

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

ORSSIE F. BUMPUS,	:	
	:	
Appellant,	:	
	:	Case No: 16CV-10932
vs.	:	
	:	(JUDGE FRYE)
OHIO DEPARTMENT OF	:	
ADMINISTRATIVE SERVICES,	:	
	:	
Appellee.	:	

DECISION AND FINAL JUDGMENT
AFFIRMING ADJUDICATION ORDER OF NOVEMBER 4, 2016

This is an administrative appeal by Orssie F. Bumpus contesting an Adjudication Order issued November 4, 2016 by the Ohio Department of Administrative services. For the reasons that follow, the Order is **AFFIRMED**.

STATEMENT OF THE CASE

The Order requires Mr. Bumpus to repay disability payments which were allegedly doubled-up during the first nine months of 2015. Mr. Bumpus received both disability leave benefits and retirement benefits for the same timeframe, resulting in the Order to return some of the payments to the state.

STATEMENT OF FACTS

Appellant worked as a Trooper with the Ohio State Highway Patrol for nearly 22 years. His last day of work was August 28, 2014. (Transcript of hearing, p. 14; Hearing Officer’s Report & Recommendation dated Aug. 24, 2016, ¶ 1.) He filed an application for disability leave benefits in September 2014, which OSHP recommended be approved later that same month. (*Id.*, ¶¶ 2, 5.) Although Mr. Bumpus identified his disability simply as “Stress/Anxiety,” his condition required inpatient hospitalization from August 31 - September 5, 2014. (¶ 2) Appellant’s condition was deemed so serious that a psychiatrist wrote in September 2014 that

he “will never be cleared to carry a gun while functioning as a highway patrol officer.” (¶ 8)

At the time his disability occurred Mr. Bumpus was a participant of the state’s Deferred Retirement Option Plan. (“DROP”). The DROP program allowed Troopers to continue to work while receiving DROP retirement benefits too. (R & R ¶ 6; Admin. Record pp. 105, and 101-102.) This, it appears, contributed to the confusion about payment arrangements, and ultimately the overpayment with which this case is concerned.

DAS initially approved disability leave on October 3, 2014. (R & R ¶ 7) Bumpus’ initial benefits were paid for the period October 1 to November 30, but based upon further medical documentation his disability status was extended for the period December 1, 2014 to May 24, 2015. (¶¶ 13, 15)

Because as of January 2, 2015, Appellant was still unable to return to work (¶ 16) he was notified that he was being involuntarily separated from state employment by the OSHP. Once that occurred, he no longer was able to participate in the DROP program, but he became eligible for his regular state retirement benefits through the OSHP retirement system. (¶ 16)

Ultimately DAS disability leave benefits were again extended and approved up to September 13, 2015. (¶¶ 22 - 24) That was the one-year maximum time period for DAS benefits of the type given Mr. Bumpus.

In August 2015, the Highway Patrol Retirement System notified DAS that Mr. Bumpus would be receiving his regular retirement benefits, and no longer was a state employee or participating in the DROP program. (¶ 25) Once he had become eligible for regular retirement, back in January 2015, the undisputed testimony was that Bumpus became ineligible to simultaneously receive DAS disability leave benefits. (¶ 26) Thus, DAS took the position that all disability payments made between January 3, 2015 and September 13, 2015 had to be returned.

After determining a net overpayment disability benefit amount, DAS sent a letter to the Appellant dated May 5, 2016. The letter informed the Appellant that DAS was going to look to the Appellant for payments wrongfully made. Mr. Bumpus retained counsel and appealed. His administrative hearing was held July 20, 2016.

The Notice of Hearing contained the following “**Reason for Denial**”:

Administrative Rule 123: 1-33-06(A): An employee remains eligible for disability leave benefits until the effective date of retirement from a state employee's retirement system and Administrative Rule 123:1-33-05(I): The director shall initiate all necessary steps to recover disability leave benefits or insurance premiums paid in error.

(Record at 124) (emphasis in original)

With additional information, DAS modified the claim to a refund amount of \$20,673.54 by letter dated June 13, 2016. (Record p. 145). Following the administrative hearing, the Report and Recommendation to the Director of DAS was for recovery of that amount.

