



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

**TOM ORLANDO, Clerk  
JOURNAL ENTRY  
Christopher R. Rothgery, Judge**

Date 4/25/16

Case No. 15CV187764

TIMOTHY HENNESSEY  
Plaintiff

PRO SE  
Plaintiff's Attorney

VS

STANDARD PARKING CO., et al.  
Defendant

F. ALLEN BOSEMAN, JR.  
Defendant's Attorney (216)696-7600

This matter is before the Court for consideration of Appellant Timothy Hennessey's appeal of the decision of the Ohio Unemployment Compensation Review Commission (hereinafter "Review Commission") pursuant to R.C. 4141.282. Upon consideration of the Appellant's Brief, Appellee's Brief filed by ODJFS, and the certified transcripts of the records, this Court finds as follows.

**STANDARD OF REVIEW**

R.C. 4141.282 governs unemployment compensation appeals to the Court of Common Pleas. Subsection (H) of that statute provides as follows:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission. *Id.*

The Review Commission's function as trier of fact remains intact. As such, this Court should defer to the Review Commission where factual matters, the credibility of witnesses, and the





weight of conflicting evidence are at issue. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Fahl v. Bd. Of Rev.*, 2 Ohio App.2d 286; *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69. As proceedings such as this are not *de novo* trials, this Court may not make factual determinations or substitute its judgment for that of the Review Commission; for “[i]f the decision is supported by credible proof, the finding may not be disturbed.” *Kilgore*, 2 Ohio App.2d at 71-73. “When reviewing the manifest weight of the evidence, ‘[t]he reviewing court \*\*\* weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.’” *Wright v. Director, Ohio Dept. of Jobs & Family Services, et al.*, 9<sup>th</sup> Dist., 2013-Ohio-2260 at ¶10 quoting *Eastley v. Volkman*, 132 Ohio St.3d. 328.

### ANALYSIS AND CONCLUSIONS OF LAW

1) Was the UCRC’s decision unlawful, unreasonable and against the manifest weight of the evidence?

Appellant, Mr. Hennessey, claims that the discontinuation of his benefits for his failure to timely complete a "career profile assessment" due to a computer problem he was having would be unfair and inequitable. As stated above, a court's power to review the Review Commission's decision is strictly limited. Determinations of factual questions are primarily reserved for the hearing officer and the Review Commission. *Brown-Brockmeyer Co.* at 511. As a result, courts are prohibited from making factual determinations or deciding the credibility of witnesses. *Irvine v. Unemploy. Comp. Bd. of Review*, 19 Ohio St.2d 15 (1985). Courts cannot usurp the function of the trier of fact by substituting its judgment for that of the Review Commission.





*Simon v. Lake Geauga Printing Co.*, 69 Ohio St.41 (1982). A decision supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App. 3d 159 (1983). The relevant facts are not in dispute.

Claimant filed an application for unemployment compensation benefits on February 20, 2015 which was allowed. In order to receive weekly benefits an individual whose application has been allowed must file a weekly claim and be otherwise eligible. Claimant filed and was paid benefits for twenty consecutive weeks, through the week of July 11, 2015. In order to continue to be eligible for weekly benefits a claimant must meet the requirements of R.C. §4141.29(A). Specifically, R.C. §4141.29(A)(7) requires that a claimant "participates in the reemployment and eligibility assessment program, or other reemployment services, as required by the director." Claimant was instructed to file a Career Profile Assessment with Ohio Means Jobs before July 11, 2015. Accordingly, on July 28, 2015, the Director issued a Determination that "claimant is ineligible from July 12, 2015 until this agency is provided evidence that the issue no longer exists and claimant is otherwise eligible." Claimant seeks relief from that requirement based upon his computer having a virus. However, there was substantial evidence to justify the hearing officer's finding that Claimant failed to establish good cause for failure to file the required Career Assessment. Specifically, Claimant failed to articulate sufficient reasons why he waited until the deadline to file said documentation, why he failed to attempt to use another computer such as a public library computer, why he failed to contact the hotline, or why he failed to fill out the paperwork in person at a local Ohio Means Jobs center. This Court, as a reviewing court, may not substitute its judgment for that of the Review Commission and may not





reverse the Commission simply because it interprets the evidence differently than did the Commission. *Angelkovski* at 161; *Irvine* at 18.

Based upon the record before this Court, this Court cannot find that the UCRC decision was unlawful, unreasonable or against the manifest weight of the evidence, and therefore the decision is affirmed.

### CONCLUSION

Based upon the above, this Court denies Appellant's Appeal and affirms the decision of the UCRC before this Court. Costs to Appellant Timothy Hennessey. CASE CLOSED.

IT IS SO ORDERED.

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Christopher R. Rothgery, Judge

cc: TIMOTHY HENNESSEY by mail  
ATTY. BOSEMAN, JR. by fax 216-696-2038  
ATTY. SNYDER by fax 866-436-9028

**TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.**

