



FILED
LORAIN COUNTY

2016 DEC -1 P 2:31

COURT OF COMMON PLEAS
TOM ORLANDO

**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
Christopher R. Rothgery, Judge**

Date 11/30/16

Case No. 16CV190100

PATRICK SALKIEWICZ

Plaintiff

JOSEPH LAVECK

Plaintiff's Attorney

(440)258-1018

VS

OHIO DEPARTMENT OF JOB & FAMILY
SERVICES, et al.

Defendant

LAURENCE R. SNYDER

Defendant's Attorney

(216)787-3030

This matter is before the Court for consideration of Appellant Patrick Salkiewicz's appeal of the decision of the Ohio Unemployment Compensation Review Commission (hereinafter "UCRC") pursuant to R.C. 4141.282. Upon consideration of the Appellant's Brief, the Briefs of Appellees Ohio Department of Job and Family Services (hereinafter "ODJFS") and Main Street Care Center (hereinafter "Main Street"), and the certified transcript of the record, this Court finds as follows.

STANDARD OF REVIEW

R.C. 4141.282 governs unemployment compensation appeals to the Court of Common Pleas. Subsection (H) of that statute provides as follows:

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. *Id.*





The Review Commission's function as trier of fact remains intact. As such, this Court should defer to the Review Commission where factual matters, the credibility of witnesses, and the weight of conflicting evidence are at issue. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Fahl v. Bd. Of Rev.*, 2 Ohio App.2d 286; *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69. As proceedings such as this are not *de novo* trials, this Court may not make factual determinations or substitute its judgment for that of the Review Commission; for "[i]f the decision is supported by credible proof, the finding may not be disturbed." *Kilgore*, 2 Ohio App.2d at 71-73. "When reviewing the manifest weight of the evidence, '[t]he reviewing court *** weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.'" *Wright v. Director, Ohio Dept. of Jobs & Family Services; et al.*, 9th Dist., 2013-Ohio-2260 at ¶10 quoting *Eastley v. Volkman*, 132 Ohio St.3d. 328.

ANALYSIS AND CONCLUSIONS OF LAW

- 1) Was the UCRC's decision unlawful, unreasonable and against the manifest weight of the evidence?

Appellant, Mr. Salkiewicz, claims that the UCRC's decision was unlawful, unreasonable, or against the weight of the evidence. Appellant cites three reasons that this Court should reverse the UCRC decision:

- "1) The record does not support that the \$1,000 approval rule was in effect at the time of the alleged approval of the contract.





2) The record does not support that there was ever a quote provided to Salkiewicz to approve, which is the stated reason for his discharge.

3) Punishing Salkiewicz for Main Street's haphazard contracting process constitutes a manifest miscarriage of justice. *Eastley*. In the absence of violating an existing policy, and, in fact, following standard operating procedures, Salkiewicz's discharge was unjust and therefore the Unemployment Compensation Review Commission's decision is unlawful, unreasonable, or against the manifest weight of the evidence." Appellant's Brief p. 9.

This Court will address each of Appellant's claims separately.

a) The record does not support that the \$1,000 approval rule was in effect at the time of the alleged approval of the contract.

Appellant's first contention is that the record does not support that the \$1,000 approval rule was in effect at the time of the alleged approval of the contract. A review of the transcript shows that Appellant acknowledged there was an approval process in place and that he had previously complied with said requirement. Trans. p. 27, lines 5-9. Appellant seems to be relying on his testimony provided on re-direct examination of the Hearing Officer wherein it was asked and answered as follows:

Question by Hearing Officer: "Is there a written policy that says you have to give the quotes, first of all, what's the amount that you have to get approval for? For \$500.00, I've heard \$1,000.00"

Answer by Appellant: "The last, last e-mail I had before I was discharged was an e-mail that said, 'As of,' whatever date that was, 'that it had to be anything under \$1,000.00 or over \$1,000.00 had to be approved.'" Trans. p. 32, lines 9-14.