Counsel for Mr. Bumpus did not contest the amount overpaid, or the duplication of benefits during the administrative hearing. As the administrative Hearing Officer recognized, moreover, no one accused Mr. Bumpus of any fraudulent intent in regard to this matter. (¶ 37 - 38) Instead, the evidence showed that his receipt of disability benefits continued into September 2015, while he did not actually receive any retirement payments until approximately October 2015. (Finding of Fact No. 5) Nevertheless, once approved his retirement payments were retroactive to January 3, 2015. (*Id.*) Like the lack of timely notice to DAS of Bumpus’ earlier approval for full retirement benefits, the fact that he never received duplicate monthly checks simultaneously helps explain the confusing situation presented for both parties.

Following the July 2016 hearing, the Hearing Officer issued a 13 page Report and Recommendation (R & R). DAS Director Robert Blair adopted the R & R on November 4, but in doing so ordered that “a payment plan be created allowing Mr. Bumpus to pay back the disability leave benefits over time.” (Record p. 215) The Certified Record shows that a certified mailing to the Appellant was received on November 9, 2016. No longer represented by counsel, appellant filed this appeal, *pro se*, on November 17, 2016.

On February 17, 2017 this Court filed a Journal Entry. This Court noted that the Appellant had failed to comply with the filing deadline for his Brief. Instead, Appellant appeared personally on February 16, 2017 in Courtroom 5F – the date originally noted on the case schedule as his ‘non-oral hearing’ date. The Court

sua sponte set a new briefing deadline. Appellant was given until March 3, 2017 to file a written brief. The Appellee was given until March 10, 2017 to reply. No prejudice is apparent to either side because the briefing schedule was not followed as originally intended.

THE STANDARD OF REVIEW

Kellough v. Ohio State Board of Education, Case No. 10AP-419, 2011-Ohio-431 (10th District) held:

Pursuant to R.C. 119.12, when a common pleas court reviews an order of an administrative agency, the court must consider the entire record to determine if the agency's order is supported by reliable, probative, and substantial evidence and is in accordance with law. To be "reliable," evidence must be dependable and true within a reasonable probability. *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571, 589 N.E.2d 1303. To be "probative," evidence must be relevant, or, in other words, tend to prove the issue in question. *Id.* To be "substantial," evidence must have some weight; it must have importance and value. *Id.*

In reviewing the record for reliable, probative, and substantial evidence, the trial court "must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof." *AmCare, Inc. v. Ohio Dept. of Job & Family Servs.*, 161 Ohio App.3d 350, 2005-Ohio-2714, ¶9, 830 N.E.2d 406 (quoting *Lies v. Ohio Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, 2 Ohio B. 223, 441 N.E.2d 584). In doing so, the trial court must give due deference to the administrative resolution of evidentiary conflicts because the agency, as the fact finder, is in the best position to observe the manner and demeanor of the witnesses. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265.

Id., at ¶¶ 29 – 30. *Salem v. Koncelik*, 164 Ohio App.3d 597, 2005-Ohio-5537, 843 N.E.2d 799 (10th Dist.), ¶ 16 similarly observed:

We are cognizant that courts must give due deference to an administrative agency's interpretation of its own administrative rules. See *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 545 N.E.2d 1260. The General Assembly created these administrative bodies to facilitate certain areas of the law by placing the administration of those areas before boards or commissions composed of individuals who possess special

expertise. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 1993-Ohio-122, 614 N.E.2d 748, paragraph one of the syllabus. Given such, the Ohio Supreme Court has held that, unless the construction is unreasonable or repugnant to that statute or rule, this court should follow the construction given to it by the agency. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 1992-Ohio-105, 590 N.E.2d 1223.

Appellant's Brief and other filings do not challenge the legal rules under which this court must review Mr. Bumpus' appeal.

