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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

KASSONDRRA L. CYRUS  
Plaintiff

DIRECTOR, OHIO DEPARTMENT OF JOB AND  
FAMILY, ET AL  
Defendant

Case No: CV-15-842726

Judge: PETER J CORRIGAN

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THIS IS AN ADMINISTRATIVE APPEAL FROM THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION ("REVIEW COMMISSION") PURSUANT TO R.C. 4141.282. IN THREE SEPARATE DECISIONS, THE REVIEW COMMISSION FOUND THAT CLAIMANT-APPELLANT KASSONDRRA CYRUS WITHHELD INFORMATION ABOUT HER EARNINGS WITH THE INTENT OF OBTAINING UNEMPLOYMENT BENEFITS TO WHICH SHE WAS NOT ENTITLED. AS A RESULT, APPELLANT'S BENEFIT RIGHTS WERE CANCELED AND SHE WAS HELD TO HAVE BEEN OVERPAID BENEFITS FOR THIRTY ONE WEEKS IN THE PERIOD COMMENCING WITH THE WEEK OF APRIL 6, 2013 AND ENDING WITH THE WEEK OF NOVEMBER 2, 2013; THE WEEK OF NOVEMBER 23, 2013; AND FIVE WEEKS IN THE PERIOD COMMENCING THE WEEK OF NOVEMBER 30, 2013 AND ENDING THE WEEK OF DECEMBER 28, 2013. FOR THE FOLLOWING REASONS, THIS COURT FINDS THAT THE DECISIONS ARE NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. ACCORDINGLY, THE DECISIONS OF THE REVIEW COMMISSION ARE AFFIRMED.

APPELLANT DOES NOT DENY SHE UNDERREPORTED HER EARNINGS, BUT SEEKS TO OVERTURN THE FINDING THAT SHE FRAUDULENTLY MISREPRESENTED HER EARNINGS TO AVOID THE PENALTIES REQUIRED BY R.C. 4141.35.

APPELLANT CLAIMS THAT SHE DID NOT KNOWINGLY UNDERREPORT HER EARNINGS BECAUSE SHE ASSUMED HER EMPLOYERS REPORTED HER PAYCHECK EARNINGS, THEREFORE, SHE MERELY WAS REQUIRED TO REPORT HER CASH TIPS WHICH WERE NOT CONTAINED IN PAYCHECK EARNINGS. APPELLANT ARGUES THAT THE RECORD DOES NOT SUPPORT A "KNOWING" ACT WITH PURPOSE TO OBTAIN BENEFITS TO WHICH SHE WAS NOT ENTITLED. THE RECORD INDICATES APPELLANT ADMITTED THAT SHE FAILED TO READ OR FOLLOW THE INSTRUCTIONS FOR FILING HER CLAIMS IGNORING "POP UPS" IN THE ONLINE CLAIM PROCESS.

THERE IS NOTHING IN THE RECORD TO SUPPORT THAT THE HEARING OFFICER MISAPPLIED THE LAW OR USED AN INCORRECT STANDARD. THEREFORE, THE ISSUE REMAINING FOR THIS COURT WOULD BE WHETHER THE RECORD REFLECTS EVIDENCE PROBATIVE TO INDICATE APPELLANT'S INTENT WHEN FILING HER CLAIMS. INTENT IS LARGELY PROVED BY THE ACTS OF THE APPELLANT WHICH MAY AFFORD CIRCUMSTANTIAL EVIDENCE OF HER INTENT. NICHOLS V. OHIO BUREAU OF EMPLOYMENT SERVICES, 7TH DIST. NO. 87-J-21, 1989 OHIO APP. LEXIS 914 (MAR.14, 1989). APPELLANT'S TESTIMONY OF HER INTENT IS ALSO PROBATIVE. SHE TESTIFIED SHE DID NOT INTEND TO MISREPRESENT BY ASSUMING HER EMPLOYER REPORTED THE EARNINGS SHE DID NOT REPORT. THEREFORE, HER UNDERREPORTING WAS IN FACT INTENTIONAL, BUT DID SHE UNDER REPORT WITH THE OBJECT TO OBTAIN BENEFITS TO WHICH SHE WAS NOT ENTITLED?

THE RECORD INDICATES RELIABLE, PROBATIVE EVIDENCE THAT THE "POP UPS" PROVIDED THE INFORMATION FOR HER TO CORRECTLY REPORT EARNINGS, AND THE FACT THAT APPELLANT KNEW THE MAXIMUM WEEKLY BENEFIT WOULD BE REDUCED BASED ON HER WEEKLY EARNINGS, ESTABLISH CIRCUMSTANCES THAT HER INTENT WAS TO MISREPRESENT AND OBTAIN ADDITIONAL BENEFITS. APPELLANT'S EXCUSE SHE DID NOT READ THE "POP UPS" CREATES A CREDIBILITY DETERMINATION AND THE RECORD SUPPORTS THE HEARING OFFICER'S

- 96

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OBVIOUS CONCLUSION THAT HER EXPLANATION WAS UNREASONABLE. PURSUANT TO R.C. 4141.281, WHETHER A PARTY HAS ENGAGED IN A FRAUDULENT ACT IS A FACTUAL DETERMINATION AND THEREFORE, IF THERE IS SOME CREDIBLE PROOF UPON WHICH THE COMMISSION'S DECISION WAS BASED, THAT FINDING MAY NOT BE DISTURBED. JOHNSON V. ADMINISTRATOR, OHIO BUREAU OF EMPLOYMENT SERVICES, 8TH DIST. NO. 73591, 1998 OHIO APP. LEXIS 2177 (MAY 14, 1998). THIS COURT CANNOT DE NOVO REPLACE JUDGMENTS OF WITNESSES CREDIBILITY MADE BY THE TRIER OF FACT PRESENT FOR THE TESTIMONY.

FOR THE FOREGOING REASONS, THE DECISIONS OF THE REVIEW COMMISSION ARE NOT UNLAWFUL, UNREASONABLE OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. THEREFORE, THE DECISIONS ARE AFFIRMED. COURT COSTS TO BE PAID BY APPELLANT.

COURT COST ASSESSED AS DIRECTED.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

07/23/2015

- 96  
07/21/2015

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