

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO
NOV 04 2015
D. J. [Signature]
HIGHLAND COUNTY CLERK OF COURTS

Kimberly L. Brooks : Case No: 15 CV 0079
Appellant : DECISION AND FINAL JUDGMENT
v. : ENTRY REVERSING DECISION OF
Director, Ohio Department of Job : APPELLEE AND UNEMPLOYMENT
and Family Services : COMPENSATION REVIEW
Appellee : COMMISSION

This case came before the Court pursuant to R.C. 4141.282(A) on the appeal of the Appellant from the decision of the Ohio Unemployment Review Commission dated February 11, 2015. The Unemployment Compensation Review Commission filed the certified record of its proceedings on March 31, 2015. Appellant filed her brief in support of her appeal on August 11, 2015. Appellee filed its brief on August 18, 2015 and Appellant filed her reply brief on September 11, 2015.

DECISION

PROCEDURAL HISTORY OF THE CASE

The procedural history in this case is somewhat unusual. The Appellant seeks to overturn a determination by the Appellee that her receipt of three weeks of unemployment benefits to which she was not entitled was fraudulent which disqualifies her for future benefits and according to her, as a collateral consequence, disqualifies her from employment with the State of Ohio. The Appellant was awarded weekly unemployment benefits on November 8, 2011. A determination was made by the Appellee on May 3, 2012, that the Appellant had unreported earnings for the period of November 20, 2011 to December 12, 2011, and that she withheld that information with the intent of obtaining benefits to which she was not entitled. Her benefits were disallowed for that period, she was ordered to repay \$1,161.00 in benefits and pursuant to

R.C. 4141.35(A), she was deemed to be ineligible for six weeks of benefits to which she would otherwise be entitled during the next six years.

The Director's file (Part A of record) indicates that she was sent notice of the potential issue on March 20, 2012 and did not respond. However, there is a record of a telephone conversation that resulted from Appellant's telephone call on March 23, 2012. Appellant did not appeal the determination after the issuance of the May 3, 2012 decision.

On October 20, 2014, the Appellant filed a letter appealing the determination that had been entered in the May 3, 2012 decision. She alleged that she was unaware of the determination but had repaid the benefits. On October 28, 2014, the Appellee issued a determination that the appeal was not timely as it had not been filed within twenty one days from the posting of the determination to be appealed as required by R.C. 4141.28(G).

That decision was appealed and referred to a hearing officer. After a telephonic hearing held on December 2, 2014, the hearing officer ruled that the May 3, 2012 determination notice had not been received by the Appellant and reversed the decision of the Appellee rejecting the October 20, 2014 appeal as being untimely. On December 16, 2014, a telephonic hearing before a different hearing officer was held on the appeal of the original May 3, 2012 determination. The hearing officer issued a decision on December 17, 2014, upholding the director's decision.

Appellant appealed that decision to the Unemployment Compensation Review Commission which denied the request for review by decision mailed February 11, 2015. The Appellant then filed this appeal to this Court on March 12, 2015.

FINDINGS OF THE HEARING OFFICER

In the hearing held on December 16, 2014, the hearing officer asked the Appellant why she had not reported that she had worked during the three weeks in question when she filed her

weekly claims. Appellant stated that she thought she was answering the questions correctly because she had not received any paychecks at the time (T. p. 5). She stated that when she filed her claims she was using a push button phone and that while her answers were recorded incorrectly, she thought she had answered correctly (T. p. 6). She also stated that she was not familiar with the system (T. p. 7-8).

There was no other testimony or evidence presented by either party. The hearing officer issued his finding the next day. On page one of the decision; he set forth the questions that she had answered incorrectly. However, the Court cannot find in any of the materials in the Director's files (Part A of the record) or the Unemployment Compensation Review Commission's file (Part B of the record) the specific questions that the Appellant answered during the weeks she filed her claims by telephone.

The finding of the Hearing Officer which was affirmed by the Unemployment Compensation Review Commission is that the Appellant answered the questions incorrectly with the intent to obtain benefits fraudulently. On page three of the Appellee's brief, counsel writes: "During three of her weekly claims, the Claimant was asked, "Did you work (full or part-time), or were you self-employed during the week claimed? (If you worked, you should answer YES even if you will be paid in another week.)"(Ex.1, Tr 2p. 6)." The Court has reviewed the transcript of the hearing held on December 16, 2014, and the language quoted by the Appellee in his brief is not contained in the transcript as claimed.

