

DANIEL M. HERRIGAN
2015 AUG 25 PM 3: 28
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CYNTHIA D. BLAKE)	CASE NO.: CV2014-11-5227
)	
Appellant,)	
)	JUDGE PAUL J. GALLAGHER
vs.)	
)	
ADMINISTRATOR OF THE UNEMPLOYMENT)	
REVIEW COMMISSION, <i>et al.</i> ,)	
)	<u>JUDGMENT ENTRY</u>
Appellees.)	

This matter is before the Court as an Administrative Appeal of two decisions of the Unemployment Compensation Review Commission.

Ms. Blake appealed two Ohio Department of Job & Family Services Director Decisions (June 30, 2014 and August 6, 2014) to the Unemployment Compensation Review Commission (UCRC). The UCRC conducted separate hearings. The UCRC's Hearing Officers set forth findings of fact and conclusions of law in separate written decisions. The UCRC's Hearing Officers affirmed both of the Directors Decisions for the same reasoning offered by the Director: Ms. Blake cannot maintain she was 'unable to obtain suitable work' (as required by R.C. 4141.29(A)(5)) because she did not accept all available employment.

Ms. Blake filed a combined appeal of each UCRC decision in this Court. The UCRC timely filed the certified Record of Proceedings. The matter was dismissed administratively for lack of prosecution. Ms. Blake moved to vacate the dismissal entry. That motion was unopposed and granted; the parties were granted an extension of time and leave to file appellate briefs. Upon the completion of briefing, Ms. Blake filed a Motion to Supplement the Record.

Co-Appellee, employer Akron Beacon Journal Publishing Co., Inc. (“ABJ”), objected to the motion as untimely and out of rule. The Motion to Supplement the Record is untimely and out of rule and is therefore overruled.

The matter is ripe for review and deemed submitted upon the certified record; Ms. Blake’s Complaint for Appeal; and, the Appellate Briefs of ODJFS and Ms. Blake.

STANDARD OF REVIEW

An unsatisfied claimant may appeal the commission’s decision to the trial court. R.C. 4141.282(A). The trial court shall reverse, vacate, modify or remand the commission’s decision if it finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). If the court does not find that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, then the court shall affirm the decision. *Id.*

Bulatko v. Director, Ohio Dept. of Job & Family Services, 7th Dist. App. No. 07MA124, 2008 Ohio 1061, ¶33 (Mahoning Co. March 6, 2008).

Every reasonable presumption must be made in favor of the decision and the findings of facts of the UCRC. *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008 Ohio 301, at ¶7, 891 N.E.2d 348, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). The resolution of factual questions is chiefly within the UCRC’s scope of review. *Id.* at ¶8, citing *Tsangas, Plakas, & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995). The Court’s role is to determine whether the decision of the UCRC is supported by evidence in the certified record. *Id.* (citations omitted). If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the UCRC. *Id.* (citations omitted). The fact that reasonable minds might reach different conclusions is not a basis for reversal of the UCRC’s decision. *Id.*, citing *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

FACTUAL BACKGROUND

Ms. Blake received unemployment compensation benefits because she was laid off from her full time job at PNC Bank. Ms. Blake also maintains part-time employment with ABJ as a “mailer extra.” The part-time employment does not include regularly scheduled weekly work. Part-time mailer extras call in each week and provide their availability for work to the union steward. They may also receive calls from the union steward inquiring about availability to fill a shift when or if someone calls off. Mailer extras have the right to refuse job assignments under the terms of their labor agreement and when that occurs the next available person in seniority is

given the open shift.¹ Ms. Blake has been with ABJ since 1995; she has seniority among the part-time mailer extras and thus her pick of any available shift.

Ms. Blake had to qualify for each successive week of unemployment compensation benefits and one of the statutory prerequisites for eligibility for benefits is that the claimant be “unable to obtain suitable work.” *See* R.C. 4141.29(A)(5).

