

May 23, 2016

Reply Brief of Appellant Huth

The Court has also reviewed the entire Transcript of the Record of the Proceedings filed on January 6, 2016.

This matter is an appeal from the State of Ohio Unemployment Compensation Review Commission's ("Commission") Decision dated November 18, 2015, disallowing Appellant's Request for Review in Docket No. C2015-012006, and the Commission's Decision dated November 18, 2015, disallowing Appellant's Request for Review in Docket No. C2015-011848.

STATEMENT OF THE CASE

Huth quit his employment with Lawrence Township on December 31, 2012, after Lawrence Township reduced his hours.

Thereafter, Huth filed an Application for Determination of Benefit Rights for a benefit year beginning December 30, 2012. The Office of Unemployment Compensation issued an initial Determination of Unemployment Compensation Benefits on January 25, 2013, disallowing Huth's application for unemployment compensation benefits, finding that Huth quit without just cause.

Huth filed an appeal from the Determination of Unemployment Compensation Benefits. On February 19, 2013, the Office of Unemployment Compensation Benefits issued a Director's Redetermination affirming the initial determination and denying

unemployment compensation benefits.

Huth subsequently appealed from the Director's Redetermination, and the Commission issued a Decision affirming the Director's Redetermination and disallowing Appellant's Application for Determination of Benefit Rights. The Commission subsequently disallowed Appellant's request for review.

Huth appealed the Commission's Decision to the Tuscarawas County Court of Common Pleas. The Tuscarawas County Court of Common Pleas affirmed the Commission's Decision. Subsequently, Huth appealed to the Fifth District Court of Appeals.

On December 4, 2014, the Fifth District Court of Appeals issued an Opinion that Affirmed in Part; Reversed and Remanded in Part the February 26, 2014 Judgment Entry of the Tuscarawas County Court of Common Pleas. The Fifth District Court of Appeals found that the evidence demonstrated that the reduction in Appellant's hours was substantial and amounted to a constructive discharge, and the Commission's decision that Appellant did not have just cause to leave his employment was against the manifest weight of the evidence. The Fifth District Court of Appeals remanded this matter back to this Court for further proceedings consistent with the Court of Appeals' opinion and the law.

Based upon the outcome of the appeal, on February 25, 2015, the Office of Unemployment Compensation issued a Determination of Unemployment Compensation

Benefits, correcting the previous determination and finding that Huth's application for unemployment compensation benefits would be allowed for a one-year benefit period, beginning on December 30, 2012, and ending on December 28, 2013.

A notice was also sent to Huth on February 25, 2015, informing him that \$1,883.00, represented unemployment benefits for seven weeks, ending on February 23, 2013, had been deposited into his account.

On February 27, 2015, counsel for Huth contacted the ODJFS, Office of Unemployment Compensation via facsimile to inquire as to why Huth only received benefits for seven weeks.

On March 9, 2015, the Office of Unemployment Compensation issued a Determination of Unemployment Compensation Benefits concluding that Huth was not eligible to receive benefits from February 24, 2013 through December 28, 2013. The determination was based upon a finding that claims for that period were not filed within the time limits established by Ohio Unemployment Compensation Law and Administrative Rule 4141-27-05, and that Huth failed to meet the active search for work requirement of R.C. 4141.29(A)(4). (Determination ID #228061080-1).

On March 9, 2015, the Office of Unemployment Compensation also issued a second Determination of Unemployment Compensation Benefits concluding that Huth was not eligible to receive benefits from March 17, 2013 through December 28, 2013. This

determination was based upon a finding that Huth failed to meet the registration requirements of Ohio Unemployment Compensation Law and Administrative Rule 4141-29-01. (Determination ID # 228061081-1).

Huth appealed the determinations issued on March 9, 2015.

The Office of Unemployment Compensation issued a Director's Redetermination on April 15, 2015, affirming the initial determination with ID# 228061080-1. (Determination ID #228061080-2).

Huth appealed the Director's Redetermination with ID# 228061080-2 on May 4, 2015. On July 22, 2015, the Office of Unemployment Compensation issued another Director's Redetermination, also affirming the initial determination, finding that Huth was not eligible to receive benefits from February 24, 2013 through December 28, 2013. (Determination ID #228061080-3)

Huth appealed the July 22, 2015 Director's Redetermination No. 228061080-3 on August 5, 2015, and the file was transferred to the Unemployment Compensation Review Commission on August 7, 2015. This appeal was assigned Docket No. H2015-011848. The Commission sent a Notice to Huth on August 13, 2015, informing Huth that this matter had been transferred to the Commission and that a hearing would be scheduled.

Huth's appeal from Determination ID # 228061081 was also transferred to the Commission on August 11, 2015. This appeal was assigned Docket No. H2015-012006. The

Commission also sent a Notice to Huth on August 13, 2015, informing Huth that this matter had been transferred to the Commission and that a hearing would be scheduled.

An administrative hearing was to be held in both cases on August 26, 2015, before Hearing Officer Jennifer Hanysh. However, the case was reassigned to a later date to address a subpoena request made by counsel for Huth. On September 9, 2015, the Commission issued a Subpoena of Documents and Witness to Doug Hopper, of the ODJFS, regarding Huth's online unemployment account.

The hearing was rescheduled and held on September 23, 2015, before Hearing Officer Jennifer Hanysh. The Hearing Officer heard the testimony of Irvin Huth, Kay Huth, and Douglas Hopper, ODJFS Chief of UC Technical Services.

On October 20, 2015, the Hearing Officer issued a Decision on behalf of the Commission under Docket No. H-2015011848, which affirmed the July 22, 2015 Director's Redetermination and found that Huth is not eligible to receive benefits from February 24, 2013 through December 28, 2013.

The Hearing Officer issued a second Decision on October 20, 2015 on behalf of the Commission under Docket No. H-2015012006, which affirmed the Director's Redetermination issued on March 9, 2015, and found that Huth is not eligible to receive benefits from March 17, 2013 through December 28, 2013.

On October 28, 2015, Huth filed requests for review of both of the Commission's Decisions.

On November 18, 2015, the Commission issued a Decision Disallowing Huth's Request for Review in Docket No. C2015-011848 and another Decision Disallowing Huth's Request for Review in Docket No. C2015-012006.

ARGUMENTS

Appellant requests that the Court overturn the decisions by ODJFS and the Commission denying him benefits. Appellant argues that it is ODJFS's fault that he was unable to file weekly claims. Appellant argues that ODJFS's assertion that he should have known to call ODJFS when he received the message that "no weekly claims can currently be filed," is not supported by the Record. Appellant argues that he should have been able to rely upon the messages contained within the self serve system and assume that the message was accurate. Appellant further argues that the Unemployment Compensation Act should be construed liberally in his favor. Appellant argues that he did look for work during the periods that he was required to do so, he was willing and able to work, and he kept a log of his employment search. Appellant argues that he acted as an ordinary, intelligent person under the circumstances. Appellant argues that the Commission failed to account for the evidence in the record. Appellant further argues that the Commission's decision was unlawful, unreasonable and against the manifest weight of the evidence, and the decision should be overruled.

Appellee, ODJFS, argues that Appellant failed to meet the registration requirements for weekly benefits, failed to meet the active search for work requirement, and therefore,

is ineligible for unemployment compensation benefits for certain weeks. ODJFS argues that the Commission's Decision finding that Appellant failed to timely file weekly claims and failed to meet the actively seeking work requirement was not unlawful, unreasonable, or against the manifest weight of the evidence. ODJFS argues that this Court should construe the unemployment compensation statute liberally without construing the facts liberally. ODJFS argues that evidence presented during the administrative process supports the Hearing Officer's decision. ODJFS argues that the decision of the Commission was not unlawful, unreasonable, or against the manifest weight of the evidence, and therefore, the decision must be affirmed.

STANDARD OF REVIEW

R.C. 4141.282(H), which addresses appeals from a final decision of the Commission to a court of common pleas, provides that:

“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.”

The reviewing court may only reverse the Commission's determination if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 697, 1995-Ohio-206, 653 N.E.2d 1207.

R.C. 4141.46 provides that “[s]ections 4141.01 to 4141.46, inclusive, of the Revised

Code shall be liberally construed.” The Sixth District Court of Appeals has found that “the Unemployment Compensation Act is to be liberally construed in favor of beneficiaries.”

Napolski v. Preferred Properties, Inc., 6th Dist. Lucas No. L-13-1088, 2013-Ohio-5347, ¶6.

However, the 11th District Court of Appeals has clarified that “neither the agency nor the

trial court has a duty to construe *facts more favorably to either party.*” *Burns v. Director, Ohio*

Dept. of Job and Family Services, 11th Dist. Trumbull Nos. 2004-T-0071, 2004-T-0072, 2005-

Ohio-6290, ¶47, citing *Dailey v. Admr. Ohio Bur. of Emp. Services*, 8th Dist. Cuyahoga No.

52633, 1987 Ohio App. LEXIS 5607 (Jan. 22, 1987). “Further, ‘[a] direction to liberally

construe a statute in favor of certain parties will not authorize a court to read into the

statute something which cannot be reasonably [implied] from the language or the statute.”

Burns, at ¶47, citing *Thomas v. Stringer*, 11th Dist. No. 5-127, 1975 WL 180937 (May 27, 1995).

The determination of a purely factual question is primarily within the province of

the board, and a court of law may reverse such decisions on appeal only if they are

unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine v. State*

Unemployment Compensation Bd. of Review, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985),

citing *Brown-Brockmeyer Co.*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947). Upon an appeal

based on factual grounds, the court of common pleas’ role is limited to determining

whether the board’s decision is supported by the evidence in the record. *Morris v. Ohio*

Bureau of Employment Services, 90 Ohio App.3d 295, 298, 629 N.E.2d 35 (10th Dist. 1993);

Irvine, at 18.

A reviewing court, including the court of common pleas, may not make factual findings or determine the credibility of witnesses. *Hasch v. Vale*, 5th Dist. Stark No. 2001CA00361, 2002-Ohio-3092; *See also Kilgore v. Board of Review, Bureau of Unemployment Compensation*, 2 Ohio App.2d 69, 72-73, 206 N.E.2d 423 (4th Dist. 1965). “A reviewing court can not usurp the function of the triers of fact by substituting its judgment for theirs.” *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 430 N.E.2d 468 (1982).

“The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision.” *Irvine*, at 18. If the Commission could reasonably decide either way, the courts do not have authority to upset the board’s decision. *Irvine*, at 18; *Doering v. Holmes County Dept. of Job & Family Services*, 5th Dist. Holmes No. 2008 CA 015, 2009-Ohio-5719, ¶59. “Every reasonable presumption must be made in favor of the [decision] and the findings of fact [of the Review Commission].” *Bonanno v. Ohio Dept. of Job & Family Servs.*, 5th Dist. Tuscarawas No. 2012 AP 02 0011, 2012-Ohio-5167, ¶15, quoting *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, 891 N.E.2d 348, ¶7 (9th Dist.).

However, a court should reverse an agency’s ruling that 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), citing

Griffith v. Administrator, 8th Dist. Cuyahoga No. 48301, 1987 WL 6397 (Dec. 27, 1984).

The purpose of the act is “to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.” *Boehme v. Parma Community Gen. Hosp.*, 8th Dist. Cuyahoga Nos. 81066, 81094, 2002-Ohio-6051, ¶17, citing *Salzi v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 399 N.E.2d 76 (1980).

“Just cause” in the traditional statutory sense “is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Tzangas, Plakas & Mannos*, at 697.

The version of R.C. 4141.29(A), in effect for the majority of Huth’s benefit period, provided, in relevant part, that:

“Each eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in this chapter.

(A) No individual is entitled to a waiting period or benefits for any week unless the individual:

(1) Has filed a valid application for determination of benefit rights in accordance with section 4141.28 of the Revised Code;

(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;

(3) Has registered at an employment office or other registration place maintained or designated by the director of job and family services.

Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.

(4)(a)(i) Is able to work and available for suitable work and, except as provided in division (A)(4)(a)(ii) of this section, is actively seeking suitable work either in a locality in which the individual has earned wages subject to this chapter during the individual's base period, or if the individual leaves that locality, then in a locality where suitable work normally is performed.

* * *

(b) The individual shall be instructed as to the efforts that the individual must make in the search for suitable work, except where the active search for work requirement has been waived under division (A)(4)(a) of this section, and shall keep a record of where and when the individual has sought work in complying with those instructions and, upon request, shall produce that record for examination by the director.

* * *

(5) Is unable to obtain suitable work. * * *

(6) Participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust benefits under this chapter * * *."

Ohio Administrative Code 4141-27-05 provides as follows:

"(A) When a benefit year has been established and a claim for benefits is filed for a week of total or partial unemployment, to be valid, the claim must be filed not later than the end of the third calendar week immediately following such week."

(B) In exceptional cases, when it is shown to the satisfaction of the director that an individual has been deterred by circumstances beyond the individual's control from filing a claim as prescribed in this rule, the director may extend the time limitations to file."

Ohio Administrative Code 4141-29-07(A) provides that "[i]n order for an individual

to be eligible to be credited with a waiting week or receive unemployment compensation benefits for a week, he or she must, unless otherwise provided pursuant to division (A)(4) of section 4141.29 of the Revised Code, provide documentation of the efforts on his or her part to search for work in his or her trade or occupation during each week. The individual shall produce such documentation for examination upon request and in a manner prescribed by the director.”

