

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION**

Kurt A. Looper,		Case No. 14CV-01955
Appellant,		Judge McIntosh
vs.		
Director, Ohio Department of Job and Family Services, et al.,		
Appellees.		

**Decision and Judgment Entry Affirming Decision Issued January 30, 2014
by Ohio Unemployment Compensation Review Commission**

McIntosh, J.

This case is a Revised Code 4141.282 appeal, by Kurt A. Looper (Appellant), from a Decision issued by the Ohio Unemployment Compensation Review Commission on January 30, 2014. In that Decision, the Commission affirmed a Hearing Officer's Decision disallowing Appellant's application for unemployment compensation benefits. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Facts and Procedural History

The following statement of facts is derived from the evidence presented at the Commission's hearings on November 6, 2013, *Tr. Vol. I, pp. 1-52*, and November 22, 2013, *Tr. Vol. II, pp. 1-36*. Witnesses Louise Seipel, Gregory Kendrick, Deborah Brierly, and Peter Krajnak testified as follows.

At all relevant times, Gregory Kendrick was the Student Associate Pastor at Broad Street United Methodist Church in Columbus, Ohio (Church). *Tr. Vol. I, p. 20.* By letter dated July 5, 2012, Pastor Kendrick extended the following employment offer to Appellant:

We are pleased to offer you employment at Broad Street United Methodist Church contracted through the Heart of the City Foundation. We feel that your skills and background will be valuable assets to our team.

Per our discussion, the position is SSI Ohio Project Specialist. Your immediate supervisor will be Gregory E. Kendrick, Jr., student associate pastor, in consultation with the supervisory committee. Your starting date will be Monday, July 16, 2012 and the position end date will be June 30, 2013, as prescribed by current grant cycle. The salary is \$32,000 and is paid on a bi-weekly basis. You will also be provided medical insurance benefits through the West Ohio Conference of the United Methodist Church. The enclosed employee handbook outlines the policies and procedures for Broad Street employees, you are asked to review and return the final page with a signature of acknowledgement.

If you choose to accept this offer, please sign the second copy of this letter in the space provided and return it to us.

We look forward to welcoming you as a new employee at Broad Street U.M.C. *Tr. Vol. I, pp. 11, 25-27, 35.*

On July 5, 2012, at the Church, Appellant signed the hiring letter in Pastor Kendrick's presence, thereby acknowledging Appellant's acceptance of the Church's employment offer. *Tr. Vol. I, pp. 14, 16, 23-24, 34-36.* When Appellant was hired, he understood that his employment would begin on July 16, 2012 and end on June 30, 2013. *Tr. Vol. I, pp. 24, 36.*

The Coalition on Homelessness and Housing in Ohio (COHHIO) is an advocacy group that assists homeless and marginally housed individuals find more stable housing. *Tr. Vol. I, p. 23.*

The Heart of the City Foundation (Foundation) is a 501(c)(3) not-for-profit organization that provides funding for programs that are offered at the Church and are directed towards homeless and low-income residents of downtown Columbus, Ohio. *Tr. Vol. II, p. 12.* The

Foundation is separate from the Church. *Tr. Vol. II, p. 13.* As a 501(c)(3) not-for-profit organization, the Foundation is able to apply for grant money that religious organizations, such as the Church, are not permitted to apply for. *Tr. Vol. I, p. 25.* The Foundation has no employees. *Tr. Vol. II, p. 13.* The work of the Foundation is performed by volunteers and by members of its board. *Tr. Vol. II, p. 13.* At all relevant times, Peter Krajnak was the Executive Director of the Foundation. *Tr. Vol. II, pp. 6, 14.*

