

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

Alissa M. Knapp, et al.

FILED  
IN COURT OF COMMON PLEAS  
DEFIANCE COUNTY, OHIO

Case No. 16-CV-43656

Plaintiffs

-vs-

OCT 31 2017

*Ang M. Halbraith*  
CLERK

Defiance Therapeutic Massage, et al.

: JUDGMENT ENTRY

Defendant

:

:

This cause came on for consideration of this appeal filed by Defiance Therapeutic Massage & Wellness Center, LLC seeking to overturn the administrative determination that Plaintiff-Appellee, Alissa M. Knapp, was discharged without just cause from covered employment with Defiance Therapeutic Massage & Wellness Center, LLC and therefore entitled to unemployment compensation.

The parties have provided extensive merit briefs and a multi-volume record on appeal is also before the court.

In the instant case, Alissa M. Knapp performed services as a massage therapist at Defiance Therapeutic Massage & Wellness Center. Defiance Therapeutic's appeal attacks the determination that the

business relationship between Knapp and Defiance Therapeutic amounted to "covered employment". They do not argue the "without just cause" determination.

It is well settled that the court is required to observe the standard of review set forth in §4141.282 (H) of the Ohio Revised Code. The statute states: "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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission." In practice, the Ohio Supreme Court has provided that the Review Commission's decision must be affirmed "if some competent, credible, evidence in the record supports it." *Central Ohio Vocational School Dist. Bd. Of Edn. V. Admr., Ohio Bur. Of Emp. Servs.*, 21 Ohio St.3d 5 (1986).

The extensive record herein details the business relationship between the parties. Defiance Therapeutic attacks the hearing officer's application of the twenty factors set forth in the Ohio Administrative Code 4141-03-05 upon which a determination of a covered employment must be based. As in the related case, Defiance Therapeutic's principal argument flows from the manner in which the Appellee's compensation was calculated. As in the case of the acupuncturist in the related case, this massage therapist's compensation was calculated with reference to

the billings for massage services she performed. Based, almost solely, upon this means of calculating compensation, Defiance Therapeutic contends that Ms. Knapp was an independent contractor and therefore not within the "covered employment" so as to qualify for unemployment compensation benefits.

The record herein, as extensively detailed in the merit brief of the Appellee, sets for substantial credible evidence upon which the "covered employment" determination can be found. While the parties may have initially intended an independent contractor relationship to exist, clearly by the time of her separation, Ms. Knapp was subject to extensive direction and control of Defiance Therapeutic and clearly required, as part of the overall relationship, to perform extensive services beyond specific massage therapy. Again, as in the related case, the mere fact that compensation was calculated with reference to billed services does not negate the fact that Defiance Therapeutic exercised substantial control in the overall relationship. In the instant case, as well, the documentation generated by Defiance Therapeutic and the Workers' Compensation premium/tax arrangements clearly support the determination of covered employment.

It is apparent that the record herein contains substantial credible evidence in support of the Review Commission's determination. It is

therefore ORDERED, ADJUDGED and DECREED that the within appeal is  
DISMISSED, with prejudice.

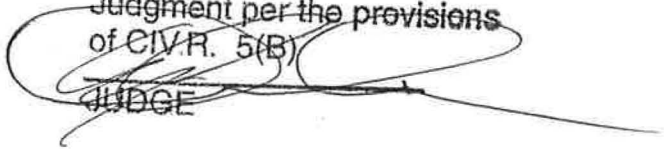


Joseph N. Schmenk  
JUDGE

cc: Eric A. Baum  
One Government Center, Suite 1340  
Toledo, Ohio 43604  
Attorney for Appellee, Ohio Department of  
Job & Family Services

Mark S. Barnes  
405 Madison Avenue, Suite 1900  
Toledo, Ohio 43604  
Attorney for Appellant, Defiance Therapeutic  
Massage & Wellness Center, LLC

**TO THE CLERK:**  
Serve all parties with  
Notice and Date of this  
Judgment per the provisions  
of CIV.R. 5(B)



JUDGE