently concluded, as a matter of law, that AWL Transport, Inc. is a successor in interest to Triple Lady's Agency, Inc. Moreover, this

Court concludes, as a matter of law, that there is reliable, probative and substantial evidence to support that conclusion.

Appellant did not meet its burden of proof. *Prime Kosher Foods, Inc. v. Bureau of Employment Services*, 35 Ohio App. 3d 121 (1987). The evidence demonstrates that Triple Lady's Agency Inc. and AWL Transport, Inc. were under the common management and control of Jerry Carlton, Linda Carlton, Heather Carlton and Patrick Fojas. All four of these individuals transferred to AWL Transport Inc. in the first quarter of 2011 in positions of ownership, management, and/or control. A Bill of Sale executed on July 22, 2010 establishes that Triple Lady's Agency, Inc. sold at least 44 vehicles to AWL Transport, Inc. Additionally, the Wage Record Reports confirm that 78 of 84 employees, or 92.85% of the workforce, transferred from Triple Lady's Agency, Inc. to AWL Transport, Inc. between the fourth quarter 2010 and first quarter 2011. Moreover, the terms and/or mandates of a loan agreement entered into voluntarily between the USDA and AWL Transport Inc. are not relevant to this case.

Accordingly, the evidence demonstrates that the transfer resulted in Appellant becoming a successor in interest *by operation of law*. R.C. 4141.24(F); O.A.C. 4141-17-04. In light of the fact that Appellant became a successor in interest *by operation of law*, the only legal conclusion is that Appellee's decision is in accordance with law.

Based on the foregoing, Appellant's legal arguments are hereby **OVERRULED**.

DECISION

Accordingly, this Court concludes that Appellee's September 17, 2014 Decision is supported by reliable, probative and substantial evidence and is in accordance with law because the evidence demonstrates that Appellant became a successor in interest by operation of law. Thus, Appellee's September 17, 2014 Decision is hereby **AFFIRMED** based on additional reasons as set forth and supported by the evidence. Appellant's motion to extend time filed on January 13, 2015 is hereby **GRANTED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 03-04-2015

Case Title: AWL TRANSPORT INC -VS- OHIO STATE DEPARTMENT JOBS
FAMILY SERVIC

Case Number: 14CV010540

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 14CV010540

Case Style: AWL TRANSPORT INC -VS- OHIO STATE
DEPARTMENT JOBS FAMILY SERVIC

Case Terminated: 10 - Magistrate

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0105402015-01-1399980000

Document Title: 01-13-2015-MOTION TO EXTEND TIME

Disposition: MOTION GRANTED