

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DANIEL M. HARRIGAN
2012 JUL 18 PM 3:40

KENNETH MEARNS)	CASE NO.: CV2012-0423
)	SUMMIT COUNTY
Appellant.)	CLERK OF COURTS
)	
vs.)	JUDGE PAUL J. GALLAGHER
)	
MICKEY FORD, et al.,)	<u>JUDGMENT ENTRY:</u>
)	<u>ADMINISTRATIVE APPEAL</u>
Appellee.)	(Final and Appealable)

This matter is before the Court as an Administrative Appeal of a decision by the Unemployment Compensation Review Commission (“UCRC”). Pursuant to R.C. §4141.35(A), the UCRC determined Appellant Kenneth Mearns made a fraudulent misrepresentation on his application for benefits, it has issued an order that Mearns repay the entire \$13,160.00 he received during the benefits period in question, and it renders Mearns ineligible for future benefits. Mearns has appealed this decision asserting that it is unlawful, unreasonable, and against the manifest weight of the evidence.

Standard of Review

A common pleas court reviewing a determination by the UCRC must affirm the decision unless it concludes that the decision was “unlawful, unreasonable, or against the manifest weight of the evidence.” R.C. §4141.282. The Court is not permitted to make factual findings or determine credibility of witnesses, but the Court does have a duty to determine whether the decision is supported by evidence in the record. *Barilla v. Director, Ohio Dept. of Job & Family Services*, 9th Dist. App. No. 02CA008012, 2002-Ohio-5425, ¶6 (Lorain Co., Oct. 9, 2002).

R.C. §4141.35(A) provides if the director of job and family services “finds that any fraudulent misrepresentation has been made by an applicant...with the object of obtaining benefits to which he was not entitled” the director can require the repayment of all benefits received.

R.C. Chapter 4141 does not define the phrase “fraudulent misrepresentation.”

The UCRC investigator in this matter, David Lakatos, testified at Mearns' hearing that the standard he applies in investigating possible fraud requires the "intent to deceive." Transcr. at p.9. The Unemployment Compensation Review Commission's Law Abstract indicates the UCRC requires intent, and that "an individual's simple negligence in failing to exercise due care in ascertaining the truth of the representation at issue does not support an inference that the individual knew that the representation was false at the time it was made." Unemployment Compensation Review Commission's Law Abstract, Chapter 10 Overpayment and Fraudulent Misrepresentation.

The Ninth District Court of Appeals has held the common law definition of fraud (requiring scienter / intent) does not apply for purposes of R.C. §4141.35, and that in such cases "fraud simply refers to the making of a statement that is false, where the party making the statement does or should know it is false." See *Barilla*, ¶¶35-36. This Court further finds, "[T]he language unambiguously requires more than simply a misrepresentation;" "the claimant must have the subjective 'object' to take from the State that which he realizes he is not entitled to have." *Tatman v. Administrator*, 12th Dist. App. No. 1203, 1983 Ohio App. LEXIS 11952 (Clermont Co., July 13, 1983).

LAW & ANALYSIS

In his initial application for unemployment benefits, Mearns appropriately claimed his spouse as a dependent based upon their earnings. Transcr. at p.14. When Mearns completed his new application to extend his benefits, he again claimed his spouse as a dependent and gave affirmative answers to the following questions on his application:

[Did you] [p]rovide 1/2 cost of support from 11/15/2010 to 02/13/2011?

[Is your] [s]pouse's income from 11/15/2010 to 02/13/2011 less than or equal to 1/4 AWW from 10/01/2009 to 09/30/2010? ¹

Although Mearns' spouse previously qualified as his dependent, before Mearns re-applied for benefits his spouse had taken on additional work hours / wages to the extent that her

¹ AWW means "Average Weekly Wage;" it is calculated by "dividing an individual's total remuneration for all qualifying weeks during the base period by the number of such qualifying weeks, provided that if the computation results in an amount that is not a multiple of one dollar, such amount shall be rounded to the next lower multiple of one dollar. R.C. §4141.01(O)(2). The phrases "Qualifying Week" and "Base Period" are also defined in R.C. §4141.01.

average weekly wage for the period at issue was no longer less than or equal to one-quarter of Mearns' average weekly wage for the period. Transcr. at p.15. There is conflicting evidence in the record as to whether Mearns' spouse's income for the period at issue exceeded the one-quarter percent of Mearns' income by either \$67.37 or by \$110.70, but there is no dispute that the increase disqualified her as a dependent. It is further undisputed that Mearns did not complete the mathematical calculations required to affirmatively determine whether his spouse's income remained less than or equal to his average weekly wage for the period at issue: Mearns merely presumed his spouse's dependency status had not changed.

During a random audit the Benefit Payment Control unit discovered a potential impropriety regarding falsification of dependent information. Upon being notified of this potential irregularity concerning his unemployment claim, Mearns cooperated in the Benefit Payment Control investigation and supplied all the necessary documentation and records to the unit to assist its investigation. Mr. Lakatos, the investigator with ODJFS Benefit Payment Control unit, investigated this matter and testified on behalf of ODJFS at Mearns' administrative hearing. Mr. Lakatos said Mearns told him he just used the same answers from his last claim and merely assumed his spouse still qualified as his dependent. Transcr. at p.8.

When Mr. Lakatos was asked if it is possible not to commit a fraud where an applicant merely answers a question incorrectly because they either didn't have all the potential information or lacked the theorems to determine their average weekly wages for the period in question, Mr. Lakatos testified:

...[T]here obviously would be a consideration given towards that to determine was there intent to commit fraud? Yes...there are situations where an individual can have made an error in...their understanding a question..., and the State could in fact rule it as a non-fraud issue as opposed to a fraud issue. ...[T]his happens quite a lot where people don't understand the questions or they interpret the question differently and provide a response which is different than what would be expected. Transcr. at p.17.

Mr. Lakatos then testified that Mearns' case was unique for him, but the reason he concluded a fraudulent misrepresentation was made is:

...[B]ased on the responses given. We have to look at the evidence in the case file as well as the statements provided. And based on the evidence provided [], it was pretty apparent that Mr. Mearns didn't review his information to [] see whether or not his spouse qualified as a dependent but that he just automatically

went and answered these questions without verifying the facts before he [] completed his application. Transcr. at pp.18-19.

[Q]: So your belief is the lack of detailed [] review of his wife's income showed the intent to defraud?

[A]: Yes sir, whether it's [] a matter of, you know, [] that he didn't have the information available and just assumed or he had the information available but still put down the answer. It's still fraud. In the State's mind that is still fraud whether it is a [] ignorance of the facts or [], having the facts but still deciding to claim that [] spouse as a dependent.[T]hat's enough information for the State to have made a ruling of fraud.

[Q]: And do you believe that [] Mr. Mearns actually intended, purposely intended that he fraud [sic] the State here?

[A]: That is the ruling by the State is that he claimed that dependent to receive the higher benefit rate of unemployment.

Mr. Lakatos was then asked whether he personally believed Mearns purposely intended to defraud the State, he stated:

...I met and spoke with Mr. Mearns and, ...it's my feeling on the matter but for what it's worth, it's my feeling on the matter that Mr. Mearns just made an assumption without checking the facts, without checking to see if his wife did qualify. Transcr. at p.19.

Mearns' Affidavit, in the record, states, "I was basically not aware of the percentage of [my spouse's] income that put my claim over the limit." He further explains the mistake because he was not educated regarding the procedure, and he averred that he did not knowingly try to defraud the State.

At the administrative hearing, Mearns testified that he submitted the application over the telephone and an ODJFS representative merely asked him, "Basically has everything remained the same." and he was not questioned specifically regarding incomes for himself or his dependent spouse. Transcr. at pp.26-27. The hearing officer found Mearns not credible on this point because the evidence suggests the application was submitted via the internet and he had never before used this excuse in Mr. Lakota's investigation.

The hearing officer issued a written decision finding Mearns not credible and affirming the Director's Redetermination that Mearns made a fraudulent misrepresentation regarding his

dependent spouse with the object of obtaining benefits to which he was not entitled. Mearns was ordered to re-pay the entirety of \$13,160.00 for the benefits he received from February 26, 2011 through September 17, 2011, and he was rendered ineligible for future otherwise valid claims.

Credibility determinations are outside of the scope of this Court's review. But, even disregarding the entirety of Mearns' testimony at the administrative hearing as not credible, there is evidence in the record that confirms Mearns merely made an assumption without checking the facts. Regardless of the dependency status of Mearns' spouse, Mearns was eligible to receive unemployment compensation benefits. It is the amount of benefits to which he is entitled which is at issue and there is nothing in the record to suggest that Mearns completed his application with the object of obtaining additional benefits to which he was not entitled. Mearns is entitled to a reduced amount of benefits for the period at issue because his spouse no longer qualified as his dependent. The UCRC's conclusion that Mearns perpetrated a fraud is unreasonable and against the weight of the evidence. Mearns failed to correctly ascertain his spouse's income by way of a complex mathematical equation used to determine dependency based on his and his spouse's (fluctuating) average weekly wages. It is equally unreasonable to require Mearns to pay back the entirety of the benefits he received, including those benefits which he was rightfully entitled, and to further preclude him from receiving future benefits to which he may be entitled.

This case is factually distinguishable from *Barilla* and the case relied upon by the Ninth District Court of Appeals in *Barilla, Ridel v. Bd. of Review*, 7th Dist. App. No. 79 CA 72, 1980 Ohio App. LEXIS 14014 (May 19, 1980). Rather, this case more resembles the *Diliberto* and *Tatman* cases, wherein the applicants were confused by a question or the mathematical formulas utilized to arrive at an appropriate answer. See *Diliberto v. Administrator*, 8th Dist. App. No. 57181, 1989 Ohio App. LEXIS 2859 (Cuyahoga Co., July 20, 1989); *Tatman v. Administrator*, 12th Dist. App. No. 1203, 1983 Ohio App. LEXIS 11952 (Clermont Co., July 13, 1983). Finding such errors and / or mistakes *per se* fraudulent is unreasonable.

CONCLUSION

The UCRC's determination that Mearns fraudulently misrepresented information in his application for the purpose of obtaining benefits to which he was not entitled is unreasonable

and against the weight of the evidence under the facts of this case; particularly upon the harsh results it inflicts upon an individual who is otherwise eligible to receive unemployment compensation benefits, albeit at a reduced rate without claiming a dependent.

On the facts established, Mearns received benefits in excess to that which he was entitled, but because the record lacks evidence of fraud, the penalty provisions of R.C. §4141.35(A) are not applicable and Mearns eligibility for future benefits is not thereby impaired. The UCRC determination of fraudulent misrepresentation is VACATED and the determination is MODIFIED to the extent that the UCRC shall re-calculate the amount Mearns was overpaid due to the error, and order reimbursement of such overpaid funds pursuant to R.C. §4141.35(B), "for reasons other than fraudulent misrepresentation."

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the UCRC determination appealed in this matter is VACATED AND MODIFIED. The matter is remanded to the UCRC to order reimbursement of overpaid funds for reasons other than fraud pursuant to R.C. §4141.35(B). This is a final and appealable Order; there is no just cause for delay.

It is so Ordered.



JUDGE PAUL J. GALLAGHER

cc: Attorney Michael Creveling
Attorney Laura Blum Mazorow

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CASE NUMBER: CV-2012-01-0423

KENNETH MEARNs vs MICKEY FORD

Judge: PAUL GALLAGHER

ORDER FILED: 07/19/2012

NOTICE

TO: LAUREL DIANE MAZOROW
STATE OFFICE TOWER-12TH FLOOR
615 WEST SUPERIOR AVE.
CLEVELAND, OH 44113

YOU ARE HEREBY NOTIFIED THAT A FINAL APPEALABLE ORDER IN THE ABOVE CASE HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT. SAID NOTIFICATION IS REQUIRED BY THE OHIO SUPREME COURT AND CIVIL RULE 58(b)

The followin represents information that has been entered on the docket of the Clerk of the Common Pleas Court regarding this order. A maximum of the first eight (8) lines of this entry are displayed

UCRC DETERMINATION APPEALED IN THIS MATTER IS VACATED AND MODIFIED. THE MATTER IS REMANDED TO THE UCRC TO ORDER REIMBURSEMENT OF OVERPAID FUNDS FOR REASONS OTHER THAN FRAUD. THERE IS NO JUST CAUSE FOR DELAY. PG

07/19/2012

Daniel M. Horrigan
Summit County Clerk Of Courts