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THIS IS A FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Jose A. Florez,	*	Case No.: CI0201504416
	*	
Plaintiff-Appellant,	*	
	*	JUDGE IAN B. ENGLISH
-vs-	*	
	*	
Director, Ohio Department of Job and Family Services, et al.,	*	**OPINION AND JUDGMENT ENTRY**
	*	
	*	
Defendants-Appellees.	*	

This is an appeal from consecutive decisions by the Ohio Unemployment Compensation Review Commission ("UCRC"), which collectively determined that plaintiff-appellant, Jose A. Florez, fraudulently claimed and obtained weekly unemployment compensation benefits from the end of January 2009, through the first week of August 2011. Having carefully examined the entire administrative record, the arguments of counsel, and the applicable law, and upon application of the decidedly deferential standard of review set forth in R.C. 4141.282(H), the court finds that the commission's decisions are not unlawful, unreasonable, or against the manifest weight of the evidence and must, therefore, be affirmed.

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I. BACKGROUND

Data contained in the administrative record indicates that Mr. Florez was employed as a forklift operator with Exel, Inc. from June 17, 2006, until October 2013. According to a "Claim Summary" included in the Director's file, Florez filed six initial applications for unemployment compensation that were allowed by the Ohio Department of Job and Family Services ("ODJFS") and assigned one-year benefit periods with ending dates during each of the first six years of his employment with Exel. Between October 13, 2011, and November 8, 2011, ODJFS issued five separate Notices of Determination concerning Florez' eligibility for particular clusters of enumerated weekly benefits that were claimed and paid during benefit years ending in December 2009 through 2011. Each notice contained a determination that Florez had earned wages from his employment with Excel during the listed weeks and, except for one waiting week ending June 25, 2011, that he withheld this information from the agency with the intent of obtaining benefits to which he was not entitled. The collective import of these determinations was that Florez had been overpaid benefits on account of his fraud for virtually the entire two and one-half year period from week ending January 31, 2009, through week ending August 6, 2011, in the aggregate amount of $37,328.

On April 30, 2015, Florez appealed the ODJFS determinations en masse. On May 15, 2015, the Director of ODJFS issued separate "Redeterminations" dismissing each appeal as untimely filed. Florez then appealed the Director's redeterminations on May 26, 2015, and ODJFS transferred jurisdiction to the UCRC on July 21, 2015. The matter proceeded to hearing before a UCRC Hearing Officer solely on the issue whether Florez' appeals to the Director were timely filed. On August 7, 2015, the hearing officer reversed the Director's redeterminations,

finding that Florez never received a copy of the initial ODJFS determinations, and ordered that the matter be set for a joint hearing on the merits.

A telephone hearing on the merits of all five appeals was conducted on August 24, 2015. Florez and Cheryl Vires, an Investigator with Benefit Payment Control, appeared and offered testimony at the hearing. Responding to questions posed by the hearing officer, Florez testified that he never claimed or received benefits for any week in which he earned wages and had no knowledge of how the claims for benefits during the weeks in question came to be filed on his account, since he did not share his account information or give anyone access to his account. Asked if he ever filed a police report for identity theft, Florez stated that "I did, but I don't remember when. * * * I think it was back in 2006 or somewhere around there."

Florez explained that he did occasionally file claims for weekly benefits, but only when the Exel plant shut down during the first two weeks of July or the last two weeks of December, and only in years when he was actually laid off during those periods. With respect to the plant closings, Florez admitted that he would have claimed benefits for the first two weeks of July and the last two weeks of December in 2009 and 2010. He was then questioned as follows:

> Q: Well, * * * you stated that you would have filed in July and December. * * * For 2009, it [payroll information provided by Exel] shows earnings for the first two weeks in July and the last two weeks in December. For 2010, it shows earnings for the first two weeks in July and the last two weeks in December. * * * Can you explain that?
>
> A: Well, some of them also was where I had a bye week, so I didn't ever claim none of them.
>
> Q: Well, that's not my question?
>
> A: I know.
>
> Q: Your testimony and from the information in the file stated that you had a layoff the first two weeks in July and the last two weeks in December * * * but this [payroll record] goes all the way back to 2008, and the

> employer never shows that you had no earnings for the first two weeks in July and the last two weeks in December. So, can you explain that? [Y]ou are saying that you claimed those weeks back at that period because you were on shutdown and yet the employer is showing that you had earnings for all those weeks.
>
> A: Well, if I only have. . . If the employer is showing that I had earnings, I must have been working * * *. I'm just saying in general that's the time, only time that I would have filed for unemployment is during the first two weeks of July and * * * the ending two weeks of December.
>
> * * *
>
> Q: Why would you have filed for benefits if the employer shows you had earnings? I mean, I'm looking at 2009 and for the first two weeks in July, you had several hundred dollars' worth of earning in both of those weeks. In the * * * [l]ast two weeks of December, you had several hundred dollars each, earnings each of those weeks. So why would you have filed for a shutdown, if you had earnings those weeks?
>
> A: Well, if I had earnings that week, ma'am, um, I didn't file * * *. You know, I don't understand why it's showing I did file them. That's my thing. * * * if I had earnings, then I didn't file. I was working, obviously, so I wasn't laid off.
>
> Q: But, then at what period were you. . . When you say that you filed the first two weeks in July and the last two weeks in December, what period are you talking about when all of the records supplied by your employer show that you worked during those weeks. So, when you say that you filed for the first two weeks of July and the last two weeks of December, what period is that when they [the payroll records] show that you were employed those weeks?
>
> A: Well, it had to been all of them, but * * * I don't know how they [Exel] can say they paid me if we are in shutdown.

Ms. Vires testified that she discovered the overlap in benefit payments and earned wages during the disputed weeks through a "wage record cross match." In September 2011, she mailed two separate notices informing Florez of the issue and requesting an explanation and any supporting information as to whether and why he failed to report his earnings with Exel when he filed for weekly benefits, but received no response. Vires also opined that if someone else did

claim benefits on Florez' account, Florez would have known about the breach. She explained that all benefit payments for the entire period from January 2009, through August 2011, were deposited directly into a debit-card account with a consistently maintained personal identification number ("PIN"). Thus, any benefit payments triggered by a third party would have been deposited into the same account as the payments admittedly generated by Florez in July and December of each year. The fact that Florez "was using [the debit card] from benefit year to benefit year * * * shows that if someone else was claiming, he [Florez] was aware because he was getting his card back."

On further questioning by the hearing officer, Florez denied that he ever had a debit card, stating that he received a check in the mail for the claims he filed in July and December. The hearing officer then elicited testimony from Ms. Vires that the agency has not issued paper checks since the end of 1998, after which the following exchange occurred:

> Hearing Officer: * * *. So, Mr. Florez, you have heard the testimony. Can you explain how you are saying you got a check, if checks have not been issued in almost 20 years?
>
> Mr. Florez: Well, they usually go in through my checking account.
>
> Hearing Officer: Well, you just said * * * before that you got a check in the mail.
>
> Mr. Florez: I used to get it through the mail * * *, then it went through my checking account is what I'm saying, they mailed it to, straight directly direct deposit in my checking account.
>
> Hearing Officer: Looking at the claims for the last weeks in December when you admit you would have filed, * * * [i]t shows a deposit amount, it shows the debit transaction number[,] and it states the deposit amount shown on the stubs should be accessible through your debit card within two working days. The records show that that money was put onto a debit card. Can you respond to that?
>
> Mr. Florez: Uh, no I can't, ma'am.

> Hearing Officer: So, even though our records show that that money for the weeks that you admit you claimed were put onto a debit card, you deny having a debit card.
>
> Mr. Florez: Well, yeah.

On August 25, 2015, the hearing officer issued a series of five decisions in which she essentially affirmed the initial ODJFS determinations, albeit with slight modifications, and made the following common findings:

> Claimant failed to report his earnings for the weeks at issue although he filed claims for those weeks. Claimant's testimony denying having filed those claims was not credible. In light of the information presented in this case, the Hearing Officer finds that claimant made a fraudulent misrepresentation in order to obtain benefits for which he was not eligible.

On September 10, 2015, counsel for Florez entered his appearance in the administrative proceedings and submitted a Request for Review, which was subscribed and sworn by Florez before a Notary Public. In his affidavit, Florez attested among other things that he recently received a Notice from ODJFS, dated August 25, 2015, indicating that he requested a PIN change to his account. According to the affidavit, Florez did not request the change, which "shows that the Ohio Department of Job and Family Services records are wrong." The notice of PIN change attached to Florez' affidavit states that a new temporary PIN "was assigned to you on 08/24/2015 at 08:45:11 AM," which was 30 minutes after the scheduled commencement of the telephone hearing on the merits of Florez' appeals. On September 30, 2015, the UCRC denied Florez' request for further review.

Florez timely filed a notice of appeal with this court on October 16, 2015, pursuant to R.C. 4141.282. Florez then filed his brief in support of the appeal on December 23, 2015. The Director filed her opposing brief on January 22, 2016, and Florez filed a reply brief on January 29, 2016. The matter is now decisional.

II. STANDARD OF REVIEW

Judicial review of UCRC decisions is governed by R.C. 4141.282(H), which provides:

> 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.

In requiring courts to affirm the commission's decision absent a predicate finding that the decision contravened the manifest weight of the evidence, the General Assembly has chosen "an extremely deferential standard of review." *State ex rel. Pizza v. Strope*, 54 Ohio St.3d 41, 46, 560 N.E.2d 765 (1990). *See also Elliott v. Bedsole Transp., Inc.*, 6th Dist. Lucas No. L-11-1004, 2011-Ohio-3232, ¶ 12 ("We must apply a deferential standard of review in this matter and determine whether the Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence"); *Jones v. Jones*, 4th Dist. Athens No. 07CA25, 2008-Ohio-2476, ¶ 18 ("This standard of review is highly deferential and even 'some' evidence is sufficient to sustain the judgment and prevent a reversal").

In *Sinclair v. Ohio Dept. of Job & Family Servs.*, 8th Dist. Cuyahoga No. 101747, 2015-Ohio-1645, ¶ 7, the Eighth District Court of Appeals explained:

> Reviewing courts are precluded from making factual determinations or determining the credibility of the witnesses in unemployment compensation cases—that is the commission's function as the trier of fact, and reviewing courts must defer to the commission on factual issues regarding the credibility of witnesses and the weight of conflicting evidence. *Irvine* [*v. Unemp. Comp. Bd. of Review*], 19 Ohio St.3d [15] at 18, 482 N.E.2d 587 [1985]; *Tzangas*[, *Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694] at 696, 653 N.E.2d 1207 [1995]. The courts' role is to determine whether the decision of the commission is supported by some competent, credible evidence in the record. *Tzangas*. If there is evidence in the record to support the commission's decision, a reviewing court cannot substitute its own findings of fact for those of the commission. *Lorain Cty. Aud. v. Unemp. Comp. Rev. Comm.*, 9th Dist. Lorain No. 03CA008412, 2004-Ohio-5175, ¶ 8. Moreover, every reasonable presumption should be made in favor of the commission's decision and findings of fact. *Banks v. Natural*

> *Essentials, Inc.*, 8th Dist. Cuyahoga No. 95780, 2011-Ohio-3063, ¶ 23, citing *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. * * * When the board might reasonably decide either way, the courts have no authority to upset the board's decision." *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587; *Struthers v. Morell*, 164 Ohio App.3d 709, 2005-Ohio-6594, 843 N.E.2d 1231, ¶ 14 (7th Dist.).

Nevertheless, R.C. 4141.282(H) constitutes neither prescription nor authority for judicial rubberstamping of commission decisions. While reviewing courts are precluded from making factual determinations or credibility assessments, they are required to certify that the board's decision is supported by evidence in the record. *Reef v. Admr., Ohio Bur. of Emp. Servs.*, 6th Dist. Wood No. WD-95-070, 1996 Ohio App. LEXIS 1181, 8 (Mar. 1, 1996). Moreover, "courts should reverse an agency's ruling which reaches an unreasonable conclusion from essentially undisputed evidence at the administrative hearing." *Opara v. Carnegie Textile Co.*, 26 Ohio App.3d 103, 105-106, 498 N.E.2d 485 (8th Dist.1985). As explained by the Sixth District Court of Appeals:

> [W]here the agency reaches an unreasonable conclusion as based upon essentially undisputed evidence admitted at the administrative hearing, the court owes less deference to the agency's decision. In such an instance, the common pleas court, in finding that the administrative agency's decision is against the manifest weight of the evidence, is resolving the legal effect of unchallenged facts rather than determining the existence of such facts. Accordingly, no substitution of judgment occurs and the court can and should reverse the agency's decision.

(Citations omitted.) *Hageman v. Admr., Ohio Bur. of Emp. Servs.*, 6th Dist. Williams No. 90WM000007, 1991 Ohio App. LEXIS 1576, 5-6 (Apr. 12, 1991).

III. PROPRIETY OF HEARING OFFICER'S DECISION

Florez candidly delimits his arguments within tightly confined parameters. Essentially, R.C. 4141.35(A) defines fraud as "any fraudulent misrepresentation * * * made by an applicant for or a recipient of benefits with the object of obtaining benefits to which the applicant or

recipient was not entitled." Florez is not denying that the record contains some evidence that fraudulent misrepresentations were made in connection with the disputed weekly claims or that they were made with the requisite degree of culpability. Rather, Florez asserts the record is devoid of evidence that he is the person who made them; and that "ODJFS, and the UCRC, have in effect placed the burden on [him] to prove his innocence." More precisely, he maintains there is no evidence that "it was Florez himself, and not someone else, who had applied for and received the benefits" or that he "had colluded with anyone else to receive the payments." As succinctly stated in Florez' sworn request for commission review, his underlying contention is that "[s]omeone must have made a mistake or engaged in fraud, but it wasn't me!"

Accordingly, the determinative inquiry in this appeal requires no parsing or application of the statutory elements of fraud; and for that reason, the court declines to address the Director's contention that R.C. 4141.35(A) imposes a "relaxed" or "less-rigorous standard" of fraud that is "easily satisfied" in comparison with common-law fraud. There is no indication that the UCRC or its hearing officer deviated from the express language of the statute in determining the issue of fraud, and Florez presently admits that he was employed and earning wages during the weeks in question. Thus, if the record contains some evidence that Florez was party or privy to the filing of claims or receipt of benefits for those weeks, the commission's decisions must stand.

Both parties attach significance to the Tenth District's decision in *State ex rel. Sherry v. Indus. Comm. of Ohio*, 10th Dist. Franklin No. 04AP-78, 2004-Ohio-7050, a mandamus action challenging the Industrial Commission's determination that a workers' compensation claimant committed fraud by collecting weekly disability benefits while gainfully self-employed. In that case, the issue concerned not the claimant's identity as the person who claimed or received the

workers' compensation benefits, but the claimant's receipt of remuneration for his work-related activities. In denying the claimant's requested writ, the court concluded in pertinent part:

> The fourth issue is whether the commission improperly shifted the burden of proof to relator by allegedly faulting relator for failing to disprove the bureau's claim that he was paid for his activities.
>
> The bureau submitted to the commission copies of checks and bank records showing that relator received remuneration totaling more than $17,000 for approximately 60 jobs that were performed from June 23, 2001 to September 28, 2002. According to the commission's order, relator testified that he did not make any money operating his business over the period in question. He testified that he kept only enough funds to cover the cost of materials and that the remainder went to the individuals who did the actual physical work. However, the commission noted that relator kept no accounting records to support this testimony. The commission found that relator's testimony was not credible.
>
> It is true that the bureau had the burden of proof with respect to its motion to terminate TTD compensation and to declare an overpayment. See *State ex rel. Quarto Mining Co. v. Foreman* (1997), 79 Ohio St.3d 78, 83-84, 1997 Ohio 71, 679 N.E.2d 706. However, the commission did not improperly shift the burden of proof to relator on the issue of remuneration as relator contends.
>
> The bureau presented a prima facie case that relator received remuneration for his work activities. The bureau submitted copies of checks deposited into relator's bank account totaling more than $17,000 for approximately 60 jobs that were performed from June 23, 2001 to September 28, 2002. The commission could draw an inference from this evidence that relator was remunerated for his work activities. The commission was not required to believe relator's testimony that he kept none of the remuneration and, thus, made no profit from his business. While relator had an opportunity to rebut the inference that he received remuneration for his work activities, he failed to do so. The commission's placing of significance upon relator's inability to produce accounting records to support his testimony was not tantamount to a shifting of the burden of proof. The commission simply gave its reasoning as to why it disbelieved relator's testimony.

Id. at ¶ 47-50.

The parties have not located any case in which a claimant accused of fraud in connection with a claim for unemployment benefits asserted that he or she did not submit the claim, which is principally a defense of identity theft. This is not surprising, since case law is hardly teeming

with decisions on the subject. This court's research discloses two decisions from courts outside Ohio bearing on the issue, and those decisions offer some additional, albeit limited, guidance.

In *Sprecher v. Labor & Indus. Rev. Comm.*, Wis.App. No. 2006AP2072, 2007 Wis.App. LEXIS 339 (Apr. 10, 2007), the Wisconsin Department of Workforce Development ("DWD") found after conducting an audit that claimant had committed fraud by concealing wages earned during 22 weeks in which she filed unemployment claims. At a hearing before an administrative law judge ("ALJ"), claimant admitted that she earned wages over the period in question, but denied that she filed any claims for benefits during those weeks. The ALJ, and subsequently the Wisconsin Labor Industry and Review Commission ("LIRC"), affirmed the DWD's decision with respect to 18 of the 22 weeks, and trial court affirmed the LIRC's decision.

In rejecting the claimant's contention that the trial court erroneously affirmed the LIRC's decision, the court in *Sprecher* held:

> On appeal, Sprecher argues that she was a victim of identity theft and asserts that the circuit court should have investigated this possibility on its own. However, the record does not show that she raised this issue or offered evidence in support of such a claim before the DWD or the ALJ. Rather, the LIRC's determination that Sprecher concealed work performed and wages earned was based upon her own admissions at the hearing before the ALJ, as well as upon the testimony of Sprecher's former employer at Pressure Clean and an unemployment benefits specialist from the DWD. Sprecher now claims that she was "stunned and confused at the questions [she] was asked and at the documents" presented at the hearing, and that, in fact, she never submitted these claims, but rather was a victim of identity theft. However, Sprecher offers no evidence in support of this contention. Sprecher's conclusory assertions, without more, are not the "relevant, credible, and probative evidence upon which reasonable persons could rely to reach a conclusion."

Id. at ¶ 9, quoting *Princess House, Inc. v. Dept. of Industry, Labor & Human Relations*, 111 Wis.2d 46, 54, 330 N.W.2d 169 (1983).

In *Rathod v. Dept. of Emp. & Economic Dev.*, Minn.App. Nos. A10-99, A10-156, A10-157, 2010 Minn.App.Unpub. LEXIS 1052 (Oct. 19, 2010), claimant established an account with

the Minnesota Department of Employment and Economic Development ("DEED") after he was laid off from work in October 2008, but obtained full-time employment in December 2008. The agency's records indicated that from December 2008 to June 2009, claimant's PIN and social security number were used to request benefits and that those benefits were directly deposited into claimant's bank account each week. After the claimant's employer reported his wages, DEED issued a determination of ineligibility and assessed a penalty for fraud on all benefits received by claimant during that period. Claimant appealed the determination on grounds that someone must have accessed his benefit account and requested and received the benefits in his name. An unemployment law judge ("ULJ") upheld DEED's determination, finding that claimant failed to rebut the presumption established under Minn. Stat. 268.084(b), which provides that when a PIN is used in the filing of a continued request for unemployment benefits, the applicant to whom the PIN was issued is presumed to be the person who applied for and received the benefits.

Affirming the ULJ's decision, the court in *Rathod* held:

> The ULJ found that relator's claims that someone accessed relator's account and used his PIN and social security number to request benefits were not plausible, and were insufficient to overcome the presumption in Minn. Stat. § 268.084(b) that relator was the person using his PIN. Thus, the ULJ made a credibility determination that we will not disturb on appeal. The ULJ found that relator established a benefit account under his prior name, continued to request and receive benefits after working full time, and did not vigorously pursue any allegation of identity theft with the police or the bank. Because substantial evidence in the record supports these findings, we defer to them.

(Citations omitted.) *Id.* at 4.

Manifestly, the foregoing cases are not squarely on point and constitute neither binding nor persuasive authority. They do, however, suggest a workable framework for analyzing cases in which a claimant accused of fraudulently claiming or receiving benefits asserts an identity-theft defense. At a core level, the agency must initially present a prima facie case that the

accused claimant is the person who claimed or received the disputed benefits in order to utilize the remedial and punitive measures outlined in R.C. 4141.35(A). This requirement is reflected in the Director's statutory duty to determine whether the fraudulent misrepresentation was made by "an applicant for or a recipient of benefits" with the object of obtaining benefits to which "the applicant or recipient" was not entitled. The statute does not, however, contain any presumption under which the continued use of a debit card, PIN, or other identifying account information is automatically attributed to the claimant named on the account. Thus, the agency's prima facie case must appear from evidence contained in the administrative record.

To be sure, bank records, debit card transactions, witness statements, or recordings made on the agency's automated telephone filing system would be evidentiary hallmarks of a thorough investigation in these kinds of cases. But, Ohio courts have never required any particular type of evidence to support a finding under R.C. 4141.35(A):

> "The general rule that fraud is not presumed, but must be proved by the party who alleges it, does not mean that it cannot be otherwise proved than by direct and positive evidence. As the general American authorities indicate, fraud in a transaction may be proved by inferences which may reasonably be drawn from intrinsic evidence respecting the transaction itself, such as inadequacy of consideration, or extrinsic circumstances surrounding the transaction. Fraud may be, and often is, proved by or inferred from circumstances, and the circumstances proved may in some cases raise a presumption of its existence."

Nichols v. Admr., Ohio Bur. of Emp. Servs., 7th Dist. Jefferson No. 87-J-21, 1989 Ohio App. LEXIS 914, 7-8 (Mar. 14, 1989), quoting 51 Ohio Jurisprudence 3d 103, Fraud & Deceit, Section 240. *Accord Salyers v. Dir., Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 12AP-576, 2013 Ohio App. LEXIS 1140, ¶ 18 (Mar. 28, 2013); *Johnson v. Ohio Bur. of Emp. Servs.*, 8th Dist. Cuyahoga No. 73591, 1998 Ohio App. LEXIS 2177, 11-12 (May 14, 1998); *Christie v. Admr., Ohio Bur. of Emp. Servs.*, 11th Dist. Lake No. 95-L-152, 1996 Ohio App. LEXIS 3875, 9 (Sept. 6, 1996).

Although the foregoing cases involve the evidentiary methods of proving the element of intent, what is true in regard to proving the mental components of fraud is also true of its physical components. Even in criminal cases, the identity of the accused as the person who engaged in the prohibited conduct may be established by circumstantial evidence. *See State v. Tate*, 140 Ohio St.3d 442, 2014-Ohio-3667, 19 N.E.3d 888, ¶ 15 ("Like any fact, the state can prove the identity of the accused by 'circumstantial or direct' evidence"). In fact, Ohio courts have long recognized that "'circumstantial evidence in all classes of cases is as competent as positive evidence, and the jury [or any trier-of-fact] has the right to rely upon it as direct evidence.'" *York v. Pennsylvania RR. Co.*, 73 Ohio App. 323, 326, 56 N.E.2d 341 (3d Dist.1943), quoting 17 Ohio Jurisprudence 182, Evidence, Section 139. Thus, the identity of Florez as "the individual who applied for the benefits at issue, * * * received those benefits, or at least had knowledge that those benefits were being paid out on his behalf," as Florez properly frames the issue, may also be "proved by or inferred from circumstances." *Nichols* at 8.

The instant record does contain evidence that Florez claimed or received the benefits at issue, or "at least had knowledge that those benefits were being paid out on his behalf." Claim and application summaries in the Director's file show that Florez established benefit years with end dates in December of 2009, 2010, and 2011, and that continued weekly benefits were claimed and paid on his account between the end of January 2009, through the first week of August 2011. Florez testified that he would have claimed and received benefits for the first two weeks in July and the last two in December of 2009 and 2010. Ms. Vires testified that all benefits paid for weeks ending January 31, 2009, through August 6 2011, including those admittedly claimed by Florez in July and December, were deposited directly into the same debit-card account. The hearing officer noted, for example, that claim records "for the last weeks in

December when you admit you would have filed, * * * show that that money was put onto a debit card" and state in particular that "the deposit amount shown on the stubs should be accessible through your debit card within two working days." Extrapolating from this evidence that Florez used or was privy to the use of the debit card to access continued benefit payments during the period in question is not speculation, but a perfectly legitimate inference.

Moreover, it was hardly unreasonable for the hearing officer to find Florez' testimony that he neither filed the claims nor possessed a debit card less than credible. At first, Florez admitted that he would have filed for benefits during the beginning weeks of July and the ending weeks of December 2009 and 2010. When confronted with payroll information provided by his employer that he received wages during those periods, Florez intimated that ODJFS's claims records must be inaccurate, since he would not have claimed benefits during any week in July or December for which his employer reported wage earnings. When the hearing officer pointed out that his employer reported earnings for July and December in every year dating back to 2008, Florez then intimated that his employer's records must be in error, since he claimed benefits only during plant closings. In denying that he ever received or used a debit card to access benefit payments, Florez initially stated that he received a check in the mail for the claims he filed in July and December. Questioned again on the matter after Vires testified that the agency has not issued paper checks since 1998, Florez stated, "I used to get it through the mail * * *, then it went through my checking account." Yet, nothing in the hearing transcript or elsewhere in the record indicates that Florez worked for Exel or had an unemployment claim during or prior to 1998.

This court fully appreciates the argument raised by Florez that "minor discrepancies and instances of confusion" in a claimant's testimony are to be expected, especially at a hearing held

over four years after the operative events. A claimant's failure to exhibit an eidetic memory or comprehend administrative terminology should not automatically be interpreted as insincerity. But here, the inconsistencies in Florez' testimony were the very heart of his defense; and nothing in the transcript indicates that Florez misunderstood the issues or received anything less than a full and fair opportunity to present his case.

For all the foregoing reasons, I find that the commission's decisions in this case are not unlawful, unreasonable, or against the manifest weight of the evidence and should, therefore, be affirmed.

JUDGENT ENTRY

The R.C. 4141.282 Appeal from the Decisions of the Unemployment Compensation Review Commission ("UCRC") filed by plaintiff-appellant, Jose A. Florez, on October 16, 2015, is found not well-taken and Ordered denied.

It is further Ordered that the decisions issued by the UCRC on September 30, 2015, and by UCRC Hearing Officer Leanne Colton on August 25, 2015, are Affirmed.

6/28/16
Date

Judge Ian B. English