On July 11, 2012, COHHIO, as the grantor, and the Foundation, as the grantee, entered into a Grant Agreement for a grant period of July 16, 2012 to June 30, 2013. *Tr. Vol. I, pp. 15-16, 22-25, 39, Tr. Vol. II, pp. 7-11, 14-15.* Pursuant to the Grant Agreement, COHHIO awarded funds to the Foundation for the purpose of implementing the “SSI Ohio Project.” *Tr. Vol. I, pp. 11, 39, Tr. Vol. II, p. 33.* The purpose of the SSI Ohio Project was to assist homeless individuals in applying for SSI. *Tr. Vol. I, pp. 11-12.* SSI (Supplemental Security Income) is a federal income supplement program designed to help aged, blind, and disabled people, who have little or no income, by providing cash to meet their basic needs for food, clothing, and shelter.¹

Pursuant to the Grant Agreement, the Foundation contracted with the Church, as the Foundation’s subcontractor, to perform the work of the SSI Ohio Project at the Church. *Tr. Vol. II, pp. 10-11.* The Church, as the subcontractor for the Foundation, hired Appellant as an SSI Ohio Project Specialist, to perform the work of the SSI Ohio Project at the Church. *Tr. Vol. II, p. 7.* The Church itself did not have the funds to perform the work of the SSI Ohio Project. *Tr. Vol. I, p. 14.* The grant funds received by the Foundation enabled the Church to pay Appellant’s salary for the work he performed. *Tr. Vol. II, p. 33.* The Church had a limited time, from July 16, 2012 to June 30, 2013, to perform the work of the SSI Ohio Project under the Grant Agreement. *Tr. Vol. I, p. 14.*

From July 16, 2012 to June 30, 2013, Appellant worked at the Church as an SSI Ohio Project Specialist whose function was to assist homeless individuals in applying for SSI. *Tr. Vol. I, pp. 11-12, 15, 20-21.* Appellant performed his work at the Church, where he was provided with an office. *Tr. Vol. II, pp. 6-7, 22.* During Appellant's employment at the Church, Louise Seipel was the Senior Pastor. *Tr. Vol. I, p. 11.*

The Church paid Appellant's salary of \$32,000 with grant money. *Tr. Vol. I, pp. 12, 20, 24, Tr. Vol. II, pp. 6-7, 21-22.* Appellant's health insurance was provided through the West Ohio Conference of the United Methodist Church, as stated in the hiring letter dated July 5, 2012. During Appellant's employment at the Church, Deborah Brierly was employed as the Church Administrator. *Tr. Vol. I, pp. 38-39.* Under Ms. Brierly's supervision, the Church's payroll services were used to pay Appellant's salary, with the grant money provided by COHHIO to the Foundation. *Tr. Vol. I, pp. 39-40.* The Foundation did not write checks to Appellant, and Appellant was not employed by the Foundation. *Tr. Vol. II, pp. 6, 8, 17.*

When the Grant Agreement expired on June 30, 2013, Appellant's position at the Church ended, pursuant to the hiring letter dated July 5, 2012. *Tr. Vol. I, p. 15.* Appellant's last day of employment at the Church was June 30, 2013.

On July 22, 2013, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning July 21, 2013.

On July 25, 2013, the Church reported to ODJFS that Appellant was not separated from employment due to a lack of work, but because the grant funding his position ended on June 30, 2013.

In a Determination issued on August 1, 2013, the Director of ODJFS disallowed Appellant's application for unemployment compensation benefits. On August 8, 2013, Appellant appealed the Determination.

In a Director's Redetermination issued on August 26, 2013, the Director of ODJFS affirmed the initial Determination. On September 16, 2013, Appellant appealed the Director's Redetermination.

On September 17, 2016, the Director transferred jurisdiction of Appellant's appeal from ODJFS to the Ohio Unemployment Compensation Review Commission.

On November 6, 2013 and November 22, 2013, a Commission Hearing Officer conducted a hearing on Appellant's appeal. Appellant testified, as did Pastor Seipel, Pastor Kendrick, Ms. Brierly, and Mr. Krajnak.

In a Decision issued on November 26, 2013, the Hearing Officer found that Appellant had been employed by the Church. The Hearing Officer concluded that, pursuant to R.C. 4141.01(B)(3)(h)(i), the services that Appellant performed during his base period of employment were performed in the employ of a church, and therefore, the services were not performed in covered employment. Consequently, the Hearing Officer disallowed Appellant's application for unemployment compensation benefits.

The Hearing Officer rendered the following findings of fact:

During the period from July 16, 2012, through June 30, 2013, claimant performed services as an SSI Ohio Project Specialist under a grant agreement between the Coalition on Homelessness and Housing in Ohio (COHHIO) and Heart of the City Foundation. Heart of the City Foundation in turn entered into a contract with Broad Street United Methodist Church, and Broad Street United Methodist Church paid claimant for the services that he performed as an SSI Ohio Project Specialist. In this position, claimant performed community outreach to the homeless. Claimant had learned about this opportunity from Gregory Kendrick, who is a Student Associate Pastor at Broad Street United Methodist Church. Claimant signed a letter dated July 5, 2012, which states, in part, "We are pleased

to offer you employment at Broad Street United Methodist Church contracted through the Heart of the City Foundation.” The letter also states the following: “Your immediate supervisory [*sic*] will be Gregory E. Kendrick, Jr., student associate pastor.” The letter states that the position had a start date of July 16, 2012, and an end date of June 30, 2013, with a salary of \$32,000.00 to be paid on a bi-weekly basis. The letter indicates that the claimant would be provided medical insurance through the West Ohio Conference of the United Methodist Church.

On July 22, 2013, claimant filed an application for unemployment benefits. The base period for this application consists of the second, third, and fourth quarters of 2012, and the first quarter of 2013. The alternate base period for the application consists of the third and fourth quarters of 2012, and the first and second quarters of 2013. The claimant did not have any employment during the regular or alternate base period aside from the employment described above.

The Hearing Officer provided the following reasoning for his Decision:

After considering the evidence presented in this case, the Hearing Officer finds that the claimant was “employed” by Broad Street United Methodist Church. The Hearing Officer finds the claimant signed the letter dated July 5, 2012 that begins by saying, “We are pleased to offer you employment at Broad Street United Methodist Church contracted through the Heart of the City Foundation.” The claimant was paid directly by Broad Street United Methodist Church. While the money used to pay claimant came from grant funds that Heart of the City Foundation received from COHHIO, this does not change the fact that the money was paid to claimant by Broad Street United Methodist Church. Finally, it was Mr. Kendrick, the Student Associate Pastor for Broad Street United Methodist Church, who initially made claimant aware of the opportunity.

Pursuant to the exemption described in Section 4141.01(B)(3)(h) of the Ohio Revised Code, it will be held that the services that the claimant performed during the base period were not performed in covered employment as the services were performed in the “employ” of a church. The weeks that claimant worked for Broad Street United Methodist Church, under the grant agreement between COHHIO and Heart of the City Foundation, cannot be used to meet the requirement of having at least twenty qualifying weeks of covered employment during the base period for claimant’s application for benefits. Because claimant did not have at least twenty qualifying weeks of covered employment during the regular or alternate base period for his application for benefits, claimant’s application will be disallowed.

On December 16, 2013, Appellant appealed the Hearing Officer’s Decision to the Commission.

On January 8, 2014, the Commission allowed Appellant's request for review.

On January 30, 2014, the Commission issued a "Decision on Request for Review Affirming Hearing Officer." After reviewing the record, the Commission affirmed the Hearing Officer's Decision.

Appellant has appealed the Commission's Decision to this Court pursuant to R.C. 4141.282.

Standards of Appellate Review

Revised Code 4141.282(H), which governs this appeal, 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.

A reviewing court employs a well-established standard of review in appeals involving the Commission: "[A] reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence." *Loughman v. Ohio Dept. of Pub. Safety*, 10th Dist. No. 15AP-473, 2016-Ohio-1086, ¶ 7, quoting *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 697 (1995). When a reviewing court applies this standard, it may not make factual findings or determine witness credibility. *Loughman*, ¶ 7, citing *Irvine v. State Unemp. Comp. Bd. of Rev.*, 19 Ohio St. 3d 15, 18 (1985). Factual questions remain solely within the Commission's province. *Loughman*, ¶ 7, citing *Tzangas* at 696. Thus, a reviewing court may not reverse the Commission's decision simply because "reasonable minds might reach different conclusions." *Loughman*, ¶ 7, quoting *Irvine* at 18.

In determining whether the Commission's decision is supported by the manifest weight of the evidence, a reviewing court applies the civil manifest weight of the evidence standard set forth in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279 (1978), syllabus, which holds: "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *Loughman*, ¶ 7.

Analysis

An individual is eligible for unemployment compensation benefits if he "is unemployed, has been employed by an employer or employers subject to [R.C. Chapter 4141] in at least twenty qualifying weeks within the individual's base period, and has earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half percent of the statewide average weekly wage for such weeks." R.C. 4141.01(R)(1).

However, R.C. 4141.01(B)(3)(h)(i) provides that covered employment does not include service "[i]n the employ of a church or convention or association of churches, or in an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches[.]" It is undisputed that Broad Street United Methodist Church is, in fact, a church.

Appellant's first argument in support of this appeal is that the evidence does not support the Commission's finding that Appellant was employed by the Church. However, as reflected above, there is ample evidence, provided by the testimony of Pastor Seipel, Pastor Kendrick, Ms. Brierly, and Mr. Krajnak, that Appellant was employed by the Church. Appellant's first argument is not well taken.

Appellant's second argument in support of this appeal is that the record certified to the Court by the Commission is incomplete. Specifically, Appellant contends that Claimant's Exhibits P, Q, and R are missing from the record. The exhibits, however, are not missing from the record.

The Commission certified its record to the Court on April 1, 2014. Claimant's Exhibit P, consisting of two pages of emails and a third page identifying the document as "CLAIMANT'S EXHIBIT P," is contained in the certified record. For reference, the Clerk's labeling numbers, "E2082 - N41," "E2082 - N42," and "E2082 - N43" are located on the upper left-hand corner of each page of the exhibit. Appellant is mistaken in his belief that Claimant's Exhibit P is not contained in the certified record.

Regarding Claimant's Exhibits Q and R, the Court observes that, at the hearing on November 6, 2013, the Hearing Officer admonished Appellant that, when the hearing resumed on November 22, 2013, only Claimant's Exhibits A through P, which had been produced for the hearing on November 6, 2013, would be admitted into evidence when the hearing concluded on November 22, 2013. *Tr. Vol. I, pp. 45-48.* Consistent with that ruling, when the hearing resumed on November 22, 2013, the Hearing Officer declined to admit Claimant's Exhibits Q and R, which were newly produced on that date, into evidence. *Tr. Vol. II, pp. 31-32.* Claimant's Exhibits Q and R are not, therefore, missing from the record. Appellant's second argument in support of this appeal is not well taken.

Conclusion

Having considered the record certified to the Court by the Ohio Unemployment Compensation Review Commission, the Court finds that the Commission's "Decision on

Request for Review Affirming Hearing Officer,” issued on January 30, 2014, is not unlawful, unreasonable, or against the weight of the evidence. The Decision is therefore **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

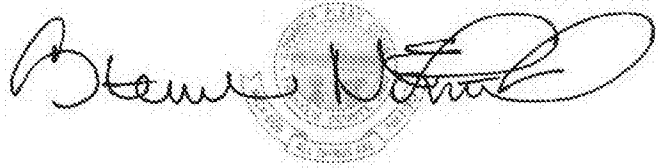
Copies electronically transmitted to all parties and counsel of record.

¹ See <https://www.ssa.gov/ssi/>.

Franklin County Court of Common Pleas

Date: 10-19-2016
Case Title: KURT LOOPER -VS- OHIO DEPARTMENT JOBS & FAMILY SERVICE ET AL
Case Number: 14CV001955
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular, embossed seal. The seal is partially obscured by the signature and contains some illegible text around its perimeter.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 14CV001955

Case Style: KURT LOOPER -VS- OHIO DEPARTMENT JOBS &
FAMILY SERVICE ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes