COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

UPPER ARLINGTON CITY,

Appellant, **CASE NO. 15CVF-07-6436**

-vs- **JUDGE WOODS**

DIRECTOR, OHIO STATE DEPARTMENT OF JOB AND FAMILY SERVICES,

Appellee.

DECISION AND ENTRY
REVERSING THE DECISION OF JUNE 30, 2015
AND
ORDER OF REMAND

WOODS, JUDGE

The above-styled case is before this Court on an appeal of the Decision Disallowing Request for Review issued by the Unemployment Compensation Review Commission (Commission) that held that the Commission would not review the City of Upper Arlington's (Appellant) request for review. The Commission's Decision was mailed on June 30, 2015. In this appeal, the Appellant named only the Director of the Ohio State Department of Job and Family Services (Appellee).

Appellant filed its merit Brief on October 6, 2015 and its Reply on October 26, 2015. The Appellee filed its merit Brief on October 8, 2015. After a review of the pleadings, briefings, and the certified record, this Court **REVERES** the decision mailed on June 30, 2015 and **REMANDS** the matter for actions consistent with this Decision.

I. STATEMENT OF THE CASE:

This appeal is a result of the Commission's Decision that held that it would not reconsider the prior decision holding that the Appellant was a reimbursing employer and therefore the Commission could not charge the mutualized fund. The Decision was timely appealed by the Appellant.

II. STATEMENT OF THE FACTS:

This appeal was commenced due to a claimed error that occurred when Mr. James A. Starrett requested unemployment benefits. Mr. Starrett was provided benefits but it was later determined that he should not have received the benefits. Mr. Starrett was a retiree from the Appellant. Mr. Starrett was working for a subsequent employer when he was laid off and made his claim.

In the process of assessing Mr. Starrett's claim, the Appellee was charged with reviewing Mr. Starrett's employment history. Given the timing of his separation, the Appellee noted that Mr. Starrett worked for the Appellant during the look back period to determine benefits. The Appellee also looked at the amount of time he worked for his new employer. The Appellee determined that Mr. Starrett's qualifying work history showed 60.4688% at the Appellant's place of employment and the remaining work history with his new employer.

Furthermore, the evidence showed that the Appellant was a 'reimbursing' employer. That meant that the Appellant did not contribute to the system but was required to reimburse the system once a claim was paid. According to the Appellee, once Mr. Starrett secured payment from the system, the Appellant was responsible to reimburse 60.4688% of the payment to the Appellee.

The Appellee eventually determined that Mr. Starrett was not entitled to the benefits he was paid and that there had been an overpayment of $1,538.34 to Mr. Starrett. The Appellee however continued to seek the reimbursement from the Appellant for its share of the payment that was made in error. The Appellant lost at all levels of its administrative appeal prior to having the matter removed to the Commission.

A hearing was conducted on May 9, 2015. Mr. Brady testified at the hearing. Mr. Brady was/is an HR manager for the Appellant. Mr. Brady testified that Mr. Starrett had

started his employment in June of 1984 and he ended his employment in January of 2014. The reason for ending his employment was because Mr. Starrett retired. (Hr. Tr. P. 6) Mr. Brady acknowledged that the Appellant was the reimbursing employer in regard to unemployment compensation matters. (Hr. Tr. P. 7) At that point the Hearing Officer felt that there was nothing more to be gained by questioning Mr. Brady.

The Hearing Officer stated that:

> ". . . the issue here is that because the City of Upper Arlington is a reimbursing employer and, and not a contributing employer under, under the Ohio revised Code, I'm looking specifically at 4141.24 and 4141.125, charged can't be transferred over to mutualized account or the charged for a reimbursing employee essentially can't be touched. The only way that they can be transferred over is on appeal through a judge." (Hr. Tr. P. 7, lines 20 - 25)

The Appellant's counsel took issue with that opinion. At that point the Appellant provided a closing argument asserting that it was unfair that Appellant should be charged anything when it was the Appellee's mistake that led to the wrongful payment.

The Hearing Officer issued his Decision on May 11, 2015. The Decision contained the following language within the 'Reasoning' section:

> While the claimant's separation from employment may have been due to disqualifying conditions, City of Upper Arlington is a reimbursing employer. Therefore, the Hearing Officer has no legal authority to transfer charges to the mutualized account.

The Hearing Officer based that decision on the application of R.C. §4141.241.

At page 7 of Appellee's Brief, the following is noted:

> Therefore, even assuming that Claimant's separation may have been due to disqualifying conditions, the UCRC has no legal authority to transfer charges to the mutualized account. **This Court does**. (Emphasis added)

Appellee then concluded its Brief by claiming that the Decision mailed June 30, 2015 was lawful, reasonable and supported by the weight of the evidence.

The Appellant appealed and filed a timely request for review to the Commission. The Commission issued its June 30, 2015 Decision Disallowing Request for Review.

Appellant timely appealed that Decision to this Court.

The matter has now been fully briefed. This case is ready for review.

III. STANDARD OF REVIEW:

R.C. 4141.26(D) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission relevant to the issues now before this Court. R.C. 4141.26(D) provides, in part, the following:

> After an appeal has been filed in the court, the commission, by petition, may be made a party to such appeal. Such appeal shall be given precedence over other civil cases. 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. The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. An appeal may be taken from the decision of the court of common pleas of Franklin county.

This case turns heavily on the issue of statutory construction. Please note the following relevant case law:

> Moreover, in Lorain City Bd. of Ed. v. State Emp. Relations Bd. (1988), 40 Ohio St.3d 257, 533 N.E.2d 264, we held that courts must accord due deference to the State Employment Relations Board's interpretation of R.C. Chapter 4117, since the General Assembly designated it to be the proper forum to resolve public employment labor disputes. Similarly, we hold in the cause sub judice that courts must accord due deference to the State Board of Psychology in its interpretation of R.C. Chapter 4732 and the relevant provisions of the Ohio Administrative Code, given that the General Assembly has deemed it to be the proper forum to determine licensure matters concerning psychologists. *Leon v. Ohio Bd. of Psychology*, 63 Ohio St.3d 683, 687, 590 N.E.2d 1223 (Ohio 1992)

Said line of authority was followed in *Salem v. Koncelik*, 2005-Ohio-5537, 164 Ohio App.3d 597, 843 N.E.2d 799 (Ohio App. 10 Dist. 2005). Please note the following langue from *Salem*:

> We are cognizant that courts must give due deference to an administrative agency's interpretation of its own administrative rules. See Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio (1989), 46 Ohio St.3d 147, 545 N.E.2d 1260. The General Assembly created these administrative bodies to facilitate certain areas of the law by placing the administration of those areas before boards or commissions composed of individuals

> who possess special expertise. See Pons v. Ohio State Med. Bd. (1993), 66 Ohio St.3d 619, 614 N.E.2d 748, paragraph one of the syllabus. Thus, the Ohio Supreme Court has held that unless the construction is **unreasonable or repugnant** to that statute or rule, this court should follow the construction given to it by the agency. Leon v. Ohio Bd. of Psychology (1992), 63 Ohio St.3d 683, 590 N.E.2d 1223. (Emphasis added)

From within this framework, this Court will render its decision.

IV. ANALYSIS:

There is not much in dispute in this case. The Appellant is a reimbursing employer. The Appellee and the Commission relied upon R.C. §4141.241to show that because the Appellant is a reimbursing employer, there is no authority to charge a claim to the mutualized account. Please note the following from R.C. §4141.241(B):

> (B) Except as provided in division (I) of section 4141.29 of the Revised Code, benefits based on service with a nonprofit organization granted a reimbursing status under this section shall be payable in the same amount, on the same terms, and subject to the same conditions, as benefits payable on the basis of other service subject to this chapter. Payments in lieu of contributions shall be made in accordance with this division and division (D) of section 4141.24 of the Revised Code.

The Appellee asserted that the code then clearly indicated that the money cannot be charged to the mutualized fund in R.C. §4141.241(B)(1) as follows:

> (b) In the computation of the amount of benefits to be charged to employers liable for payments in lieu of contributions, all benefits attributable to service described in division (B)(1)(a) of this section shall be computed and charged to such organization as described in division (D) of section 4141.24 of the Revised Code, and, except as provided in division (D)(2) of section 4141.24 of the Revised Code, **no portion of the amount may be charged to the mutualized account** established by division (B) of section 4141.25 of the Revised Code. (Emphasis added)

Hence, it is the position of the Appellee that the loss is the Appellant's to repay.

However, another part of the code provides the Appellant with hope. The following language is contained within R.C. §4141.24(D)(2):

> (2) Notwithstanding division (D)(1) of this section, charges to the account of any employer, including any reimbursing employer, **shall** be charged to the mutualized account **if it finally is determined by a court on appeal** that the employer's account is not chargeable for the benefits. (Emphasis added)

Therefore it appears that the Appellant was required to go through a potentially pointless agency process so that it could finally file its appeal with this Court and ask this Court for the relief that it first had to request from the Appellee.

Therefore this Court must decide if the mistake made by the Appellee to initially provide benefits to Mr. Starrett should be charged to the Appellant. If it should not be charged to the Appellant, then pursuant to R.C. §4141.24(D)(2), this Court must order that it be charged to the mutualized fund.

The Appellant in its reply asserted that the law shows that it cannot attempt to seek reimbursement from its prior employee. Only the Appellee has the right to do that. The Appellant also pointed out that if the Appellee would recover the money from its former employee, R.C. §4141.35(D) mandates that said money go to the mutualized account. And if the former employee voluntarily submitted the money back the Appellee

A determination in favor of the Appellant would require the participants in the mutualized fund to pay for an employee when that employee's employer never paid into the mutualized fund. A determination in favor of the Appellee would require the tax payers of Arlington to pay to the Appellee money it never had to pay in the first place due to the Appellee's mistake.

This Court holds that the Appellant's account is not chargeable for the benefits paid. Weighing the equities of the situation; reviewing the law and arguments advanced by the parties; and exercises this Court's discretion; this Court reverse s the Decision of the Commission and remands the matter so that the loss can be charged to the mutualized account.

V. DECISION:

Having held that the decision of the Commission was supported by reliable, probative and substantive evidence, and in accordance with law, this Court **REVERSES** the

decision dated June 30, 2015 and remands the matter so that the loss can be charged to the mutualized account.

Costs to Appellee.

IT IS SO ORDERED

THIS IS A FINAL APPEALABLE ORDER

William Woods, Judge

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Franklin County Court of Common Pleas

Date: 10-30-2015

Case Title: UPPER ARLINGTON CITY -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICE

Case Number: 15CV006436

Type: DECISION/ENTRY

It Is So Ordered.

/s/ Judge William H. Woods

Court Disposition

Case Number: 15CV006436

Case Style: UPPER ARLINGTON CITY -VS- OHIO STATE DEPARTMENT JOB FAMILY SERVICE

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes