

IN THE COURT OF COMMON PLEAS
RICHLAND COUNTY, OHIO
CLERK OF COURTS
FILED

SUSAN KUBU,

2015 APR 15 A 10:22

Plaintiff-Appellant,

LINDA H. FRARY
CLERK OF COURTS

CASE NO. 14 CV 0709 R

v.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES,

Decision on Administrative
Appeal

Defendant-Appellee.

This administrative case was brought before the court by Ms. Kubu's appeal from the decisions of the Unemployment Compensation Review Commission (the Commission) finding that Ms. Kubu had fraudulently misrepresented her income with the object of obtaining benefits to which she was not entitled and ordering Ms. Kubu to repay the amount of unemployment benefits to which she was not entitled from September 2009 through October 2011 in the sum of \$20,790.00.

This case concerns Ms. Kubu's claims for unemployment compensation following her layoff from Power Flo Technologies in 2009. On June 11, 2012, the Director of the Department of Job and Family Services (ODJFS) issued four decisions (Determination Numbers 224545318-2 (June 5, 2009—January 23, 2010), 224545569-2 (January 30, 2010—August 14, 2010), 224551275-2 (September 25, 2010—January 29, 2011), and 224546082-2 (February 5, 2011—October 1, 2011)) disallowing Ms. Kubu's requested unemployment benefits because she had unreported earnings from North Central State College and withheld this information with the intent of obtaining or extending benefits to which she was not entitled.

Journalized on the court's
docket on 4-16-15

W. Miller
Deputy Clerk

After Ms. Kubu's appeal and a transfer of jurisdiction from ODJFS to the Unemployment Compensation Review Commission, a consolidated hearing was held on all four appeals on August 20, 2012. The hearing officer issued a decision on each of the four appeals finding that Ms. Kubu "made fraudulent misrepresentations with the object of obtaining benefits to which the claimant was not entitled" and ordering Ms. Kubu to repay those benefits to ODJFS. The Commission did not make a specific finding regarding Ms. Kubu's intent to defraud with the object of obtaining benefits to which she was not entitled. Instead, the Commission found that she knew or should have known she was making fraudulent misrepresentations, relying on *Barilla v. Ohio Dept. of Job & Family Serv.*, 9th Dist. Lorain No. 02CA008012, 2002-Ohio-5425, ¶ 34-37.

Ms. Kubu appealed this decision to this Court on October 26, 2012 in case number 12-CV- 1330. This Court reviewed the factual record, the arguments of the parties, and the relevant Ohio law in considering this appeal and issued a decision on March 31, 2014, returning the case to the Unemployment Compensation Review Commission for a specific factual finding on whether Ms. Kubu made the misrepresentations with the "object of obtaining benefits to which she was not entitled."

On May 2, 2014, a hearing was held by the Unemployment Compensation Review Commission with Ms. Kubu testifying on her own behalf and Ms. Renee Resendez testifying for the Ohio Department of Job and Family Services. A new opinion was issued by the Unemployment Compensation Review Commission on June 4, 2014. The Commission found that the Ms. Kubu intentionally filed the claims on appeal with the intent to collect benefits. She derived a system of averaging her wages in order to

keep her claims open during times in which she was not entitled to benefits so that she could continue to collect and extend those benefits.

This Court has reviewed the submitted briefs in this matter, the case file and all of the relevant law in this matter and has come to the following conclusions.

Factual Findings of the Commission:

The Commission made the following findings of fact after reviewing the evidence and the testimony in this case:

1. Ms. Kubu grossly underreported her earnings to the Ohio Department of Job and Family Services for the weeks ending September 5, 2009 and September 26, 2009; the weeks ending October 3, 2009 through December 12, 2009; the weeks ending January 9, 2010 through January 23, 2010; the weeks ending January 30, 2010 through March 20, 2010; the weeks ending April 3, 2010 through June 12, 2010; the weeks ending June 26, 2010 through August 14, 2010; the weeks ending September 25, 2010 through December 4, 2010; the weeks ending January 8, 2011 through January 29, 2010; the weeks ending February 5, 2011 through March 19, 2011; the weeks ending April 2, 2011 through June 11, 2011; and the weeks ending June 25, 2011 through October 1, 2011.
2. Ms. Kubu intentionally filed the claims on appeal. She did so with the intent to collect benefits. She admitted that she used the particular method that she used for her claims in order to continue to keep her claim open. She intended to receive additional tiers of benefits. She admitted that she wished to extend the period to collect and the amount of benefits she could receive.

3. Ms. Kubu created a formula to average her wages. She did not report the actual wages that she earned in the weeks for claims for which she filed. The average was not based upon the hours she actually worked. It was based upon a formula which took into account past part-time wages and possible future lack of wages.
4. When Ms. Kubu filed the claims in question she was specifically asked if she worked in the week. She was also asked the amount of wages she actually earned. She was not asked to average and/or to estimate the wages she earned.
5. Ms. Kubu should have been able to understand these instructions as she has a post-graduate degree. She is also an instructor at a local college.

Analysis:

Venue.

Ohio Revised Code § 4141.282(B) places venue in the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed. Ms. Kubu is a resident of Ashland County and appears to have been a resident of Ashland County throughout the course of the events involved in this case. Power Flo, or Carter Machine Co. Inc, the business that Ms. Kubu was laid off from and which is the basis for her unemployment claim, is located in Crawford County. Only NCSC is located within Richland County. The Court is not convinced that this establishes venue with the Richland County Court of Common Pleas.

Fraudulent Misrepresentation

Ohio Rev. Code § 4141.35(A) provides for the cancellation of benefits, among other penalties, for a claimant's fraudulent misrepresentation with the object of obtaining benefits to which the applicant or recipient was not entitled.

This Court may not disturb the Commission's decision below unless the Court finds it to be unlawful, unreasonable, or against the manifest weight of the evidence.¹ Ohio Rev. Code § 4141.35(A) requires intent to be either found or inferred. Ms. Kubu's arguments are all based on the factual findings of the Commission and she cites to no statutory or case law for this Court to consider, therefore, the issue before this Court is that of the manifest weight of the evidence. Judgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed as being against the manifest weight of the evidence.² The Court may not make factual findings or determine witness credibility.³ The Court must defer to the commission's findings of fact.⁴

Fraudulent misrepresentation is a statement that an unemployment compensation applicant knows to be false.⁵ The intent to commit fraud may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances.⁶ Whether an individual engaged in fraudulent misrepresentation is a factual finding.⁷ Therefore, this Court may not disturb that finding if it is based on some competent, credible evidence.⁸

The Hearing Officer specifically found that Ms. Kubu made fraudulent misrepresentations in this case with the intent to collect benefits to which she was not

¹ Ohio Rev. Code § 4141.282 (H).

² *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

³ *Irvine v. Unemp. Comp. Bd. Of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

⁴ *McGee v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 09AP-680, 2010-Ohio-673, ¶ 11. See also, *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468 (1982).

⁵ *Barilla v. Ohio Dept. of Job & Family Servs.*, 9th Dist. Lorain No. 02CA008012, 2002 Ohio 5425, ¶ 36; *Johnson v. Ohio Bur. of Emp. Servs.*, 8th Dist. Franklin No. 73591, 1998 Ohio App. LEXIS 2177 (May 14, 1998); *Ridel v. Bd. of Review*, 7th Dist. Mahoning No. 79 C.A. 72, 1980 Ohio App. LEXIS 14014 (May 19, 1980).

⁶ *Salyers v. Director, Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 12AP-576, 2013 Ohio App. LEXIS 1140, citing *Johnson*, supra at *11.

⁷ *Riley v. Ohio Bur. of Emp. Servs.*, 82 Ohio App.3d 137, 140, 611 N.E.2d 485 (3d Dist.1992).

⁸ *Id.*

entitled. The decision lays out specific facts and reasons in support of this finding. Ms. Kubu intentionally filed the claims in question and she intentionally created a system of “averaging” her wages in order to keep her claim open so that she could continue to collect benefits and move through tiers which extended her benefits, even when she was no longer eligible for benefits.

The findings of the Commission are not unlawful or unreasonable. Nor were the findings against the manifest weight of the evidence. There was some competent and credible evidence going to all essential elements, including the intent to commit fraud in this case, and, therefore, this Court will not disturb the factual findings of the Commission.

Judgment Entry

It is therefore ordered that:

1. The June 4, 2014 decisions of the Commission are hereby affirmed.
2. Costs are taxed to appellant;
3. The clerk shall serve copies of this order on Attorneys John A. Boyd and Laurence R. Snyder telling them the date it was entered on the court’s journal.



Judge Brent N. Robinson