

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

**TOM ORLANDO, Clerk
JOURNAL ENTRY
James L. Miraldi, Judge**

Date	<u>07/31/17</u>	Case No.	<u>17CV191848</u>
<u>MATTHEW A MISHAK</u>		<u>PAUL J CORRADO</u>	
Plaintiff		Plaintiff's	(216)765-4000
		Attorney	
VS			
<u>OHIO DEPARTMENT OF JOB & FAMILY SERVICES</u>		<u>LAURENCE R SNYDER</u>	
Defendant		Defendant's	(216)787-3093
		Attorney	

The Unemployment Compensation Review Commission ("UCRC") determined that Claimant Matt Mishak ("Mishak") was discharged for just cause by the City of Elyria.

The UCRC made the following factual findings:

Claimant Mishak worked as an assistant law director/prosecutor for the City of Elyria from January 3, 2012 to July 26, 2016 and was a salaried employee. On May 1, 2014, a memo was posted directed to the city prosecutors. He read the memo. Several prosecutors worked for other jurisdictions and the purpose of the memo was to clarify what could and what could not be done while the prosecutors were working for the City of Elyria. When the work became involved or time-consuming, the prosecutor was to take leave, such as for jury trials, discovery motions, motions to suppress. They could perform ordinary case management if it did not conflict with the work the prosecutor was being paid to do for the City of Elyria.

In 2016, it came to the City of Elyria's attention that Mishak might be in violation of this memo. Elyria made a records request and compared records with the Village of Grafton and determined he was double billing. Mishak was meeting with Grafton representatives to discuss Grafton cases in his Elyria office during his normal work hours for Elyria. He was billing Grafton for work that he was doing while he was being paid by Elyria for work he was expected to be doing for Elyria. He did not take leave.

The UCRC found that Mishak knew of Elyria's policy concerning representing jurisdictions other than Elyria. He acted contrary to that rule by interviewing witnesses which was not "ordinary case management." Based upon Mishak's testimony and the payroll documents, UCRC found that he was working for Grafton when he should have been working for Elyria and billed both entities for

the same time. Other Issues concerning employment with Grafton and ability to work were considered moot.

Mishak contends that Elyria did not have good cause to terminate him because an investigation was pending so the facts known by Elyria at the time of his termination were incomplete; the policy was unfair because it was subject to different interpretations and enforced unfairly; he did not received due process during his hearing because he was prevented from presenting evidence that he believed was relevant; and the hearing officer misunderstood the City of Elyria's policy.

The court may only reverse, vacate, modify, or remand the decision to the UCRC if it finds that the decision "was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. 4141.282(H). Otherwise, the court is required to affirm. *Id.* R.C. 4141.282(H); *Tzangas, Plaka, & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696-97 (1995). The resolution of factual questions is chiefly within the UCRC's scope of review. *Tzangas* at 696. Thus, when assessing a decision the court must refrain from making factual findings or weighing the credibility of witnesses, and must instead determine whether the evidence in the certified record supports the UCRC's decision. *Id.* If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the UCRC. *Durgan v. Ohio Bur. of Emp. Servs.*, 110 Ohio App.3d 545, 551 (9th Dist.1996). Every reasonable presumption must be made in favor of the decision and the findings of facts of the UCRC. *Roberts v. Hayes*, 9th Dist. No. CA 21550, 2003-Ohio-5903, ¶ 15, quoting *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988).

First, Claimant Mishak has challenged the evidentiary rulings during the hearing which excluded evidence that he contends was relevant, The hearing before the UCRC is highly informal, and the hearing officer has broad discretion in accepting and rejecting evidence and in conducting the hearing. *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07 MA 124, 2008-Ohio-1061, ¶ 11. Hearing officers are not bound by common law or statutory rules of evidence or formal rules of procedure." R.C. 4141.281(C)(2). Rather, the purpose of the hearing is to ascertain the facts that may or may not entitle the claimant to unemployment benefits, and the hearing officer's discretion is tempered to the extent that he must afford each party an opportunity to present evidence that provides insight into the very subject of the dispute. *Bulatko* at ¶ 11, citing *Owens v. Admr., Ohio Bur. of Emp. Servs.*, 135 Ohio App.3d 217, 220 (1st Dist.1999).

Considering the highly informal nature of the proceedings before the UCRC, the hearing officer's decision to admit some evidence and excludes other evidence is not a basis to reverse the UCRC's decision.

Second, Claimant Mishak has challenged whether the UCRC's decision was supported by competent, credible evidence.

Mishak testified at the hearing that he was aware of the posted City of Elyria policy concerning prosecutors that worked for more than one jurisdiction. He also testified that he completed work for Grafton while he was being paid by Elyria. He believed that this was permissible because his work for Grafton was ordinary case management. He further testified that he considered 99 percent of case activities to be ordinary case management. As long as his work for Grafton did not interfere with Elyria work, he was not in violation of the policy. The UCRC disagrees with Mishak's interpretation of the policy, noted that he was an at-will employee and found that he was terminated for just cause.

This court finds that the decision of the UCRC was not unlawful, unreasonable, or against the manifest weight of the evidence. The issues of an ongoing investigation, the fairness of the policy or its application in a particular instance do not impact this finding. There was competent, credible evidence to support the UCRC's finding and therefore, the decision that Mishak was discharged for just cause must be affirmed.


James L. Miraldi, Judge

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

TOM ORLANDO, Clerk
JOURNAL ENTRY
James L. Miraldi, Judge

Date 07/31/17

Case No. 17CV191848

MATTHEW A MISHAK
Plaintiff

PAUL J CORRADO
Plaintiff's (216)765-4000
Attorney

VS

OHIO DEPARTMENT OF JOB & FAMILY
SERVICES
Defendant

LAURENCE R SNYDER
Defendant's (216)787-3093
Attorney

This court finds that the decision of the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence. There was competent, credible evidence to support the decision that Appellant Mishak was discharged for just cause. The decision is affirmed. See Journal.

Case closed. Costs to Appellant Mishak.


James L. Miraldi, Judge

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 it's date of entry upon the Journal