This question and answer do not indicate when the policy was implemented. Appellant was responding to a question about whether there was a policy and for what amount. Further, the prior testimony of Appellant was clear that there was a policy he was aware of. Determinations





of factual questions are primarily reserved for the Hearing Officer and the Review Commission. *Brown-Brockmeyer Co.* at 511. As a result, courts are prohibited from making factual determinations or deciding the credibility of witnesses. *Irvine v. Unemploy. Comp. Bd. of Review*, 19 Ohio St.2d 15 (1985). Courts cannot usurp the function of the trier of fact by substituting its judgment for that of the Review Commission. *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.41 (1982). A decision supported by some competent, credible evidence will not be reversed as being against the manifest weight of the evidence. *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App. 3d 159 (1983). Based upon the above, this Court finds that Appellant's first contention is not well-taken and therefore overruled.

b) The record does not support that there was ever a quote provided to Salkiewicz to approve, which is the stated reason for his discharge.

Appellant's second contention is that the record does not support that there was ever a quote provided to Appellant to approve, which is the stated reason for his discharge. A review of the transcript reveals otherwise. Appellant received an email from Chris Barnicle, the service manager for Gross Plumbing, the contractor that did the work. Mr. Barnicle testified that he attached a copy of the invoice from 2012 when the fire damper inspection was previously done. Trans. pp. 18-19. The email indicated that it took nearly a month to complete the work in 2012. Ex. A. Appellant acknowledges that he received the email but did not review the attachment. Trans. p. 29, lines 6-13. Appellant contends that the email and the attachment do not constitute a quote. *Id.* at lines 14-26., p. 30, lines 1-6. Appellant admits he did not know or inquire of the scope of work, how many hours the work was going to take, or what the hourly rate would be and still Appellant did not ask for a quote from Mr. Barnicle. *Id.* at p. 32, lines 5-8, p. 33, lines





2-16. As stated by the Hearing Officer in his reasoning, it was Appellant's responsibility to know the cost of the work before it was performed, otherwise he could not know if it was in excess of \$1,000.00, and consequently authorization was required. As such, simply keeping his head in the sand and not obtaining a "quote" when he had information sent to him, the prior invoice for over \$21,000 when the inspection was done in 2012, does not suffice as fulfilling his obligations prior to approving work to be done. As such, this Court finds Appellant's second contention not well-taken and therefore overruled.

c) Punishing Salkiewicz for Main Street's haphazard contracting process constitutes a manifest miscarriage of justice. *Eastley*. In the absence of violating an existing policy, and, in fact, following standard operating procedures, Salkiewicz's discharge was unjust and therefore the Unemployment Compensation Review Commission's decision is unlawful, unreasonable, or against the manifest weight of the evidence.

Appellant's third contention is that punishing Appellant for Main Street's "haphazard" process constitutes a manifest miscarriage of justice. The testimony in this matter does not support Appellant's contention. Actually, Appellant's own testimony indicates there was a policy, that he was aware of the policy, and that he chose to not read an attachment or otherwise inform himself of the scope, hours, and cost of the work that he approved which ran afoul of the policy. As such, this Court finds Appellant's third contention not well-taken and therefore overruled.






CONCLUSION

Based upon the above, this Court finds there is substantial evidence in the record to support the factual conclusions reached by the UCRC that Appellant was separated from his employment with just cause and therefore not entitled to unemployment benefits. Therefore, this Court finds that the UCRC decision before this Court is not unlawful, unreasonable, or against the manifest weight of the evidence and it is hereby affirmed. Costs to Appellant Patrick Salkiewicz. CASE CLOSED.

IT IS SO ORDERED.

VOL _____ PAGE _____



Christopher R. Rothgery, Judge

cc: ATTY. LAVECK by fax 440-282-2046
ATTY. SNYDER by fax 866-436-9028
ATTY. PIVONKA by fax 216-682-2109

TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.

