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MAR 14 2016

**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**COURT OF COMMON PLEAS
ENTER**
HON. MEGAN E. SHANAHAN
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

MICHAEL J. HONEBRINK,	:	Case No. A1503278
Appellant,	:	Judge Megan E. Shanahan
v.	:	
DSM INDUSTRIES, INC.. et al.,	:	DECISION ADOPTING MAGISTRATE'S DECISION
Appellees.	:	

This case is before the Court on the Objection of the Director, Ohio Department of Job and Family Services ("ODJFS"), to the Magistrate's Decision rendered January 6, 2016.

STANDARD OF REVIEW

This Court must "undertake an independent review as to the objected matters to ascertain [whether] the magistrate has properly determined the factual issues and appropriately applied the law." Civ.R. 53 (D)(4)(d). The Court "may adopt or reject a magistrate's decision in whole or in part, with or without modification," and "may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate." Civ.R. 53 (D)(4)(b).

DISCUSSION

In this case, Appellant, Michael Honebrink ("Honebrink"), was terminated from DSM Industries, Inc. for alleged violation of company rules. The Ohio Department of

Job and Family Services (“ODJFS”) issued an initial Determination allowing Honebrink’s claim for unemployment benefits. DSM appealed the Determination. ODJFS issued a Redetermination affirming the initial Determination. DSM appealed the Redetermination. The case was transferred to the Commission. The hearing officer conducted a phone hearing on May 12, 2015. Honebrink did not call in for the hearing. The hearing officer reversed the Redetermination and found that Honebrink was terminated with just cause. Honebrink claims that he did not know about the May 12, 2015 hearing. He only learned of it when he received the Decision Reversing Entitlement to Unemployment Benefits. Honebrink quickly appealed the Decision, which appeal was summarily denied. Honebrink appealed.

The Magistrate found that Honebrink did not have notice of the hearing. The Commission’s Notice of Hearing states that the notice was sent to “Michael J. Honebrink, 546 CHRISTMAS LN, CINCINNATI, OH 45224-1411, Via email.” Honebrink asserts that he did not see any email from ODJFS requesting his presence at the hearing. The email was sent to an email inbox on the ODJFS server which Honebrink was presumed to have been monitoring. For various reasons, Honebrink had stopped monitoring this email inbox. The record does not contain a copy of the email.


The Magistrate vacated the Decision of the hearing officer and remanded the case for further hearing upon proper notice to all parties.

Pursuant to R.C. 4141.282(H), the court must determine if a decision of the Ohio Unemployment Compensation Review Commission is unlawful, unreasonable or against the manifest weight of the evidence.

A claimant is entitled to procedural due process in connection with an unemployment-compensation hearing. Notice to parties of proceedings is essential. Honebrink did not see the email from ODJFS. No other method of getting notice to Honebrink was attempted. There was no regular mail service and no phone call, the manner in which notice previously was given. Under R.C. 4141.282(H), the Court finds it was unlawful and unreasonable for the ODJFS to make a determination without proper notice to Honebrink of the hearing.

CONCLUSION

The Court adopts the Decision of the Magistrate with the modification that the standard of review is R.C. 4141.282(H) and including the decision to strike the affidavit of Mike Honebrink attached as Exhibit A to Honebrink's brief filed on September 30, 2105.

 3/14/16
Megan E. Shanahan, Judge

ENTERED

MAR 14 2016

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

MICHAEL J. HONEBRINK,

Case No. A1503278

Appellant,

Judge Shanahan

v.

DSM INDUSTRIES, INC., et al.,

MAGISTRATE'S DECISION

Appellees.



RENDERED THIS 6TH DAY OF JANUARY, 2016.

This administrative appeal is from the Unemployment Compensation Review Commission's ("Commission") Decision denying further review of a hearing officer's decision to deny Appellant Michael J. Honebrink's ("Appellant") claim for unemployment benefits. This appeal was timely filed pursuant to R.C. §§ 119.12 and 5101.35(E).

STANDARD OF REVIEW

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and such additional evidence as the court has admitted, that the 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 order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.¹

A strict reading of this standard of review allows the trial court to weigh the evidence to determine whether it is reliable, probative and substantial. However, the trial

¹ / Ohio Rev. Code § 119.12 (West 2009).

court is required to give due deference to the administrative resolution of evidentiary conflicts.² Consequently, an administrative factual finding should not be disturbed without legally sufficient reasons for doing so.

Section 119.12 of the Revised Code requires that evidence considered by the court on appeal be reliable, dependable, probative and substantial.³ Reliable evidence is dependable, confidently trusted, and there is reasonable probability that the evidence is true.⁴ Probative evidence is relevant and tends to prove the issue in question.⁵ Substantial evidence is evidence with some weight; it must have importance and value.⁶

DISCUSSION

This case arises from Appellant's termination from DSM Industries, Inc. for alleged violations of company rules. The Ohio Department of Job and Family Services ("ODJFS") issued an initial Determination allowing Appellant's claim for unemployment benefits because DSM failed to establish Appellant was fired for just cause. DSM timely appealed the initial Determination. ODJFS issued a Redetermination which affirmed the initial Determination. DSM timely appealed the Redetermination. The case was transferred to the Commission. The hearing officer conducted a phone hearing on May 12, 2015. Appellant did not call in for the hearing. The hearing officer reversed the Redetermination and found Appellant was terminated with just cause. Appellant requested further review, which was disallowed. This appeal followed.

² / *Star Cruises v. Department of Liquor Control*, No. C-950701, 1996 Ohio App. LEXIS 1013, at *4-5 (App. 1 Dist.), see *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, and *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619.

³ / *Our Place, Inc. v. Ohio Liquor Control Comm'n.* (1992), 63 Ohio St.3d 570, 571.

⁴ / *Id.*

⁵ / *Id.*

⁶ / *Id.*

As a preliminary matter, ODJFS filed a Motion to Strike an exhibit attached to Appellant's merit brief. R.C. 4141.282(H) requires administrative hearings to be reviewed strictly on the certified record unless additional evidence is admitted under limited circumstances. Therefore, Exhibit A attached to Appellant's brief must be stricken.

Although the parties briefed the issue of just cause, the court does not reach that issue at this time. Appellant claims he did not receive notice of the hearing on May 12, 2015, which is why he failed to call in and severely hindered his case. Appellant, apparently acting pro se, was successful twice in front of ODJFS. He then did not call in for the third hearing and his claim was denied. Appellant denies receiving email notice of the hearing at his personal email address.

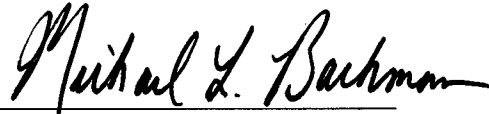
The Commission's Notice of Hearing states the notice was sent to "Michael J. Honebrink, 546 CHRISTMAS LN, CINCINNATI, OH 45224-1411, Via Email."⁷ However, the record does not contain a copy of the email. In fact, the record is completely devoid of any evidence that the email was sent or what address it was sent to. ODJFS argues the email was sent to the address designated by Appellant and the address has been redacted from the record. The fact that Appellant previously appeared for two hearings and then immediately appealed the decision denying his claim (which was also sent by email) seems to contradict ODJFS' argument. Email is obviously a very convenient, cost-effective form of communication, but proof of service is vital when notice becomes an issue. Since there is no evidence in the record that the email notice was sent or where it was sent to, the court must vacate the decision of the hearing officer

⁷ / See Review Commission File of the Record.

and remand this matter for further hearing after proper notice to all parties has been given.

DECISION

ODJFS' Motion to Strike Exhibit A of Appellant's merit brief is GRANTED. The Commission's Decision Disallowing Request for Review dated June 3, 2015 and the hearing officer's Decision disallowing Appellant's claim dated May 13, 2015 are hereby VACATED. This case is REMANDED to the Commission's hearing officer for a new hearing. In addition to any notices by email, notice of the hearing shall be sent by regular mail to Appellant's counsel Barry A. Rothchild, 101 W. Central Parkway, Cincinnati, Ohio 45202.



**MICHAEL L. BACHMAN,
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION
HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR
ATTORNEYS AS PROVIDED ABOVE.

Date: 1-8-16 Deputy Clerk: 