At lines 16-20 on page six of the hearing transcript, the hearing officer asked "Well that's not a, I mean I can understand that you thought maybe your earnings would not be reported until you were paid, but the question is were you, did you work and the answer to that question that you responded was no, you did not work...". The language cited by Appellee in his brief is

contained in the hearing officer's decision filed December 17th but not in the hearing transcript nor in any of the documents in the proceeding filed with the Court.

STANDARD OF REVIEW BY THE COURT

Pursuant to R.C. 4141.282(H), the Court reviews the certified record of the proceedings of the Appellee and determines whether the decision of the Appellee was unlawful, unreasonable or against the manifest weight of the evidence. If it is, the decision of the commission is to be reversed. If not, it is to be affirmed. The Court does not have the right to substitute its judgment for that of the commission or the hearing officer even if it would have reached a different interpretation of the evidence. The determination of factual questions in the case is primarily one for the hearing officer and the commission; see **Brown-Brockmeyer Co. v. Roach (1947), 148 Ohio St. 511.**

DECISION OF THE COURT

This Court is limited in reviewing the proceedings to the record submitted by the Unemployment Compensation Review Commission. There must be some evidence in the record to support the finding that the decision was not unlawful, unreasonable or against the manifest weight of the evidence.

As previously noted, the Court has been unable to find any document in the record that contains the actual questions that were answered by the Appellant, the instruction, or any explanations on how to answer them. Appellant claims that she thought that she had answered the questions correctly but admitted that she had not and later repaid the benefits received. She admits that she was not entitled to the benefits but argues that she did not answer them incorrectly with the intent to obtain benefits fraudulently as determined by the Appellee. She

argues that the instructions that are given during the telephonic filing are confusing and she thought she had answered them correctly.

On page four of the hearing officer's decision filed December 17, 2014, he states: "The claimant testified that she did not intend to commit fraud despite the fact that the weekly claim for benefits questionnaire instructs claimant's (sic) to report their wages even if they will be paid in subsequent weeks." The record before the Court does not contain the weekly claim for benefits questionnaire so the Court has no way to determine that this finding is correct. He further found that the Appellant's claim that she did not intend to commit fraud was unpersuasive in light of the clear instructions to report all earnings regardless of when received. However, as previously noted, the Court has no evidence of those instructions in the record before it.

The proof of fraudulent intent by the Appellant in this Court's opinion depends upon the language of the questions asked and the instructions regarding those questions that were given to the Appellant when she filed her claims telephonically. The hearing officer in his question asked of the Appellant on page six of the hearing transcript indicated that he could understand that the Appellant could have thought she was not to report her earnings until she had been paid.

The Court believes that the hearing officer and counsel for Appellee are probably correct when they quote the language of the questions and instructions that were given to the Appellant. However, there is simply nothing in this record that the Court can find that proves the language of the instructions or the questionnaire mentioned in the decision

Based upon the Court's review of the certified record in this case, and the consideration of the briefs filed by each of the parties, it is the Court's decision that the decision of the Appellee, the hearing officer and the Unemployment Compensation Review Commission that the

Appellant answered the questions with a fraudulent intent to obtain benefits is not supported by sufficient evidence in the record filed in this case and is therefore unlawful, unreasonable and against the manifest weight of the evidence. In reaching this decision, the Court is not making a determination that the Appellant's actions were not fraudulent, but simply that the record before the Court is not sufficient to support a finding that they were. Such evidence undoubtedly exists, but since it is not part of the record filed with the Court, it cannot be considered.

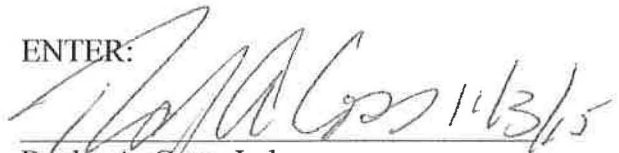
FINAL JUDGMENT ENTRY

Therefore, it is the judgment of the Court that the decision of the Appellee and the Unemployment Compensation Review Commission that the Appellant made fraudulent misrepresentations in three weekly claims for benefits for the weeks ending November 26, 2011 through December 10, 2011, and that she is disqualified for six otherwise valid claims for the period of May 2, 2012 through May3, 2018, is hereby reversed and set aside.

The Appellee shall pay the costs of this proceeding. The Court finds that this is a final appealable order. There is no just cause for delay.

IT IS SO ORDERED.

ENTER:


Rocky A. Coss, Judge