

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

GRATE LAKES COURIER SERVICE, LLC,

Case No: 15CVF-09-8444

Appellant,

JUDGE YOUNG

-vs-

OHIO STATE UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION, ET AL.,

Appellees.

DECISION AND ENTRY
AFFIRMING THE COMMISSION'S
DECISION OF AUGUST 26, 2015

YOUNG, JUDGE

The above-styled case is before the Court pursuant to Great Lakes Courier Service, LLC's (Appellant) appeal as filed on September 24, 2015. The Appellant has now named the Ohio State Unemployment Compensation Commission and the Director of the Ohio State Department of Job and Family Services. (Appellees).

Appellant filed its Brief with the Court on July 29, 2016 and the Appellees responded with their Brief on August 26, 2016. Appellant filed its Reply Brief on September 9, 2016. The pleadings are in order.

For the reasons that follow, this Court **AFFIRMS** the Commission's Decision of August 26, 2015.

I. STATEMENT OF THE CASE:

Appellant contested a holding concerning the status of its workers by the administrative agency. The Commission held that the workers in question were employees of the Appellant and not independent contractors. The determination led to a decision that increased the Appellant's cost of doing business. After the final determination was made at the agency level, the Appellant

proceeded to file this appeal.

II. STATEMENT OF THE FACTS:

The case was originally commenced in September of 2015. At that time – and according to the then prevailing case law – the Appellant erred when it did not name the Director of the Department of Job & Family Services. The Appellee at the time – the Unemployment Compensation Commission – moved to dismiss the Appellant’s appeal and that motion was granted by this Court.

The Appellant appealed that decision. While the matter was pending the Supreme Court issued *Pryor v. Dir., Ohio Dept. of Job & Family Servs.*, 2016-Ohio-2907. That decision changed the interpretation of the statute. The Tenth District Court of Appeals followed the *Pryor* decision and on May 24, 2016 it rendered its decision styled: *Great Lakes Courier Serv., L.L.C. v. State Unemp. Comp. Rev. Comm.*, 2016-Ohio-3143. The matter was remanded to this Court at that time.

On remand the parties submitted a new case schedule to set a briefing schedule. Furthermore, the Appellant was given the opportunity to substitute the Director as a party. The parties met the new deadline and the matter is now ready for review.

This case deals with the efforts of Mr. David Allison to secure employment benefits after he was terminated by the Appellant. When Mr. Allison filed for his benefits, the Appellees could not find an employer account number for the Appellant. The Appellees then conducted an investigation.

Both Mr. Allison and the Appellant were asked to respond to standard questions concerning the work environment so that the Appellees could determine the nature of the working relationship. The 20 questions asked to both Mr. Allison and the Appellant were based on the 20 criteria as found within OAC §4141-3-05(B). The investigation concluded with the holding that the Appellant and

Mr. Allison were employer and employee. Appellant asserted that said decision was in error because Mr. Allison was an independent contractor.

The main factors discovered from the investigation were as follows: Appellant set the work schedule; Appellant set the work to be performed and in what order; Mr. Allison was not permitted to arrange for his own replacement; Mr. Allison had to call off if he was not going to be personally performing the work; Appellant provided Mr. Allison with a company uniform, including shirt, hat and badge; Appellant trained Mr. Allison; Mr. Allison was required to drive regular routs for the Appellant; Mr. Allison had to keep logs for the Appellant; Mr. Allison was paid by the hour; Appellant paid Mr. Allison bi-weekly; and Mr. Allison was not allowed to work other jobs if it interfered with his schedule with the Appellant. (Hr. Tr. pages 14 – 15 and Exhibit 5 and 6)

As already noted, the parties have now fully briefed the issues and the case is ready for review.

III. STANDARD OF REVIEW:

R.C. §4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. Please note the following:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission. R.C. §4141.282(H)

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-*

Brockmeyer Co. v. Roach (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission's decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.*(1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer's determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162.

However, this Court must review the record to determine if the evidence relied upon by the Commission is/was internally inconsistent. Please note the following:

An agency's findings of fact will be presumed to be correct and deferred to by the reviewing court unless the court determines that "the agency's findings are internally inconsistent, impeached by evidence of a prior inconsistent statement, rest upon improper inferences, or are otherwise unsupportable." *Ohio Historical Society v. State Employment Relations Bd.*, 66 Ohio St.3d 466, 471 (1993).

Simply put, the mere fact that there was evidence produced that was opposed to the evidence relied upon by the agency, does not require that this Court overturn the holding of the agency.

Based on the above, this Court will no review the arguments of the Appellant.

IV. Analysis:

The Appellant asserted that its facts were better than the Appellees' facts. The Appellant pointed to the portions of the record wherein Appellant's position was supported. It pointed to its contract with its employees showing that they were independent contractors. Though not fully developed, the Appellant also advanced an assertion that some of the evidence relied upon by the

Appellees were in fact conditions of work mandated by other regulatory bodies such as the Ohio Department of Transportation and the Public Utilities Commission of Ohio.

Appellant admitted it provided uniforms but noted that it did not provide tools, instrumentalities or other materials to its employees. The Appellant generally tried to minimize the findings of the Appellee when those findings pointed to the fact that its ‘contractors’ were in fact employees.

In the end, however, the Appellant failed to produce any evidence that the facts relied upon by the Commission were materially inconsistent or otherwise untrustworthy. As noted, this Court will not substitute its judgment on factual determinations.

The Appellant asserted that the Commission relied on hearsay when it allowed its investigator to testify as to what Mr. Allison said in response to the 20 questions sent to him. However, the civil rules do not normally apply in an administrative proceeding and there was no evidence in the briefing that showed that the Appellant timely objected to the evidence. In fact it appears that all of the Exhibits were discussed at the hearing and the Appellant did not object. (Hr. Tr. at page 10, line 13) Nor did the Appellant object at the hearing to the testimony of Ms. Rhodes. So, even if there was a timely objection – which there was not - the Hearing Officer was free to rely upon the prior statements and the report of the Commission’s investigator.

The determination of the issue at the center of the case is very fact specific. Though the Appellant advanced the case of *Haring v. Triangle Equip. Corp.*, 91 Ohio App.3d 432, (1992) (5th Dist.) *Haring* does not refute all of the findings relied upon by the Commission. Furthermore, *Haring* was a de novo review of a motion for summary judgment where the appellate Court was free to make its own decision – not an administrative review such as the case now before this Court.

The Court affirms the Decision of the Commission dated August 26, 2015.

V. DECISION:

The Commission's Decision of August 26, 2015 is **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER

DAVID YOUNG, JUDGE

Copies to:

JERRY E PEER JR
TWO MIRANOVA PL, STE 330
COLUMBUS, OH 43215
Counsel for the Appellant

SUSAN M SHEFFIELD
20 W FEDERAL ST, 3RD FLR
YOUNGSTOWN, OH 44503
Counsel for the Appellees

Franklin County Court of Common Pleas

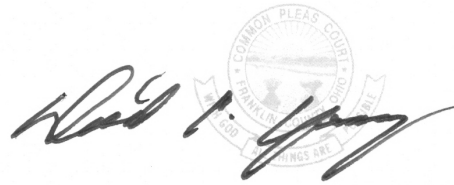
Date: 09-13-2016

Case Title: GREAT LAKES COURIER SERVICE LLC -VS- OHIO STATE
UNEMPLOYMENT COMPENSATION

Case Number: 15CV008444

Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "David C. Young", is written over a circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the inner border, and "JUDICIAL BRANCH" at the bottom. The seal also features a central emblem with a scale of justice and a book.

/s/ Judge David C. Young

Court Disposition

Case Number: 15CV008444

Case Style: GREAT LAKES COURIER SERVICE LLC -VS- OHIO
STATE UNEMPLOYMENT COMPENSATION

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes