

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

<b>KATHY J. SALYERS,</b>		<b>CASE NO. 11CVF08-10658</b>
<b>Appellant,</b>		<b>JUDGE SHEERAN</b>
<b>vs.</b>		
<b>DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,</b>		
<b>Appellee.</b>		

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

**SHEERAN, J.**

This case is a Revised Code 4141.282 administrative appeal, by Kathy J. Salyers (Appellant), from a “Decision Disallowing Request for Review” issued by the Ohio Unemployment Compensation Review Commission on July 27, 2011. The record that the Commission has certified to the Court reflects the following facts and procedural history.

**Proceedings Before Ohio Department of Job and Family Services and  
Ohio Unemployment Compensation Review Commission**

On November 7, 2008, by telephone, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits, for a benefit year beginning November 2, 2008 and ending October 31, 2009. She reported that her last separating employer was Callos Professional Employment II, LLC, and she reported that her last date

worked at that employment was July 9, 2008. After Appellant filed her initial application on November 7, 2008, she filed weekly claims for benefits for the weeks ending November 15, 2008 through October 2, 2010.

In a Determination issued on November 30, 2010, ODJFS cancelled Appellant's application for unemployment compensation benefits, pursuant to R.C. 4141.35(A), "due to fraudulent misrepresentation regarding a hidden disqualifying separation from employment." ODJFS determined that Appellant had intentionally failed to disclose that she had additional employment after her separation from Callos on July 9, 2008 and before she applied for benefits on November 7, 2008. ODJFS reduced Appellant's weekly benefit amount and total benefits payable to zero and ordered her to repay overpaid benefits in the amount of \$12,990. On December 13, 2010, Appellant appealed the Determination.

In a Director's Redetermination issued on February 17, 2011, the Director of ODJFS affirmed the November 30, 2010 Determination. On March 2, 2011, Appellant appealed the Director's Redetermination to the Ohio Unemployment Compensation Review Commission. On March 7, 2011, the Director transferred jurisdiction of the appeal to the Commission.

On May 19, 2011, a Hearing Officer appointed by the Commission conducted a telephone hearing on the appeal. Appellant participated and testified. Diane Jerrell, a Benefits Payment Control Investigator employed by ODJFS, also testified.

Appellant testified that, after her employment with Callos ended on July 9, 2008, but prior to filing her application for unemployment compensation benefits on November 7, 2008, she had other employment, at The Gap clothing retailer. *Transcript (T.) 8-9.* Appellant testified that she worked for The Gap from mid- or late October 2008 to November 7, 2008, for two or three weeks. *T. 8.* Appellant testified that, during her training/orientation period at The Gap, she

was paid by The Gap. *T. 8-9.* Appellant testified that she did not consider herself to be truly employed by The Gap, however, because she received poor training, she was not able to do the job, she had migraine headaches, and she quit. *T. 10.*

Appellant testified that, when she applied to ODJFS for unemployment compensation benefits on November 7, 2008, by telephone, she spoke with a customer service representative, whom she described as a young man who was about twenty-three or twenty-four years old. *T. 8, 18.* Appellant testified that she answered all of his questions. *T. 9.* Appellant testified that, when she told the customer service representative that she had just finished training/orientation, he asked her who her last long-term employer was. *T. 8-9, 11, 18.* Appellant testified that she told him that her last long-term employer was Callos. *T. 9, 18.* Appellant testified that the customer service representative did not ask her any follow-up questions about her training/orientation, and she did not volunteer any other information about it. *T. 9.* Appellant testified that she did not conceal any information from the customer service representative and that, if he would have asked her questions about her training/orientation, she would have answered the questions. *T. 8, 11.*

Appellant testified that, when she was contacted by Diane Jerrell, the Benefits Payment Control Investigator employed by ODJFS, Appellant “completely cooperated” with Ms. Jerrell, sent her several emails, and faxed letters to her. *T. 15.*

Diane Jerrell testified that she investigated Appellant’s claim after ODJFS discovered, in late 2010, that Appellant had worked for The Gap for a five-week period during the last quarter of 2008. *T. 12-13.*

Ms. Jerrell testified that she sent an email to Appellant, asking why Appellant quit working at The Gap, but she received no response from Appellant. *T. 13.* Ms. Jerrell testified

that she also mailed a letter to Appellant, at the address Appellant provided to ODJFS, asking why Appellant did not report her employment with The Gap when she applied for unemployment compensation benefits. *T. 14.* Ms. Jerrell testified that she received no response from Appellant.

*T. 14.* Ms. Jerrell testified that she never received any written correspondence from Appellant.

*T. 18.*

Ms. Jerrell testified that a woman, not a man, took Appellant's telephone application for unemployment compensation benefits on November 7, 2008. *T. 14-15.*

In a Decision issued on June 6, 2011, the Hearing Officer affirmed the February 17, 2011 Director's Redetermination. The Hearing Officer provided the following reasoning:

When filing her Application for Determination of Benefit Rights in November of 2008, claimant failed to disclose that she had been employed by Gap and had been separated from employment with that employer just prior to filing her Application. This constitutes fraudulent misrepresentation. Based upon this finding, claimant will be subject to penalty weeks as noted by the Ohio Revised Code. In addition, the fraudulent misrepresentation will result in the cancellation of her Application for Determination of Benefit Rights. Based upon this finding, claimant received unemployment compensation benefits to which she was not entitled and she will be ordered to repay those benefits to the Ohio Department of Job and Family Services.

On June 20, 2011, Appellant filed a request for review by the Commission.

On July 27, 2011, the Commission issued a "Decision Disallowing Request for Review."

On August 25, 2011, Appellant filed this appeal.

### **Standards of Appellate Review**

Revised Code 4141.282 governs unemployment compensation appeals to the common pleas court. *Houser v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶6. More specifically, the statute provides:

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.

R.C. 4141.282(H).

This is the standard of review for unemployment compensation appeals, in the common pleas court and in the court of appeals. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 696 (1995). In reviewing a Commission decision, a trial court is not permitted to make factual findings or determine the credibility of witnesses. *Id.*, citing *Irvine v. State Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d 15, 17-18 (1985). Similarly, a trial court may not substitute its judgment for that of the Commission on factual issues or credibility issues. *McCarthy v. Connectronics Corp.*, 183 Ohio App. 3d 248, 2009-Ohio-3392, ¶16 (6th Dist.), citing *Irvine* at 18. Instead, a trial court must “determine whether the decision of the [Commission] is supported by the evidence in the record.” *Irvine* at 18.

Judgments that are supported by some competent, credible evidence on the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St. 2d 279, syllabus (1978).

### **Analysis**

In support of this appeal, Appellant argues that the Commission’s July 27, 2011 “Decision Disallowing Request for Review” is not supported by the evidence. Specifically, Appellant asserts that the Hearing Officer, and thereafter the Commission, should have believed Appellant’s testimony, as opposed to the testimony of Ms. Jerrell. However, as noted above, in reviewing a Commission decision, this Court is not permitted to determine the credibility of the witnesses or substitute its judgment for that of the Commission on credibility issues. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d at 696; *Irvine v. State*

*Unemp. Comp. Bd. of Review*, 19 Ohio St. 3d at 17-18; *McCarthy v. Connectronics Corp.*, 2009-Ohio-3392 at ¶16. To the contrary, this Court's obligation is to determine whether the Commission's decision is supported by the evidence in the record.

Revised Code 4141.35(A) provides:

§ 4141.35. Fraudulent misrepresentations to obtain benefits

(A) If the director of job and family services finds that any fraudulent misrepresentation has been made by an applicant for \*\*\* benefits with the object of obtaining benefits to which the applicant \*\*\* 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 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 before such person may become eligible for further benefits, and shall withhold such unpaid sums from future benefit payments accruing and otherwise payable to such claimant.  
\*\*\*

The record contains evidence that Appellant did not report her employment with The Gap when she filed her telephone application for determination of benefit rights on November 7, 2008. She failed to disclose her most recent separating employer, thereby committing fraudulent misrepresentation under R.C. 4141.35. Pursuant to R.C. 4141.35(A), the Director of ODJFS was obligated to cancel Appellant's benefit rights.

Appellant takes issue with the fact that the Hearing Officer did not accept Appellant's explanation for her failure to report her employment with The Gap, to wit, that Appellant's training/orientation period at The Gap was not truly employment. However, as the Hearing

Officer astutely asked Appellant at the hearing on May 19, 2011, “[I]f you went to someplace that wasn’t your home, spent time there and they paid you for that time, how is that not employment?” *T. 10*. The Court concludes that the Hearing Officer’s decision, and the Commission’s decision affirming the Hearing Officer, are supported by evidence in the record.

**Conclusion**

Having considered the record that the Commission has certified, the Court finds that the Commission’s July 27, 2011 “Decision Disallowing Request for Review” is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Decision is hereby **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry.

It is so **ORDERED**.

Electronically signed by:

JUDGE PATRICK E. SHEERAN

Copies to:

KATHY J. SALYERS, Appellant *pro se*, 1403 Pitching Wedge Dr., No. 103, Raleigh, NC 27603

MICHELLE T. SUTTER, AAG (0013880), Counsel for Appellee, 30 E. Broad St., Fl. 26, Columbus, OH 43215-3428

Franklin County Court of Common Pleas

**Date:** 06-08-2012  
**Case Title:** KATHY J SALYERS -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR  
**Case Number:** 11CV010658  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "Patrick E. Sheeran", is written over a circular, textured seal or stamp.

/s/ Judge Patrick E. Sheeran