

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**

**GENE P. STEVENSON,**

**Appellant,**

**-vs-**

**Case No: 11CVF-12-16325**

**JUDGE SHEWARD**

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

**Appellees.**

**DECISION AND ENTRY**  
**AFFIRMING THE DECISION DISALLOWING REQUEST FOR REVIEW AS**  
**MAILED ON NOVEMBER 30, 2011**

**SHEWARD, J.**

Before the Court is the Appeal of Gene P. Stevenson (hereinafter referred to as the Appellant) of the Decision Disallowing Request for Review as mailed on November 30, 2011 issued by the Unemployment Compensation Review Commission (hereinafter referred to as Commission) that denied Appellant's administrative appeal. In this appeal, the Appellant named the Ohio Department of Job and Family Services (hereinafter referred to as the Appellee) and his former employer Mike's Trucking LTD (hereinafter referred to as Employer).

The Appellee moved to dismiss the case due to a perceived failure to prosecute the matter. This Court denied that Motion and allowed the Appellee to file its merit Brief. In the same Decision the Court held that the filing from the Appellant, dated March 30, 2012, would be treated as the Appellant's Brief. The Appellant went a head and filed another Brief on May 10, 2012. The Appellee timely filed its Brief on May 9, 2012. The Employer has not made an appearance in this appeal.

For the reasons the follow, this Court **AFFIRMS** the November 30, 2011 Decision of the Commission.

### **I. STATEMENT OF THE CASE**

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

### **II. STATEMENT OF THE FACTS**

Appellant was employed as a truck driver. The Employer called and requested that he come into work on a Saturday. The Appellant knew that he would be requested from time to time to work on Saturdays. (Hr. Tr. P. 6, L. 17 – 18 & P. 7, L. 1 – 4) The Appellant declined to come in feeling that, due to his seniority, he never should have been asked to work on a holiday weekend. (Hr. Tr. P. 7, L. 5 – 20) The Appellant read the language from the policy into the record for the benefit of the Hearing Officer. Please note the following from the eight page of the hearing transcript:<sup>1</sup>

12 | **A: Yes sir. It says Saturdays: Depending on availability of work**  
 13 | **drivers may be required to work until noon or later on Saturdays;**  
 14 | **however, there may be times that drivers are required to work the**  
 15 | **entire day. If there are only a few jobs available on Saturday**  
 16 | **volunteers will be scheduled first; however, if no one volunteers**  
 17 | **drivers will then be appointed. That's it.**

The Employer let the Appellant know that if he did not come to work as requested, he could be fired. The Appellant still refused to come into work. The Employer terminated the Appellant. Appellant was terminated on July 1, 2011. (Hr. Tr. P. 5, L. 14 – 15)

The Appellant filed for benefits. The benefits were denied because it appeared that the Appellant was fired for cause; i.e., insubordination for failing to respond to the Employer's request to work on the Saturday shift. Eventually, the Appellant was given the

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<sup>1</sup> The darker text, found in this Decision, are 'copy images' from the certified record scanned and filed with the Court.

opportunity to present his arguments at a hearing that was conducted on October 12, 2011.

The Hearing Officer issued a Decision on October 18, 2011. Please note the following from the 'Findings of Fact':

**In response to his supervisor's request, claimant stated that he would not work on Saturday. When claimant refused, he was informed that such a refusal could result in termination. Claimant again refused to come in on Saturday and was terminated.**

Hence, the Hearing Officer concluded that the Appellant was fired for just cause.

The Appellant timely appealed that Decision by a fax dated November 3, 2011. The Appellant disagreed with some of the Hearing Officer's factual findings. The Appellant reasserted his claim that he told his Employer that his Employer was not paying him enough for his work. The Appellant also asserted a claim of disparate treatment where other employees were given lesser suspensions in similar circumstances. The last argument was not made at the hearing and it was not supported by any documents attached to the Appellant's objections to the Hearing Officer's Decision. Finally, there was no race based allegation in the Appellant's objections nor were there any claims of racial bias during the hearing.

The matter was reviewed by the Commission and it issued its November 30, 2011 Decision disallowing the review. The Appellant appealed and the matter has now been briefed.

### **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:**

This issue for the Commission concerned a just cause termination of the Appellant. The evidence at the hearing clearly showed that the Appellant was aware of the overtime issues and that he was instructed to work on a Saturday. The Appellant felt that he did not have to perform that requested task due to his seniority. When pressed by his former Employer he refused to

work the Saturday shift. His Employer fired him. The Decision of the Hearing Officer, implicitly adopted by the Commission within its Decision disallowing further review is clearly lawful, reasonable, and supported by the manifest weight of the evidence.

The Appellant's claim of disparate treatment was not advanced at the hearing, nor was it supported by any factual evidence. The Appellant's claims of racial motivation in his termination are not supported by any evidence and were raised for the first time on appeal. Even if said claim had any merit, it was waived by the Appellant.

Finally, Appellant remained adamant that his former Employer was not paying him as much as he should receive for each load transported. The Hearing Officer explained that that was not an issue for the Commission and proceeded with the issue of a just cause termination. The Appellant testified that he had brought that issue to the attention of his Employer after he was terminated or when he was about to be terminated. The Hearing Officer's determination not to give the matter and credence is/was appropriate.

## **V. DECISION**

The Commission's Decision Disallowing Request for Review of November 30, 2011 is **AFFIRMED**.

**THIS IS A FINAL AND APPEALABLE ORDER**

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Franklin County Court of Common Pleas

**Date:** 05-24-2012  
**Case Title:** GENE P STEVENSON -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR  
**Case Number:** 11CV016325  
**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Richard S. Sheward". The signature is written over a circular blue ink seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom. The signature is written in a cursive style.

Judge Richard S. Sheward

Court Disposition

Case Number: 11CV016325

Case Style: GENE P STEVENSON -VS- OHIO STATE DEPT JOB FAMILY  
SERVICES DIRECTOR

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 11CV0163252012-03-3099980000

Document Title: 03-30-2012-REPLY BRIEF

Disposition: MOTION DENIED