

FILED  
COURT OF COMMON PLEAS

JUN 05 2015

LINDA K. FANKHAUSER, CLERK,  
PORTAGE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS  
PORTAGE COUNTY, OHIO

THE CARTER-JONES LUMBER CO.,	)	CASE NO. 2014 CV 129
	)	
Appellant,	)	JUDGE LAURIE J. PITTMAN
	)	
--vs--	)	ORDER AND JOURNAL ENTRY
	)	
DAVID L. BONIN, ET AL	)	
	)	
Appellees	)	
	)	

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This appeal arises as a result of an Ohio Unemployment Compensation Review Commission (“Review Commission”), decision ultimately granting unemployment compensation benefits to Appellee David L. Bonin (“Claimant” or “Bonin”), a former employee of Appellant, The Carter-Jones Co., Inc. (“Employer”).

**A. STATEMENT OF THE FACTS**

Claimant worked as a regional vice president for the Employer from 1988 until he gave notice on 8/27/12 that he would leave the company. On 8/21/12 Jeff Donley, Vice President for Employer, had asked Claimant to meet him at a local restaurant. At that meeting Donley told Claimant that his position was being eliminated and that he (Donley) would create a new position for Claimant. Donley gave several names for the position, but no title was made clear to claimant during the meeting.

Claimant’s base salary would remain the same with the new position, but no bonus plan was available at the time of the meeting nor was any job description discussed. Claimant did not accept the position at that time and informed Donley that he wanted to take a few days off to consider his options. During that time off Claimant sent Donley his letter of resignation.

## **B. STATEMENT OF THE CASE**

On 10/7/13, Appellee Director ODJFS issued an initial determination, holding that Claimant was totally unemployed due to lack of work and allowed his application for benefits. Employer timely appealed and by redetermination decision issued 11/5/13 the Director affirmed the decision in its entirety.

Employer appealed the redetermination decision and on 11/5/13 the Director transferred jurisdiction to the Review Commission pursuant to R.C. 4141.281 (B). On 12/4/13 Hearing Officer Robert S. Bush conducted a telephonic evidentiary hearing and by decision mailed 12/5/13 affirmed the Director's redetermination decision in its entirety.

On 12/12/13 Employer timely requested further review by the Review Commission and its request was allowed. On 1/30/14 the Review Commission affirmed the Hearing Officer's decision and the instant appeal follows.

## **C. STANDARD OF REVIEW**

In the case sub judice this Court adheres to the standard of review set forth in R.C. 4141.282 (H) which provides in pertinent part:

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.

## **D. DISCUSSION AND LAW**

This court's review of the underlying merit decision entered 12/5/13 demonstrates that its conclusions are capably supported by the record. Said decision holds in pertinent part:

The employer could not give the claimant all the specifics as it was a new position and not everything regarding the new position had been worked out. At the time of the offer the claimant was still employed. Therefore he did not have to accept the offer. Secondly, even if the offer had been made soon after his last day of work, the Hearing Officer would not have required him to accept the new position as not enough time would have

transpired to require the claimant to accept a position that had not been finalized by the employer.

(Reasoning, p.2, para.2)

Furthermore:

The employer referred to various documents that might have help (*sic*) their case put (*sic*) never submitted any supporting documentation. Instead of having Jeff Donley testify, the employer relied on the hearsay testimony of Jeff Seder. Since the employer provided no supporting documentation and did not provide a witness with firsthand knowledge despite the fact that the witness is still in their employ, the Hearing Officer concludes that the evidence and testimony would not have been in the employer's best interest. Therefore, the claimant's sworn testimony is held to be more credible.

(Reasoning p.2, para.3)

Following the standard of review cited supra, including the tenet that "all reasonable presumptions must be made in favor of the Review Commission's ruling and findings of fact," this court determines that the decision below is fully supported by the record and concludes that Appellant's appeal is not well taken.

#### E. CONCLUSION

IT IS THEREFORE ORDERED that the appeal of The Carter-Jones Lumber Co. be and hereby is denied and the decision of the Unemployment Compensation Review Commission is affirmed.

Cost to be taxed to Appellant.

The clerk is instructed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ.R.58(B).

SO ORDERED.



LAURIE J. PITTMAN, JUDGE  
COURT OF COMMON PLEAS

Cc: Susan M Sheffield, Esq.  
Cc: Todd A Harpst, Esq.  
Cc: Mr. David L Bonin

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