

DANIEL M. HOBIGAN
IN THE COURT OF COMMON PLEAS

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COUNTY OF SUMMIT

JILL STANCIL	SUMMIT COUNTY CLERK OF COURTS	CASE NO. CV 2011-12-7006
Appellant)	JUDGE HUNTER
vs)	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.)	ORDER
Appellees)	

This matter is before the Court upon the Administrative Appeal filed December 13, 2011 by Claimant/Appellant Jill Stancil ("Stancil") pursuant to R.C. 4141.282. Stancil appeals the Ohio Unemployment Compensation Review Commission's Decision denying her unemployment benefits pursuant to R.C. 4141.29(I). The transcript of proceedings was filed on January 30, 2012. The parties have filed briefs in this matter. The Court deems all matters submitted and will proceed to consider the appeal.¹

Background

Stancil was employed with the Ravenna City Board of Education ("BOE") since January 24, 2011 as a part-time, permanent English as a second language (ESL) teacher. Stancil was separated from work on June 6, 2011 due to the employer's summer break. Stancil received a reasonable assurance letter that she would be rehired in same capacity

¹ Stancil requested a hearing on her appeal. However, she failed to offer any authority or compelling reason for a hearing. As such, Stancil's request for hearing is not well taken.

for the 2011-2012 school year. Stancil was also employed by PSI Affiliates Inc., a private placement company for teachers with school districts, on a part time basis during the same time period.²

Stancil applied for unemployment benefits. On June 24, 2011, the Director of the Ohio Department of Job and Family Services (“ODJFS”) made a determination allowing the application for the benefit year beginning June 20, 2010 due to lack of work. On August 8, 2011, the Director issued a Redetermination which affirmed the June 24, 2011 determination. The BOE filed an appeal of this decision. The ODJFS transferred the jurisdiction to the Unemployment Compensation Review Commission (“Review Commission”). On September 28, 2011, a hearing was held by phone, with all parties participating. On September 29, 2011, the Hearing Officer modified the Director’s Redetermination finding Stancil ineligible for benefits under R.C. 4141.29(I)(1)(a) as she had a reasonable assurance of employment for the 2011-2012 school year. Stancil filed a timely request for further review from the Hearing Officer’s Decision. The Review Commission denied the request. Stancil files the instant appeal.

Standard of Review

An appeal of a decision rendered by the Review Commission is governed by R.C. 4141.282(H), which provides, in pertinent part: "...If the court finds that the decision is 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, such court shall affirm the decision of the commission."

² “ESI” is denoted throughout the transcript. However, documents included in the transcript of proceedings references “PSI Affiliates, Inc.” as a former employer of Stancil. Therefore, the Court will reference the company as “PSI”.

See *Tzangas, Plakas & Mannos v. Adm'r, Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696, 1995 Ohio 206, 653 N.E.2d 1207.

A reviewing court is not permitted to make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the commission; where the commission might reasonably decide either way, the courts have no authority to upset the commission's decision. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 19 Ohio B. 12, 482 N.E.2d 587. "Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission]." *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008 Ohio 301, 891 N.E.2d 348 at P 7, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, 526 N.E.2d 1350. A judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

Discussion

The Hearing Officer considered the sole issue of whether Stancil was entitled to benefits between academic years or terms, or during a vacation period or holiday recess. At the hearing, Stancil testified that during the 2010-2011 school year, she worked 8 hours a week for Ravenna BOE. Stancil also testified that she was employed with PSI. Stancil argues that the Hearing Officer failed to consider her layoff from her employment with PSI which occurred at or about the same time as her layoff from Ravenna BOE and therefore his decision was against the manifest weight of the evidence, was unlawful and unreasonable.

The Appellee, Director, Ohio Department of Job and Family Services (“Director”) counters that the only issue before the Review Commission and this Court is Stancil’s loss of employment with Ravenna BOE and no other employer. The Director argues that the Review Commission properly denied unemployment benefits due to Stancil’s acknowledgment at the hearing that she had a reasonable assurance of employment for the following academic year with Ravenna BOE pursuant to R.C. 4141.29(I).

R.C. 4141.29(I)(1)(a) provides in pertinent part:

Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education...shall not be paid to any individual for any week of unemployment that begins during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual performs such services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms.

The record includes Stancil’s application for benefits which included both Ravenna BOE and PSI. Both employers returned the necessary paperwork to the ODJFS. Based upon these documents, the Director determined that Stancil’s request for unemployment was approved due to her lack of work with Ravenna BOE. On appeal, the Hearing Officer noted that the only relevant issue was whether Stancil was separated by Ravenna BOE due to lack of work.

Upon review of the record, the Court finds no error in the Hearing Officer’s reasoning that R.C. 4141.29(I)(1)(a) applied in this matter as to Stancil’s employment with Ravenna BOE and that Stancil was given a reasonable assurance of employment

for the 2011-2012 school year from the Ravenna BOE. In her position, such reasonable assurance does not necessarily provide assurance for the number of hours. See, *Cohen v Toledo Public Schools*, 2004 Ohio App. LEXIS 6387, 2004 Ohio 6889 (6th Dist). Thus, the Court finds no error in the Hearing Officer's Decision that Stancil was not eligible for benefits in regards to Stancil's employment with the Ravenna BOE.

However, the Court finds the Hearing Officer erred in not considering Stancil's non-educational employment with PSI. Although the original determination only referenced Ravenna BOE, Stancil applied for benefits also in regards to her employment with PSI. Stancil raised her concerns regarding her employment with PSI at the hearing. It appears that the Hearing Officer considered only Ravenna BOE, such employment ending May 2, 2011. The Court finds that the Hearing Officer should have addressed and considered Stancil's employment with PSI as such employment occurred during the same period of time as the Ravenna BOE and ended during the same time frame on April 14, 2011. The Court finds that the Hearing Officer's failure to consider Stancil's unemployment benefits with PSI unreasonable and unsupported by the preponderance of substantial, reliable and probative evidence on the whole record.

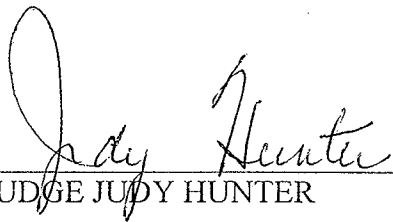
Conclusion

R.C. 2506.04 provides that consistent with its findings, the court may affirm, reverse, vacate, or modify the decision or remand the cause. The Court hereby vacates the Hearing Officer's Decision dated September 29, 2011 and the Review Commission's Decision dated November 16, 2011 disallowing request for review, and remands this matter to the Review Commission to hold a hearing to consider

unemployment compensation in relation to Stancil's employment with both Ravenna BOE and PSI.

This is a final, appealable Order. There is no just reason for delay. Court costs to Appellee.

It is so Ordered.


JUDGE JUDY HUNTER

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