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TOLEDO, OHIO

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

University of Toledo,

Plaintiff-Appellant,

vs.

Leonard White, et al.,

Defendants-Appellees.

* Case No. CI 11-4812
* Honorable Dean Mandros
* **OPINION AND JUDGMENT ENTRY**
*
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R.C. 4141.01(B)(3)(p), which excepts from the definition of employment "service performed as an intern in the employ of a hospital," applies to "interns," not "residents." The Ohio Unemployment Compensation Review Commission is not required to follow its prior inconsistent decision. An issue not raised and decided through the administrative process may not be raised for the first time on appeal to the court of common pleas. Therefore, the Decision of the Review Commission is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant-Appellee Leonard White ("White") was a medical resident at the University of Toledo Medical Center from July 1, 2007, until July 25, 2010. It is undisputed that White was compensated during that three year period. Following the completion of his residency program in

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July 2010, White was unable to find employment.

On November 22, 2010, White applied for unemployment compensation with the Ohio Department of Job and Family Services ("ODJFS"). The ODJFS initially allowed White's application, but by a Redetermination dated January 19, 2011, the Director disallowed White's application. White filed a timely appeal with the Director, and on February 9, 2011, the Director transferred jurisdiction to the Review Commission. The basis of White's appeal was that the R.C. 4141.01(B)(3)(p) exception to covered employment for service performed as an intern in the employ of a hospital was not applicable to White as he had been employed as a medical resident rather than a medical intern.

In its Decision mailed May 12, 2011, the Review Commission made the following findings of fact: 1) White was employed by University of Toledo as a medical resident from July 1, 2007, to July 25, 2010; 2) a medical internship is the first year training following medical school; and 3) White completed a three year residency at University of Toledo with the first year being the internship year. Reversing the Redetermination dated January 19, 2011, the Review Commission concluded:

Claimant was not an intern, but a third year resident during his base period. Since the law [R.C. 4141.01(B)(3)(p)] specifically refers to an intern and not a medical resident, claimant's employment as a third year resident is not excluded under this provision. * * * As claimant's employment with the University of Toledo Hospital has been found to be covered employment, claimant has established the necessary monetary requirements for a valid Application for Determination of Benefit Rights.

On June 2, 2011, the University of Toledo requested a review of the Review Commission's Decision. On July 20, 2011, the Review Commission disallowed the request for review.

On August 11, 2011, the University of Toledo filed its Notice of Appeal of the Review

Commission's Decision with this Court pursuant to R.C. 4141.282.

II. STANDARD OF REVIEW

R.C. 4141.282(H) governs the standard of review of decisions by the Review Commission:

The court shall hear the appeal on the certified record provided by the commission. 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

Reviewing courts must determine whether the Commission decision is supported by the evidence in the record but are not permitted to make factual findings or to determine the credibility of witnesses. *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207. Every reasonable presumption must be made in favor of the decision and the findings of facts of the Review Commission. *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988).

III. ANALYSIS

R.C. 4141.01(B)(3)(p) excepts from the definition of employment "service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law."

The issue before the Court is whether the Review Commission's conclusion that Subsection (B)(3)(p) is not applicable to White since he was a third year resident, not an intern, is unlawful, unreasonable, or against the manifest weight of the evidence.

The University of Toledo argues that the Review Commission's Decision must be reversed

because: (1) it contradicts a previous decision by the Review Commission; (2) the terms "intern" and "resident" have been used interchangeably in other sections of the Revised Code and the Ohio Administrative Code regarding licensing standards; and (3) White was without employment due to an agreement he made with the University of Toledo.

A. The Review Commission Is Not Required to Follow Its Prior Decisions

In *In re Claim of Rehfuss*, Docket No. H-2010012949, mailed March 1, 2011, Rehfuss was also a medical resident at the University of Toledo. She was allegedly removed from the medical residency program after the University of Toledo concluded that she exceeded her authority pursuant to her medical license. Rehfus denied that allegation. The Review Commission concluded that R.C. 4141.01(B)(3)(p) "states that medical residents are not in covered employment and, as such, claimant failed to meet the monetary requirements for filing a valid Application for Determination of Benefits Rights as she did not have any weeks of covered employment during her base period." This is contrary to the Review Commission's finding in the instant case that Subsection (B)(3)(p) applies only to interns, not residents.

The Review Commission is not required to follow its prior decisions with respect to claimants similarly situated. *Boyd v. American Freight Systems*, 51 Ohio App.3d 185, 555 N.E.2d 666 (2nd Dist. 1988), at paragraph two of syllabus. The Court reasoned:

It is, of course, good jurisprudence for a court ordinarily to follow its own previous decisions -- the principle of stare decisis -- but a court's prior decisions are not binding upon it.

We are aware of no authority, and Boyd has not directed us to any authority, that would require a judicial body or a quasi-judicial body, as a matter of law, to follow its prior decisions even in identical cases. While it does seem regrettable that the same quasijudicial body should reach inconsistent results in two identical cases arising out of the same facts, we are not aware of any authority that would require either outcome to be reversed simply for the reason that the two outcomes are

inconsistent. Indeed, if neither outcome were reversible but for the fact that they were inconsistent, an obvious problem would arise in determining which of the two outcomes to reverse, since the reversal of either one would cure the inconsistency. *Id.* at 189.

Therefore, the University of Toledo's argument that the Review Commission must follow its prior decision in *In re Claim of Rehfluss* is without merit.

B. "Intern" and "Resident" Are Not Interchangeable Terms Under R.C. 4141.01(B)(3)(p)

The University of Toledo asserts that the term "intern" as used in R.C. 4141.01(B)(3)(p) includes the term "resident" because the two terms are used interchangeably regarding medical licenses in other sections of the Revised Code and the Ohio Administrative Code. In addition, the Accreditation Council for Graduate Medical Education of the American Medical Association has replaced entirely the term "intern" with the term "resident."

As the ODJFS points out, had the legislature intended to exclude medical residents from benefit eligibility, it would have expressly referred to them in the statute as it did in other sections of the Revised Code. In addition, R.C. 4141.01(B)(3)(p), as an exception to the general rule allowing benefits, must be read narrowly in favor of awarding benefits. See *Ohio Boys Town, Inc. v. Brown*, 69 Ohio St.2d 1, 6, 429 N.E.2d 1171 (1982); *State ex rel. Hyter v. Teater*, 52 Ohio App.2d 150, 160, 368 N.E.2d 854 (6th Dist. 1977).

Moreover, White testified at the hearing that there was a difference in responsibilities as well as in pay between the first year of his residency program in which he considered himself an "intern" and the second and third years of the program in which he considered himself a "resident." According to White, an intern works under an attending physician while a resident works independently. (Transcript at pgs. 10-11).

Therefore, the Court holds that the Review Commission properly found that White "was not an intern, but a third year resident during his base period" and that R.C. 4141.01(B)(3)(p) "specifically refers to an intern and not a medical resident."

C. The University of Toledo Waived the Argument that White's Employment Ended by Agreement

For the first time in its Reply brief, the University of Toledo argued that, because White's employment with the University of Toledo ended due to an agreement he made with the University of Toledo, he is not entitled to unemployment compensation benefits. The University of Toledo relies on *Williams v. Ohio Department of Job & Family Services*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 26, 951 N.E.2d 1031, which held that "[t]he act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own. (Citation omitted.)"

Since this issue was not raised and decided during the administrative process, it is waived and may not be raised for the first time on appeal to this Court. *Roberts v. Hayes*, 9th Dist. No. 21550, 2003-Ohio-5903, ¶ 23, 2003 Ohio App. LEXIS 5248. "To allow a claimant or employer to raise an issue for the first time in an appeal to the court of common pleas would frustrate the statutory system for having issues raised and decided through the administrative process." *Kaltenbach v. Mayfield*, 4th Dist. No. 89-CA-10, 1990 Ohio App. LEXIS 1634 (Apr. 27, 1990).

Consequently, the University of Toledo's third argument is also without merit.

IV. CONCLUSION


The Court finds that the Review Commission Decision, mailed May 12, 2011, which concluded that White's employment with the University of Toledo is covered employment and he

has established the necessary monetary requirements for a valid Application for Determination of Benefit Rights, is lawful, reasonable, and supported by the evidence in the record.

JUDGMENT ENTRY

It is **ORDERED** that the Decision by the Ohio Unemployment Compensation Review Commission in Docket No. C2011-003947 is **AFFIRMED**.

Date: 4-23-12



Dean Mandros, Judge

**THIS IS A FINAL
APPEALABLE ORDER**