

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

JANET DANIEL,	]	
	]	CASE NO. 11CVF-12-15410
Appellant	]	
vs.	]	JUDGE BEATTY
	]	
DIRECTOR, OHIO DEPARTMENT OF JOB	]	
AND FAMILY SERVICES, et al.,	]	
	]	
Appellees	]	

**DECISION AND JUDGMENT ENTRY AFFIRMING THE DECISIONS OF**  
**THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**  
**AND**  
**NOTICE OF FINAL APPEALABLE ORDER**

**BEATTY, JUDGE**

This is an appeal pursuant to R.C. 4141.282 from Decisions of the Unemployment Compensation Review Commission (the “Commission”) dated November 16, 2011 and December 1, 2011.

**I. FACTS**

This matter involves Appellant Janet Daniel’s underreporting of earnings from OCB Restaurant Company, LLC, while she was receiving unemployment compensation benefits.

On April 29, 2011, the Ohio Department of Job and Family Services (“ODJFS”) sent Appellant a Notice of Potential Issue regarding her underreporting of earnings. On July 18, 2011, the Commission issued determinations that Appellant had withheld information with the intent of obtaining benefits to which she was not entitled. The determinations involve different time periods, but the same issues. On August 4, 2011, Appellant appealed the determinations.

On September 13, 2011 and October 5, 2011, a hearing was held before a Hearing Officer of the Commission. The parties appeared and presented evidence as follows.

Heather Salaski, a fraud investigator for ODJS, testified that Appellant was determined to have committed fraud because her earnings were grossly underreported. (T. I 15). Ms. Salaski gave examples, including that for the week of March 1, 2008 wages were \$179.81 and the amount reported was \$34.50, and for the week of February 23, 2008 wages were \$116.68 and no wages were reported. (*Id.* 17). She stated that wages were underreported for the period of February 17, 2008 through February 7, 2009, with the actual wages varying from \$78.96 to \$179.81. (*Id.* 19). She stated that for the period from February 15, 2009 through January 8, 2011, Appellant reported earnings of \$36.50 each week, while the actual earnings varied from \$272.19 to \$75.62. (*Id.* 39-40).

Ms. Salaski testified that in response to the notice of underreporting, Appellant stated that she had reported only scheduled work hours, rather than actual work hours, because she did not know whether she would be called to work or not, and she did not know that tips should be reported. (*Id.* 20). Ms. Salaski testified that it was irrelevant that Appellant did not know in advance how many hours she would work, as Appellant could have correctly reported by adding up the actual hours worked. Ms. Salaski added that under the guide issued to workers, all income is to be reported, including payments other than wages. (*Id.* 21). She also stated that workers are instructed to call ODJFS if they have questions about the workers' guide. (*Id.* 43).

Appellant testified, through an Arabic interpreter, that she was unable to understand the workers' guide to unemployment compensation. (*Id.* 25). She stated that she did not have anyone interpret the guide for her or try calling ODJFS to get

information. (*Id.* 26). She stated that she did not think she needed to report tip income. (*Id.* 30). She stated that she was making \$3.65 per hour plus tips. (*Id.* 27). She stated that she estimated the number of hours she worked (*Id.* 32) and completed the reports before she received the paychecks. (T. II 17). She stated that when she received her paychecks and noticed that they were for more than she had reported, she did not inform ODJFS, because she did not know that she had to do so. (T. I 33).

On October 14, 2011, the Hearing Officer issued Decisions finding that Appellant made a fraudulent misrepresentation with the object of obtaining benefits to which she was not entitled.

On November 16, 2011 and December 1, 2011, the Commission issued Decisions disallowing requests for review of the Decisions of the Hearing Officer. This appeal was filed on December 12, 2011.

## **II. STANDARD OF REVIEW**

This Court must affirm a decision of the Commission unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). The Court's scope of review is limited, and the Court is not to make factual findings or substitute its judgment for that of the Commission. *Irvine v. Unemployment Compensation Review Commission* (1985), 19 Ohio St.3d 15, 18; *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 45.

## **III. THE COURT'S FINDINGS AND CONCLUSIONS**

R.C. 4141.35 provides, in pertinent part, as follows:

(A) If the director of job and family services finds that any fraudulent misrepresentation has been made by an applicant for or a recipient of benefits with the object of obtaining benefits to which the applicant or

recipient was not entitled, and in addition to any other penalty or forfeiture under this chapter, then the director:

(1) Shall within four years after the end of the benefit year in which the fraudulent misrepresentation was made reject or cancel such person's entire weekly claim for benefits that was fraudulently claimed, or the person's entire benefit rights if the misrepresentation was in connection with the filing of the claimant's application for determination of benefit rights;

(2) Shall by order declare that, for each application for benefit rights and for each weekly claim canceled, such person shall be ineligible for two otherwise valid weekly claims for benefits, claimed within six years subsequent to the discovery of such misrepresentation;

(3) By order shall require that the total amount of benefits rejected or canceled under division (A)(1) of this section be repaid to the director ....

In *Christie v. Administrator, Ohio Bureau of Empl. Servs.* (1986), Eleventh App. Dist. Case No. 95-L-152, 1996 Ohio App. LEXIS 3875, the court held that a claimant withheld wage information with the intent of obtaining benefits to which he was not entitled where he received benefits while failing to report that he was self-employed in a business that was generating income. The court stated: "Whether or not a party engaged in a fraudulent act is a factual determination and, therefore, if there is some credible proof upon which the board's decision was based, that finding may not be disturbed." The court noted that "The intent to commit fraud may be inferred from intrinsic or extrinsic evidence, as well as from the surrounding circumstances." *Id.*, p. 9.

The Commission found that Appellant made a fraudulent misrepresentation with the object of obtaining benefits to which she was not entitled. The basis for the Commission's determination was the extent to which Appellant's earnings were grossly underreported.

The Notice dated April 29, 2011 reflects the extent of underreporting and offers support for the Commission's Decisions. For example, during the period from February 14, 2009, through January 8, 2011, a period of 95 weeks, Appellant reported wages of \$36.50 per week, which is ten hours per week at her base hourly rate of \$3.65. The amount of underreporting varied, but for most of the 95 weeks, the discrepancy was over \$100.00 per week, and for a significant number of weeks, the discrepancy was over \$200.00 per week.

As established by the above authority, the Court is not to make factual findings or substitute its judgment for that of the Commission. As the finder of fact, the Hearing Officer was entitled to find Appellant's explanation of the underreporting to be insufficient or lacking in credibility. Appellant stated that she reported only ten hours per week because she did not know in advance how many hours she would be working and that she completed the reports before receiving the paychecks. However, as noted by the investigator, Appellant could have simply added up the hours she worked each week. Moreover, while Appellant stated that she did not understand the workers' guide and did not know to report tips, the evidence was that Appellant did not contact ODJFS with questions or ask anyone to interpret the guide for her.

After reviewing the record, the Court finds that the Commission's Decisions are not unlawful, unreasonable, or against the manifest weight of the evidence. For the foregoing reasons, the Commission's Decisions are hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

**Date:** 03-22-2012  
**Case Title:** JANET DANIEL -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIR  
**Case Number:** 11CV015410  
**Type:** DECISION/ENTRY

It Is So Ordered.

  
The image shows a handwritten signature in cursive script that reads "Laurel Beatty". The signature is written in black ink and is positioned over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY" in the center, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Laurel A. Beatty

Court Disposition

Case Number: 11CV015410

Case Style: JANET DANIEL -VS- OHIO STATE DEPT JOB FAMILY SERVICES  
DIR

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes