

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

LINCOLN VIASSY,

CASE NO.: 2011 CV 02730

Appellant(s),

JUDGE BARBARA P. GORMAN

-vs-

MONTGOMERY COUNTY AUDITOR, et al,

Appellee(s).

**DECISION, ORDER AND ENTRY
DENYING APPELLANT'S
ADMINISTRATIVE APPEAL AND
AFFIRMING THE DECISION OF THE
OHIO UNEMPLOYMENT REVIEW
COMMISSION**

This matter is before the Court on the *Notice of Administrative Appeal* filed by Appellant Lincoln Viassy. The *Brief of Appellant* was filed on October 5, 2011. The *Brief of Appellee Director, Ohio Department of Job and Family Services* was filed on November 14, 2011. The *Brief of Appellee, Montgomery County Auditor* was filed on November 29, 2011. Appellant's reply *Brief* was filed on December 1, 2011. This matter is properly before the Court.

I. FACTS

Appellant Lincoln Viassy ("Appellant") appeals the decision of the Unemployment Compensation Review Commission (the "Commission") that denied Appellant's eligibility for unemployment benefits and ordered that he repay benefits that were wrongly paid to him. Appellant began working for the Montgomery County Department of Developmental Disabilities ("Employer") on January 4, 2010. On January 5, 2010, he submitted a written resignation letter that stated he was resigning because he was enrolled in a college class that conflicted with his work schedule. He then applied for and received unemployment benefits from January 9, 2010 through July 24, 2010. The Employer appealed the award of benefits, which was ultimately affirmed by the Commission. Appellant appeals the decision of the Commission and claims he was forced in

to resigning and that the Employer did not fully inform of his employment options when his work schedule conflicted with his school schedule.

II. LAW & ANALYSIS

This appeal of the Commission's ruling is pursuant to O.R.C. Section 4141.282(H), which permits the review of an order of the Commission by the appropriate common pleas court.

A. Standard of Review

Under R.C. 4141.282(H), a common pleas court shall affirm the decision of the Commission unless "the court finds that the decision of the [C]ommission was unlawful, unreasonable, or against the manifest weight of the evidence" Thus, the standard of review is not de novo, and this Court must affirm the Commission's ruling unless it is unlawful, unreasonable or against the manifest weight of the evidence.

The Ohio Supreme Court has held that "[t]he board's role as factfinder 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 Empl. Serv.* (1995), 73 Ohio St.3d 694. Although an administrative agency's decision should not be "rubber-stamped," parties are not entitled to de novo review.

Kilgore v. Board of Review (1965), 2 Ohio App.2d 69.

B. The Commission's determination was not unlawful, unreasonable or against the manifest weight of the evidence.

O.R.C. Section 4141.29(D)(2)(a) sets forth the statutory rule regarding eligibility and qualification for unemployment compensation benefits. This section provides:

(D) Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(2) For the duration of the individual's unemployment if the director finds that:

(a) The individual quit work without just cause or has been discharged for just cause in connection with the individual's work.

"Just cause is defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15, 17, 482 N.E.2d 587, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App. 2d 10, 12, 335 N.E.2d 751. An individual is not eligible for benefits if he or she quits work without just cause. O.R.C. Section 4141.29(D)(2)(a) ; O.R.C.

Section 4141. 29 (G). Quitting employment to attend school is not just cause to quit. See *Jones v. Unemp. Comp. Bd. Of Review* (Montgomery County 1989), 61 Ohio App. 3d 272.

In the case at bar, it is uncontroverted that Appellant turned in a written resignation after one day of work with the Employer. Appellant's stated reason was that the work schedule conflicted with his school courses. As set forth above, leaving employment to pursue school course work does not constitute just cause to quit. He simply chose to attend school rather than continue working. Appellant then applied for and received \$8,178.00 in unemployment benefits to which he was not entitled. Therefore, Appellant must repay the benefits he received in error.

Accordingly, this Court hereby AFFIRMS the decision of the Commission and DENIES Appellant's appeal therefrom.

III. CONCLUSION

Accordingly, the *Notice of Administrative Appeal* filed by Lincoln Viassy is hereby DENIED and the Decision of the Ohio Unemployment Compensation Review Commission is hereby AFFIRMED. Consistent with the Decision of the Ohio Unemployment Compensation Review Commission, Mr. Viassy is ordered to repay the benefits he received in error.

This is a final appealable order, and there is not just cause for delay for purposes of Ohio Civ. R. 54. Therefore, the time for prosecution and appeal to the Second District Court of Appeals must be computed from the date upon which this decision and entry is filed.

The above captioned case is ordered terminated upon the records of the Common Pleas Court of Montgomery County, Ohio.

Appellee's costs are to be paid by Appellant.

SO ORDERED:

BARBARA P. GORMAN, JUDGE

TO THE CLERK OF COURTS:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

BARBARA P. GORMAN, JUDGE

The persons listed below were notified of this Decision, Order and Entry through the electronic notification system of the Clerk of Courts.

Laura Mariani
Yvonne Tertel

Copies of the foregoing were sent to the following persons by ordinary mail:

Lincoln Viassy
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General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

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Type: Decision

So Ordered

Barbara Pugh Gorman

Barbara P. Gorman