No individual is entitled to benefits for any week unless the individual is unable to obtain suitable work. R.C. 4141.29(A)(5). “An individual who is provided temporary work assignments by the individual's employer under agreed terms and conditions of employment, and who is required pursuant to those terms and conditions to inquire with the individual's employer for available work assignments upon the conclusion of each work assignment, is not considered unable to obtain suitable employment if suitable work assignments are available with the employer but the individual fails to contact the employer to inquire about work assignments.” *Id.*

The Director of ODJFS found Ms. Blake could not establish that she was “unable to obtain suitable work” because she did not accept all available employment with ABJ.

DECISION/DOCKET NO: H-2014-014133

Ms. Blake was initially found to be eligible for unemployment benefits. However, in order to qualify for each successive week of unemployment compensation benefits, Ms. Blake was required to establish the statutory prerequisites to receive benefits. One of those statutory requirements is that the benefits claimant be “unable to obtain suitable work.” *See* R.C. 4141.29(A)(5). On June 30, 2014, the Director of ODJFS determined Ms. Blake “cannot maintain [she was] unable to obtain suitable work” under R.C. 4141.29(A)(5), because she did not accept all available employment during the weeks of May 31, 2014; June 7, 2014; June 14, 2014; and June 21, 2014. The Director found Ms. Blake ineligible for unemployment compensation benefits during each week and ordered Ms. Blake to immediately repay the overpaid benefits.

Ms. Blake appealed the decision on July 3, 2014 and a Redetermination Decision issued which affirmed the decision. Ms. Blake further appealed and jurisdiction was transferred to the UCRC. In the process, Ms. Blake and ABJ submitted answers to Fact Finding Questions and

¹ Also, the ABJ labor agreement only requires a part-time mailer extra work one (1) shift each six (6) months in order to maintain active status as a part-time employee.

other documentary evidence. On July 29, 2014, Ms. Blake sent correspondence to the ODJFS Director Bureau alleging ABJ submitted falsified documents and she supplemented the record with an ABJ-Union Agreement.

A hearing was conducted by telephone on August 12, 2014 with Hearing Officer Brady. Ms. Blake testified on own her behalf and Lisa Bookwalter, Employee Relations Manager, testified as a representative of ABJ. Ms. Bookwalter testified from a combination of personal knowledge and company records kept in the ordinary course of business. Tr. 7. Ms. Blake again challenged the veracity of the documents submitted by ABJ. Ms. Blake also had the opportunity to cross-examine Ms. Bookwalter's testimony about the documents offered on behalf of ABJ.

The Hearing Officer referred to the challenged documents and relied upon them in making her decision. The Hearing Officer made the following findings of fact:

On or about April 4, 2014, the claimant asked the union steward not to place her on the weekly schedule until further notice because she was collecting unemployment and seeking full-time work.

The employer had the following shifts available for the claimant to work: May 31, 2014; June 2, 2014, June 3, 2014; June 5, 2014, June 10, 2014; June 11, 2014; June 13, 2014; June 18, 2014, June 19, 2014; and June 20, 2014. The shifts ranged from morning to afternoon shifts.

Claimant was scheduled to work Thursday August 14. This was her first time being scheduled since her last day of work on May 23, 2014.

The Hearing Officer set forth the applicable law, R.C. 4141.29(A)(5), and her reasoning in applying the law:

The facts establish that from May 31, 2014 through June 20, 2014 there were at least 12 shifts available to the claimant. The facts establish and by claimants own admission she asked not to be placed on the weekly schedule. * * * [B]ased on the evidence presented...the claimant cannot maintain that she was unable to obtain suitable work as she did not accept all available employment. Therefore, claimant has not met the requirements of Section 4141.29(A)(5) of the Revised Code. * * * Claimant is ineligible from May 25, 2014 through August 16, 2014.

The Hearing Officer further concluded that Ms. Blake had been overpaid benefits for which she is not entitled but modified the time frames. Ms. Blake has not challenged the modification or the portion of the decision that requires her to repay overpaid benefits to ODJFS.

Ms. Blake's Complaint for Appeal and her Appellate Brief set forth several issues and facts not in the certified record; the Court has necessarily disregarded much of the outside of the record issues and allegations. Additionally, much of the law Ms. Blake refers to in her Brief

concerns a separate statutory consideration (R.C. 4141.29(D) and its subparts), not the statutory requirement at issue in these proceedings which is R.C. 4141.29(A), utilized to determine eligibility for unemployment compensation benefits.

First, Ms. Blake asserts the Hearing Officer had the responsibility to decide the issue of ‘suitability’ of the work. The suitability of the work available at ABJ was irrelevant because (a) the work involves the same job Ms. Blake has done at ABJ for twenty years, and (b) Ms. Blake admitted the work was suitable.

Next, Ms. Blake states the ABJ submitted documents created with unverified union documents and not company records. Ms. Bookwalter told the Hearing Officer the documents at issue (weekly schedules) are company records kept in the ordinary course of business. Tr. 7. Ms. Bookwalter testified about the notations on the weekly schedules and how the notations supported ABJ’s position that there were various shifts available for Ms. Blake to work at ABJ during the time frames at issue. Ms. Blake was given an opportunity to cross-examine Ms. Bookwalter concerning her interpretation of the notations on the weekly schedules. The Hearing Officer accepted the documents and relied upon them in determining the time periods where shifts at ABJ were available to Ms. Blake.

The hearing provided for by R.C. 4141.281 is highly informal. *Fredon Corp. v. Zelenak*, 124 Ohio App.3d 103, 111, 705 N.E.2d 703 (1997). For example, “[h]earing officers are not bound by common law or statutory rules of evidence or by technical or informal rules of procedure.” R.C. 4141.281(C)(2). The hearing officer has broad discretion in accepting or rejecting evidence and in conducting the hearing in general. *Owens, Admr., Ohio Bur. of Emp. Svcs.*, 135 Ohio App.3d 217, 220, 733 N.E.2d 628 (1999); *Nordonia Hills City School Dist. Bd. of Edn. v. Unemployment Comp. Bd. of Rev.*, 11 Ohio App.3d 189, 1990, 463 N.E.2d 1276 (1983). The object of the hearing is to ascertain the facts that may or may not entitle the claimant to unemployment benefits. *Owens* at 220, citing *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 43, 430 N.E.2d 468 (1982); *Nordonia Hills* at 190. The hearing officer’s discretion is tempered only to the extent that he must afford each party an opportunity to present evidence that provides insight into the very subject of the dispute. *Owens* at 220. However, a hearing officer’s failure to allow a party to present witnesses or otherwise develop their case is ground for reversing the decision of the review commission. *Id.* at 220-221.

Bulatko v. Director, Ohio Dept. of Job & Family Services, 7th Dist. App. No. 07MA124, 2008 Ohio 1061, ¶11 (Mahoning Co. March 6, 2008).

The weekly schedules provided insight into the very subject of the dispute – whether work was available to Ms. Blake during each week at issue. The Hearing Officer did not impede Ms. Blake’s ability to challenge the evidence, cross-examine Ms. Bookwalter, or develop her arguments for eligibility for unemployment compensation benefits. The Court cannot conclude the Hearing Officer erred in accepting and relying upon the documentary evidence offered by ABJ.

Finally, Ms. Blake states the available shifts at the ABJ were not communicated to her. As previously described, Ms. Blake is required to contact the union steward each week to report availability for work and to potentially schedule an available shift. Ms. Blake testified no one ever spoke with her about the shifts ABJ said were available and not taken by Ms. Blake. There were conflicts in the evidence concerning how and when availability was communicated. The Hearing Officer in the first instance resolves the conflicts in the evidence and determines the credibility of the witnesses. The Hearing Officer found several shifts were available at ABJ despite the conflicting evidence about how availability of shifts was communicated. More importantly, the Hearing Officer did not rely upon hearsay to decide the ultimate issue because she relied on Ms. Blake’s own admission that she told the union steward not to schedule her because she was seeking full-time employment.

A claimant bears the burden of proving her entitlement to unemployment compensation benefits. *Kosky v. Am. Gen. Corp.*, 7th Dist. App. No. 03-BE-31, 2004 Ohio 1541, ¶19. The administrative agency and the court have a duty to construe the Unemployment Compensation Act liberally for the claimant’s benefits; however, neither the agency nor the court has a duty to construe the facts more favorably to either party. *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006 Ohio 2313, ¶21, 833 N.E.2d 335.

Bulatko, supra, ¶31.

Courts reviewing appellate issues are not permitted to make factual findings or determine credibility of witnesses, but reviewing courts do have a duty to determine whether the decision is supported by evidence in the record. *Tzangas, Plakas & Manos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995), citing *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17-18. The fact that reasonable minds might reach different conclusions based on the evidence is not a basis for reversal. *Id.* at 697.

The Court reviewed the entirety of the evidence in the certified record and finds the Hearing Officer's decision is supported by the evidence. The decision is not unlawful, unreasonable, or against the manifest weight of the evidence and therefore it is affirmed.

DECISION/DOCKET NO. H-2014-015757

Ms. Blake was initially found to be eligible for unemployment benefits. However, in order to qualify for each successive week of unemployment compensation benefits, Ms. Blake was required to establish the statutory prerequisites to receive benefits. One of those statutory requirements is that the benefits claimant be "unable to obtain suitable work." *See* R.C. 4141.29(A)(5). In August 2014, the Director of ODJFS determined Ms. Blake "accepted an offer of work to start on 07/20/2014. After accepting the work, she did not report for work..." The Director held Ms. Blake "cannot maintain that she has accepted all available employment during the identified period" because she has not met the requirements of R.C. 4141.29(A)(5). The Director found Ms. Blake was not eligible for benefits for the week of July 20, 2014 through July 26, 2014.

Ms. Blake appealed the decision and it was affirmed in a Redetermination Decision issued on August 26, 2014. Ms. Blake further appealed and jurisdiction was transferred to the UCRC.

A hearing was conducted on September 10, 2014 with Hearing Officer Gates. Ms. Blake testified on own her behalf, represented by Attorney Edward Gilbert. Lisa Bookwalter, Employee Relations Manager, testified as a representative of ABJ. The Hearing Officer clarified for the parties he was only reviewing a single week's eligibility determination which was July 20, 2014 through July 26, 2014.

Ms. Bookwalter testified that Ms. Blake did not work for ABJ during the week at issue. She stated Ms. Blake was offered work by the union steward, and from her understanding, Ms. Blake accepted the work but then called back shortly thereafter and called off from the shift. She further testified there were other available shifts during that week that Ms. Blake could have been scheduled for; however Ms. Blake had asked the union steward not to schedule her. Attorney Gilbert cross-examined Ms. Bookwalter.

Ms. Blake testified she was not scheduled to work for ABJ during the week of July 20 through July 26, 2014. She stated she was called and asked to take a shift on July 25, 2014 and she accepted that shift. However, shortly after accepting the shift she remembered she had an

interview scheduled in the morning that conflicted with the shift so she called and cancelled the shift. The Hearing Officer asked Ms. Blake if, during the week prior to July 20, 2014, she told ABJ not to schedule her for any hours that week. Ms. Blake confirmed she told ABJ she “cannot be scheduled.” Tr. 12. Attorney Gilbert questioned Ms. Blake about the interview she had scheduled on July 25, 2014.

The Hearing Officer made the following findings of fact:

On July 24, 2014, the union steward called claimant and made claimant aware that there was work available for her on July 25, 2014. Claimant initially indicated that she would work on July 25, 2014. However, approximately ten minutes after the initial conversation with the union steward, claimant called the union steward back and informed the union steward that she would not work on July 25, 2014 because she had an interview for another job during the morning of July 25, 2014. Claimant interviewed for a full-time job with another employer on July 25, 2014.

