

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

RUTHANN CECELA,

Appellant,

-vs-

**DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES, ET AL.,**

Appellees.

Case No: 11CVF-10-12915

JUDGE HOGAN

DECISION AND ENTRY
AFFIRMING THE DECISION DISALLOWING REQUEST
FOR REVIEW AS MAILED ON OCTOBER 6, 2011

HOGAN, JUDGE

The above-styled case is before the Court on an appeal of the Decision Disallowing Request for Review issued by the Unemployment Compensation Review Commission (hereinafter referred to as Commission) that denied Ruthann Cecela's (hereinafter referred to as Appellant) administrative appeal. The Commission disallowed the Appellant's administrative appeal by its Decision mailed October 6, 2011. In this appeal, the Appellant named the Ohio Department of Job and Family Services (hereinafter referred to as the Appellee) and Appellant's former employer, Shin Yu, Inc. (hereinafter referred to collectively as the Employer).

Appellant timely filed her Brief on December 21, 2011. Appellee responded with its Brief on January 9, 2012. The Appellant did not file a Reply.

After a review of the pleadings, briefs, and the certified record, this Court holds that the Commission's Decision Disallowing Request for Review of October 6, 2011 is

AFFIRMED.

I. STATEMENT OF THE CASE

This appeal arises as a result of the Appellee's Decision that denied unemployment compensation benefits to the Appellant.

II. STATEMENT OF THE FACTS

The Hearing officer noted the following facts:¹

Claimant began working for Shin Yu, Inc. on April 15, 2009. Claimant is a server in the employer's restaurant. Claimant worked varying hours, mostly on weekends.

In March, 2011, claimant requested that she be scheduled only on weekends so she could attend a training school in Cleveland. The name of the school is The English and Nanny Governess School. Claimant enrolled in a three month program to end June 24, 2011. The employer agreed to her request.

However, a new manager reneged and scheduled claimant to work during the week. When claimant protested, the new manager told claimant to report back after she completed her training. Claimant's last day worked was March 26, 2011.

Claimant completed her training on June 24. There is no documentation in the record concerning this school or evidence that it meets ODJFS' criteria for approved training.

These findings are not truly in dispute.

The training being sought by the Appellant was at the English Nanny Governess School in Chagrin Falls, Ohio. (Hr. Tr. pages 5 - 6 and 9 – 10) At the hearing the Appellant testified that she and her new manager talked about the weekend only issue. The following testimony is relevant: (Hr. Tr. page 9)

10 | Q: Last day worked was Saturday, March 26th?

11 | A: Correct, she allowed me to work that Saturday when I came in to
12 | find that I was off the schedule, and that was going to be my last day
13 | she told me, of the weekends you know.

14 | Q: Alright so um, there was no more work after that. I mean how did
15 | you leave it, you were going to get back to her when your courses were
16 | completed?

17 | A: Yes.

¹ The darker text is a 'copy image' from the certified record filed with the Court.

The Appellant's training program ran from April 4, 2011 to June 24, 2011. (Hr. Tr. page 10)

From the evidence adduced, Appellant's last day at work was March 26, 2011. The

Appellant testified to the following conversation with her new supervisor:

“She [her supervisor] goes, well that's just the way it is, Monday through Thursday. And I go, I can come back in the summer, after school? She said, yes, and so that was it.” (Hr. Tr. page 8, Lines 12 – 15)

Appellant also testified that her level of employment fluctuated with the seasons. Please

note the following testimony from page five of the transcript:

3 Q: Did you work full-time or part-time?

4 A: It fluctuated because of the seasons, we have a, they had a big
5 outside patio and they would cut back staff during that time and it
6 really doesn't boom again until about March or April. So I was uh I
7 had more hours in the summer than the winter.

Based upon the evidence, the Hearing Officer concluded that the Appellant had made herself unavailable for work at her Employer, due to Appellant's enrolment in the out of town training class.

After the adverse Decision of August 22, 2011 the Appellant further availed herself of the administrative process and timely appealed the Hearing Officer's Decision to the Commission. On October 6, 2011 the Commission issued its Decision disallowing the Appellant's request. Appellant timely appealed that Decision to this Court and the matter has now been fully briefed. The Court has conducted a review of the pleadings, briefs and the certified record. This appeal is ready for a determination.

III. STANDARD OF REVIEW

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. R.C. 4141.282(H) provides:

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.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162.

More specifically:

The Commission and its referees are the triers of fact. See *Feldman v. Loeb* (1987), 37 Ohio App.3d 188, 190, 525 N.E.2d 496. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission’s decision was supported by some competent and credible evidence. *Id.* The common pleas court may not substitute its judgment for that of the hearing officer or the board. *Simon v. Lake Geauga Printing Co.*(1982), 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468.

Hence, this Court will defer to the Hearing Officer’s and the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162.

From within this framework, this Court will render its decision.

IV. ANALYSIS:

In support of Appellant’s argument, the Appellant advanced the case of *Gilbert v. Dir., Ohio Dept. Of Job And Family Ser.*, 2004-Ohio-4663 (First District). Appellant argued that her issue was similar to the one facing Gilbert. Furthermore, the Appellant reminded

the Court of the liberal nature of the act.

Appellee easily distinguished *Gilbert*. The *Gilbert* court dealt with a single mother who was offered a full time job. However, Gilbert had a special needs child so she had limited herself to a part-time position so that she could care for her child. Hence, when she was informed that her part-time job was now full time, Gilbert could not accept the new position. Please note the following from *Gilbert*:

On this record, in the absence of legal precedent holding an individual in Gilbert's extraordinary circumstances ineligible for benefits, and in light of the statutory language requiring a claimant to be "able to work and available for suitable work," we hold that the trial court's determination upholding the denial of unemployment benefits to Gilbert, pursuant to R.C. 4141.29(A)(4)(a), was unlawful, unreasonable, and against the manifest weight of the evidence. *Id.* at ¶6.

The extraordinary circumstances in *Gilbert* are not present in this case.²

The Appellee also showed that the Appellant's education program was not protected. Therefore it was the Appellant that created the issue by choosing to attend a training program not conveniently located to the Appellant's home or job.

The evidence established that there was work that was available to the Appellant. Apparently, the Appellant felt that it was more important for her to attend her class than to attend her job. Given the evidence advanced by the parties, the decision of the Hearing Officer is not against the manifest weight of the evidence. The Commission's Decision Disallowing Request for Review is/was not unlawful or unreasonable.

Therefore the Commission's Decision of October 6, 2011 is **AFFIRMED**.

V. DECISION:

The Commission's Decision Disallowing Request for Review of October 6, 2011 is

² For the purpose of this case, this Court need not take a position for or against the result in *Gilbert*.

AFFIRMED.

THIS IS A FINAL APPEALABLE ORDER

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Franklin County Court of Common Pleas

Date: 01-18-2012
Case Title: RUTHANN CECELA -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE ET AL
Case Number: 11CV012915
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "D. T. Hogan", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top and "ALL THINGS ARE" at the bottom.

/s/ Judge Daniel T. Hogan