“Where the denial of a claim for unemployment compensation is reversed in an appeal before the Court of Common Pleas, a claimant who failed to submit applications for benefits, pursuant to R.C. 4141.29(A) * * *, during the appeal period is not entitled to benefits for the time no claims were filed, unless deterred by circumstances beyond his control.” *Feim v. Board of Review*, 56 Ohio App.2d 175, 381 N.E.2d 1340, at the syllabus (10th Dist. 1978).

Likewise, the Ninth District Court of Appeals has also clarified that “unemployment compensation is determined on a weekly basis. Thus, while [a claimant] was appealing the denial of her original claim, she was obliged to continue to apply for unemployment for each week that she was unemployed, looking for work, and available for work.” *Walker v. Ohio Bureau of Employment Services*, 9th Dist. Lorain No. 00CA007633, 2001 WL 57168, *1 (Jan. 24, 2001), citing R.C. 4141.29(A)(1)-(4). Therefore, the claimant “had to file a claim for each week of unemployment by the end of the calendar week following the week for which

compensation was sought.” *Walker*, at *1, citing R.C. 4141.29(A)(2). The claimant “was also required to register at an employment office, and offer evidence that she made contact with at least two potential employers each week.” *Walker*, at *2, citing R.C. 4141.29(A)(4).

DECISION

The Court **FINDS** that all claimants, including Huth, receive a copy of the Worker’s Guide to Unemployment Compensation.

The Court **FINDS** that the Guide provides, in relevant part, as follows:

“Appeal Rights

If you disagree with any decision about your claim, you should file an appeal and continue to file claims for any weeks you are unemployed. If you are unable to file on your own, call your processing center for help. (ODJFS claims processing center locations and contact information are provided on page 38). Claims must meet the filing and registration timeliness requirements. If an appeal is decided in your favor, you may receive payments only for weeks that were properly claimed and are otherwise payable.

Customer service representatives are available to assist in appeal questions from 8 a.m. to 5 p.m. Monday through Friday. You can reach them by calling, toll-free, 1-877-574-0015.”

The Court **FINDS** that Huth testified that after March 7, 2013, when he tried to log in and file his weekly claim on-line, he received a notice stating that “No Weekly Claims can currently be filed.”

The Court **FINDS** that Huth testified that, based upon that message, he believed that he was unable to enter his claims into the system and file his two job contacts each week

because jurisdiction had been transferred, and these requirements no longer applied.

The Court **FINDS** that Huth acknowledged at the hearing before the Hearing Officer that he did not make weekly claims for benefits for the subject weeks.

The Court **FINDS** that, although the message on ODJFS' website could be misleading, Huth did not attempt to call the processing center for help, as previously directed in the Workers' Guide to Unemployment Compensation.

The Court **FINDS**, therefore, that the Commission could reasonably conclude that Huth did not make weekly claims for benefits for the subject weeks and did not comply with registration requirements, as required by R.C. 4141.29(A).

The Court **FINDS** that Huth testified that he sought work every week and kept a record of the jobs that he applied to; however, he testified that he lost the document when his computer stopped working in late 2013 or early 2014.

The Court **FINDS** that although Appellant Huth and Kay Huth testified generally that Huth sought work during the subject period, Huth did not present more specific evidence regarding his work-seeking activities, such as the employers that he contacted during those weeks.

The Court **FINDS**, therefore, that based upon the lack of documentation and evidence presented by Huth regarding his efforts to search for work in his trade or occupation each week, the Commission could reasonably conclude that Huth did not

comply with R.C. 4141.29(A)(4) and was not entitled to benefits for the subject weeks.

The Court **FINDS**, therefore, that the Hearing Officer's findings that Huth was not entitled to benefits for the periods of February 24, 2013 through December 28, 2013 and March 17, 2013 through December 28, 2013 were supported by the evidence in the record.

The Court **FINDS**, therefore, that the Commission's Decisions were supported by the evidence and were **not** unlawful, unreasonable, or against the manifest weight of the evidence.

The Court **FINDS** therefore, that the **Decisions of the Commission** in Docket Nos. C2015-011848 and C2015-012006, both dated November 18, 2015, disallowing Appellant's Requests for Review, should be **affirmed**.

It is therefore **ORDERED** that the **Decisions of the Commission** in Docket Nos. C2015-011848 and C2015-012006, both dated November 18, 2015, disallowing Appellant's Requests for Review, are **affirmed**.

It is further **ORDERED** that the costs of this Appeal shall be assessed to Appellant.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: Nov. 9, 2016

cc: Michela Huth, Esq.
Susan Sheffield, Senior Assistant Attorney General
State of Ohio Unemployment Compensation Review Commission
Court Administrator
Clerk of Courts