The Hearing Officer set forth the applicable law, R.C. 4141.29(A)(5), and his reasoning in applying the law:

There was at least one shift available for claimant during the week ending July 26, 2014. Claimant informed the union steward that she was not available to work that shift. In addition, by stating on Friday of the prior week that she was “open to work” but did not want to be placed on the schedule (because she was concerned about needing to call off work), claimant placed limitations on The Beacon Journal Publishing Company’s ability to schedule her for hours during the week ending July 26, 2014. Under these circumstances, it will be held that claimant is ineligible for benefits for the period beginning on July 20, 2014, and ending on July 26, 2014, because claimant did not meet the requirement of Section 4141.29(A)(5) of the Ohio Revised Code during that period. This ruling is consistent with the ruling in the decision issued by Hearing Officer Tonya Brady in Appeals Docket No. H2012-014133. [In that decision], Hearing Officer Brady held that claimant is not eligible for benefits for the period beginning on May 25, 2014 and ending on August 16, 2014, due to the application of Section 4141.29(A)(5) of the Ohio Revised Code. The week in question [in this appeal] falls within the time period in which Hearing Officer Brady found that claimant is ineligible for benefits due to the application of Section 4141.29(A)(5) of the Ohio Revised Code.

The Hearing Officer concluded:

The claimant is not eligible for benefits for the period beginning on July 20, 2014, and ending on July 26, 2014, because the claimant did not work all available hours during that period and therefore is unable to maintain that she was unable to obtain suitable work during that week in accordance with Section 4141.29(A)(5) of the Ohio Revised Code.

The evidentiary issues raised were addressed in the previous analysis concerning Decision/Docket No: H-2014-014133. The Hearing Officer accepted and relied upon the weekly

schedule for the week ending July 26, 2015. Attorney Gilbert cross-examined Ms. Bookwalter about the hearsay evidence offered. The Court finds no error at law by the Hearing Officer relying upon the documentary evidence in the record, and considering hearsay statements because the Hearing Officer is not bound by common law or statutory rules of evidence in the administrative hearing process. R.C. 4141.281(C)(2); OAC 4146-7-02. Further, it does not appear the Hearing Officers relied solely upon hearsay in making their decisions. In both cases, the Hearing Officers found Ms. Blake's own admission that she told the union steward not to schedule her was dispositive.

Aside from challenging the evidence, Ms. Blake asserts she was meeting the requirements for this particular week by seeking full time suitable work based on her skills and education. Again, much of Ms. Blake's arguments are focused on the 'suitability' of the work available at ABJ. However, suitability of work was not at issue. Ms. Blake had a burden to show she was 'unable to obtain' such work. The Hearing Officer concluded Ms. Blake could not meet her burden to show 'unable to obtain' because Ms. Blake told the union steward not to schedule her for work.

The Court reviewed the entirety of the evidence in the certified record and finds the Hearing Officer's decision is supported by the evidence. The decision is not unlawful, unreasonable, or against the manifest weight of the evidence and therefore it is affirmed.

CONCLUSION

In order to remain eligible for unemployment compensation benefits, the recipient must prove eligibility each week by meeting all statutory requirements to receive such benefits. Under R.C. 4141.29(A)(5), the claimant must show she is 'unable to obtain suitable work.' Since Ms. Blake worked at ABJ for twenty years, she had seniority that gave her a choice of available shifts. ABJ set forth evidence that there were many available shifts but Ms. Blake told the union steward not to schedule her. Ms. Blake relies heavily upon her union agreement because that document does not require her to accept all of the available shifts with ABJ. But, the fact that she wasn't required to accept all available shifts for purposes of maintaining employment with ABJ did not relieve her of her burden of establishing her eligibility for unemployment compensation benefits. The decisions finding Ms. Blake ineligible for unemployment compensation benefits because she was unable to satisfy R.C. 4141.29(A)(5) during the weeks at issue are not unlawful, unreasonable, or against the manifest weight of the evidence.

Decision/Docket No. H-2012-014133 is AFFIRMED.

Decision/Docket No. H-2014-015757 is AFFIRMED.

This is a final and appealable Order; there is no just cause for delay.

It is so Ordered.



JUDGE PAUL J. GALLAGHER

cc: Attorney Susan M. Sheffield
Attorney Matthew R. Kissling
Cynthia Blake, *pro se*, at 928 Bisson Ave. Akron, Ohio 44307