

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

COLUMBUS FAIR AUTO AUCTION, INC.,	:	
	:	CASE NO. 12CVF-6632
Appellant	:	
vs.	:	JUDGE BEATTY
	:	
JAMES M. CHAPMAN, et al.,	:	
	:	
Appellees	:	

**DECISION AND JUDGMENT ENTRY REVERSING THE DECISION OF  
THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION  
AND  
NOTICE OF FINAL APPEALABLE ORDER**

**BEATTY, JUDGE**

This is an appeal pursuant to R.C. 4141.282 from a May 17, 2012 Decision of the Unemployment Compensation Review Commission (the “Commission”).

**I. FACTS**

On December 23, 2011, Appellee James M. Chapman applied for unemployment compensation benefits. By a redetermination dated February 28, 2012, the Director, Ohio Department of Job and Family Services, found that Mr. Chapman was separated from work at Appellant Columbus Fair Auto Auction Inc. (“Columbus Fair”), due to lack of work. Columbus Fair filed an appeal, and the matter was transferred to the Commission.

On March 22, 2012, a hearing was held before a Hearing Officer of the Commission. Evidence was presented as follows.

Mr. Chapman testified that his unemployment claim related to his employment with Curves and More, where he worked before his employment with Columbus Fair. (T. 6). He testified that he was fired by Curves and More on December 24, 2010. (*Id.*).

Mr. Chapman testified that he worked for Columbus Fair “on a casual labor basis,” and that he last worked for Columbus Fair in September, 2011. (T. 7-8). When asked whether he had worked for Columbus Fair from September, 2011 until the application for unemployment benefits was filed on December 23, 2011, he answered “No” and said “I had a hernia operation.” (T. 8-9).

Scott Day, Columbus Fair’s Vice President of Finance, testified that Columbus Fair’s last paycheck to Mr. Chapman was dated September 14, 2011. (T. 10). Mr. Day stated that as of the week of December 18, 2011, Mr. Chapman was still eligible to work for Columbus Fair, and work was available to Mr. Chapman. (T. 10-11). Mr. Day testified that Mr. Chapman was a casual laborer at Columbus Fair, and that he could come to Columbus Fair on any Monday and obtain work. (T. 11). Mr. Day testified that Mr. Chapman had not worked since September, 2011, on his own volition. (T. 12).

On March 23, 2012, the Hearing Officer issued a Decision finding that Mr. Chapman was separated from Columbus Fair due to lack of work. The Hearing Officer stated that Mr. Chapman was an employee of Columbus Fair as of the date of the application and that he had not been offered work since September, 2011.

On May 17, 2012, the Commission disallowed Columbus Fair’s request for further review. On May 22, 2012, Columbus Fair filed this appeal.

## **II. STANDARD OF REVIEW**

This Court must affirm the Commission’s Decision unless the Decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H).

### III. FINDINGS AND CONCLUSIONS

Columbus Fair argues that the Commission's Decision is erroneous because Mr. Chapman was not "able to work and available to work" and because he was not "unable to obtain suitable work."

Ohio Rev. Code 4141.29(A) provides as follows:

No individual is entitled to a waiting period or benefits for any week unless the individual:

(4)(a)(i) Is able to work and available for suitable work and ... is actively seeking suitable work ....

...

(5) Is unable to obtain suitable work. An individual who is provided temporary work assignments by the individual's employer under agreed terms and conditions of employment, and who is required pursuant to those terms and conditions to inquire with the individual's employer for available work assignments upon the conclusion of each work assignment, is not considered unable to obtain suitable employment if suitable work assignments are available with the employer but the individual fails to contact the employer to inquire about work assignments.

As argued by Columbus Fair, the evidence does not establish that Mr. Chapman is "able to work and available for suitable work" in accordance with R.C. 4141.29(A)(4)(a)(i). The testimony of both Mr. Chapman and Mr. Day was that Mr. Chapman worked for Columbus Fair as a casual laborer. Mr. Day's uncontradicted testimony was that Mr. Chapman could come to Columbus Fair on any Monday and obtain work, and that he had not worked since September, 2011 on his own volition. Consistent with Mr. Day's testimony, Mr. Chapman testified that he had not worked since September, 2011 because he had had hernia surgery. There was no evidence that as of the week of December 18, 2011, Mr. Chapman was "able to work and available for suitable work."

The evidence also does not establish that Mr. Chapman “is unable to obtain suitable work” as set forth in R.C. 4141.29(A)(5). As the statute expressly provides, a claimant is not considered unable to obtain suitable work if the agreed terms of employment are such that work is available and the claimant fails to contact the employer to inquire about work. The uncontroverted testimony at the hearing was that work was available to Mr. Chapman, he failed to show up to obtain the work, and he was off work on his own volition.

For the foregoing reasons, the Court finds that the Commission’s Decision is unlawful, unreasonable, and against the manifest weight of the evidence. It is unnecessary to address the remaining issues raised by Appellant. The Commission’s Decision is hereby REVERSED. This is a final, appealable Order.

Franklin County Court of Common Pleas

**Date:** 08-21-2012

**Case Title:** COLUMBUS FAIR AUTO AUCTION INC -VS- JAMES M  
CHAPMAN

**Case Number:** 12CV006632

**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Laurel Beatty". The signature is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Laurel A. Beatty

Court Disposition

Case Number: 12CV006632

Case Style: COLUMBUS FAIR AUTO AUCTION INC -VS- JAMES M CHAPMAN

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes