

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

SUPERIOR PAYROLL
PROCESSING, LLC.

Appellant,

vs

WILLIAM JOHNSTONE, et al,

Appellees.

)
2016 AUG -2 A 11:33
CASE NO. CV-12-793441

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CLERK OF COURTS
CUYAHOGA COUNTY

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JUDGE ROBERT C. MCCLELLAND

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DECISION
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This matter is an administrative appeal with regard to a claim for Unemployment Benefits. Mr. Johnstone was hired through an employment agency, Professional Placement Services (“PPS”), a sister company to Superior Payroll Processing, LLC. His employment was as a truck driver for Exel, a company located in Hebron, Ohio, approximately 30 miles east of Columbus. PPS and its sister company Superior Payroll Processing, LLC are located in Solon Ohio.

Mr. Johnstone was hired on November 30, 2011 and his employment at Exel was terminated on May 18, 2012. The basis for the termination was a second accident occurring while he was driving a truck. He had received a sheet with terms and conditions of employment at Exel and an accident could be a basis for a termination. Exel, apparently, was lenient with Mr. Johnstone and allowed him to continue his employment after his first accident in April of 2012. It was the subsequent accident on May 17th or 18th of 2012 that caused his eventual termination. PPS is an employment agency and should be distinguished from a temporary agency. The normal contract provides the employee for a period of time after which it is hope that the company will actually hire them.

Mr. Johnstone filed for unemployment benefits and the initial decision issued June 4, 2012 determined that there was just cause for his termination as a result of the accidents. There was no consideration at that time of any claim that he had been promised additional opportunities for employment through PPS. Mr. Johnstone filed a request for reconsideration of the initial determination and on June 19, 2012 the original decision was affirmed, again based upon the termination as a result of the second accident. Mr. Johnstone's request for a hearing was granted and a telephone hearing was filed on July 13, 2012 and there appears to have been some confusion with regard to notification to the employer who did not appear on the telephone for that hearing. As a result of that hearing and statements by Mr. Johnstone that he was promised the opportunity for further employment, the initial decision was reversed on other grounds than those initially considered. The employer, PPS, appealed and requested a hearing based upon the lack of notification. A subsequent telephonic hearing was held on September 13, 2012 and that hearing officer affirmed the prior decision basing it upon conflicting testimony with regard to an offer of further employment and decided that determination was due to a lack of work and not as a result of the second accident.

There is no dispute that Mr. Johnstone had two accidents during the course of his employment at Exel, that there were company rules that covered that issue, and that Exel asked that he be terminated as a result of the second accident. What is in dispute, are the allegations that PPS made some type of promise of attempting to find further employment for Mr. Johnstone.

At some point in the last ten years, a determination was made to stop having "in person" hearings for unemployment benefits and to hold these hearings on telephone. There is an

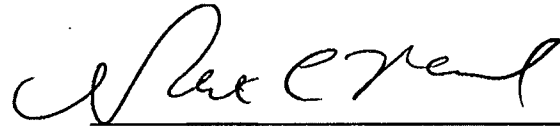
obvious problem in holding telephonic hearings since it is impossible to personally observe the witnesses as they testify which is essential in determining credibility. The standard Ohio Jury Instructions with regard to credibility refer to using all of the techniques we use in our daily lives for determining the credibility of a witness. Simply having a voice over a telephone, makes this extremely difficult and when there are issues in dispute the Court is unsure how the hearing officer makes a determination of credibility in the absence of any other evidence or documentation. This flaw in the hearing system, which is assumed to be the result of budgetary concerns, increases the difficulty of either party to make their case when it is based upon credibility. It must be remembered that many of the prior decisions on this issue were decisions based upon actual live testimony, in person at a hearing.

It is initially troubling that the first decisions had to do with the occurrence of the second accident and that no claim was made alleging a promise of future attempts to find employment. This arises for the first time at the telephonic hearing and is not contained in any of the paperwork for the initial request. Secondly, there is a problem with regard to a determination of the testimony of the parties at the telephonic hearing. Mr. Johnstone alleges that he was provided with a promise of future attempts to find him employment and PPS is adamant in stating that no such offer was made.

Based upon the initial filings, the failure on Mr. Johnstone to raise any issue with regard to continued offers of employment, and the inability to make a determination of credibility when faced with two completely opposite statements made during a telephonic conference, the Court is left with only the ability to accept the initial determination made by the office of unemployment and compensation denying this claim based upon the termination due to the multiple accidents.

The Court reverses the determinations made at the September 13, 2012 hearing.

IT IS SO ORDERED.



JUDGE ROBERT C. MCCLELLAND

Date: 8/1/16

SERVICE

A copy of the foregoing Decision was sent on the 1st day of August, 2016 by regular U.S. mail, postage pre-paid to:

Christopher J. Shaw, Esq.
1487 Belle Ave.
Lakewood, Ohio 44107
Attorney for Appellant

Mr. William Johnstone
116 Sands Drive
Hebron, Ohio 43025-9031
Appellee Pro Se



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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SUPERIOR PAYROLL PROCESSING, LLC
Plaintiff

2016 AUG -2 A 11: 53

Case No: CV-12-793441

CLERK OF COURTS
CUYAHOGA COUNTY Judge: ROBERT C MCCLELLAND

WILLIAM JOHNSTONE, ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

ORDER AND OPINION. O.S.J.

COURT COST ASSESSED TO THE DEFENDANT(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER
PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL
PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

O.S.J.

Judge Signature

Date