Documents that are not part of the Certified Record cannot be relied upon by this court on appeal. Factually speaking, as the agency found, although retirement benefits were delayed Mr. Bumpus ended up with both retirement benefits and disability payments for the same period between January and September, 2015. Appellant – for the first time – seemingly now contests the actual amount claimed to have been paid in error. Yet he offers no citation to the factual administrative record where the validity of his argument is documented. To the contrary, in closing argument to the Hearing Officer Mr. Bumpus' counsel did not even mention the dollar amount at issue. Instead, he argued that Mr. Bumpus “received money under color of law and in good faith, [and] that he, in that circumstance, would not have to pay the money back.” To order recovery would violate Bumpus' constitutional rights, it was further argued. (Tr. p. 48)

Essentially the issue on appeal is the lawfulness of the DAS Decision to recover the mistakenly paid disability money. Again, it is undisputed that ultimately Mr. Bumpus received payments of both retirement benefits and disability benefits covering the same timeframe. It is equally undisputed that DAS was unaware that Bumpus' retirement benefits had been approved until August 2015, and it was not until October 2015 that Bumpus himself learned he had been approved for retirement backdated to January 3, 2015. (R & R, at page 12 of 13) “[N]o one, including Mr. Bumpus, realized there had been a double payment for the same time period until about November 2015, when DAS sent the letter to Mr. Bumpus notifying him that he was responsible to repay over \$20,000 in benefits.” (*Id.*)

Ohio common law recognizes the “voluntary payment doctrine.” *Cirino v. Ohio Bureau of Workers' Comp.*, 8th Dist. No. 104102, 2016-Ohio-8323, 2016 Ohio

App. LEXIS 5180, ¶ 106. This is understood to mean that “money paid under mistake of fact without consideration is generally able to be recovered.” *Meeker R & D Inc. v. Evenflo Co.*, 11th Dist. Nos. 2014-P-060 and 2015-P-015, 2016-Ohio-2688, 52 N.E.3d 1207, 2016 Ohio App. LEXIS 1560, ¶ 65. Conversely, money paid under a mistake of law is not recoverable. *Id.* ¶ 69.

“A mistake of fact exists when one understands a fact to be different than it actually is. [citation omitted].” *Holdren v. Garrett*, 10th Dist. No. 09AP-1153, 2011-Ohio-1095, 2011 Ohio App. LEXIS 923, ¶ 28; see also, *Evenflo, supra*, ¶ 64

The mistake at issue here was of fact, not law. Neither party knew at the relevant time that full retirement benefits would be or had been approved retroactive to January 2, 2015, mistakenly allowing interim disability benefits to continue to be paid by DAS for a full, one-year maximum period. This entitles DAS to recover the money at issue.¹ The money at issue never would have been paid had DAS known the true factual situation. Accordingly, the DAS Adjudication Order of November 4, 2016 is found to be supported by reliable, probative, and substantial evidence and to be in accordance with law.

¹ The alternative, that duplicate benefits could not be recovered in this situation, would be a bad legal rule. Payors like DAS might slow-walk approval of interim disability payments to assure that no duplicate overpayment ever occurred even though a state retirement fund might take months to study and decide on final retirement benefits. That approach would leave disabled state employees very vulnerable financially, and generally much worse off than Mr. Bumpus is under the repayment arrangement ordered here.

FINAL JUDGMENT

The November 4, 2016 Adjudication Order issued by the Director of the Ohio Department of Administrative Services is supported by reliable, probative, and substantial evidence and is in accordance with law. It is hereby **AFFIRMED**.

Court costs, including the \$218.10 cost of preparing the administrative record (filing made Dec. 16, 2016), are taxed against Appellant Orssie F. Bumpus.

THIS IS A FINAL APPEALABLE ORDER. This case is terminated on the docket of this court.

IT IS SO ORDERED.

Mail copy to:

ORSSIE F. BUMPUS
6571 Schenk Ave.
Reynoldsburg, OH 43068
Appellant pro se

Franklin County Court of Common Pleas

Date: 05-18-2017
Case Title: ORSSIE F BUMPUS -VS- OHIO DEPARTMENT
ADMINISTRATIVE SERVICES
Case Number: 16CV010932
Type: JUDGMENT ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard A. Frye". The signature is written over a blue circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "COMMON PLEAS COURT" around the bottom. In the center of the seal, there is a smaller emblem and the motto "ALL THINGS ARE POSSIBLE" at the very bottom.

/s/ Judge Richard A. Frye

Court Disposition

Case Number: 16CV010932

Case Style: ORSSIE F BUMPUS -VS- OHIO DEPARTMENT
ADMINISTRATIVE SERVICES

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes