

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

CATHY ROSS,

CASE NO.: 2011 CV 05748

Plaintiff(s),

JUDGE DENNIS J. LANGER

-vs-

OHIO DEPARTMENT OF JOB AND FAMILY
SERVICES et al,

**FINAL AND APPEALABLE DECISION,
ORDER, AND ENTRY MODIFYING THE
DECISION OF THE UNEMPLOYMENT
COMPENSATION REVIEW
COMMISSION**

Defendant(s).

This matter is before the Court on Appellant's, Cathy Ross ("Ross"), administrative appeal from the Decision of the Unemployment Compensation Review Commission ("Commission"), affirming a Redetermination by the Appellee, Ohio Department of Job and Family Services ("Appellee" or "ODJFS") finding that Ross had received unemployment benefits that she was not entitled to. In accordance with the Local Rules, the Court issued a briefing schedule for Administrative Appeal briefs to be filed. Ross filed her *Brief ("Appellant Brief")* on October 28, 2011. The *Brief of Appellee, Director, Ohio Department of Job & Family Services ("Response")* was filed on December 1, 2011. To date, a reply has never been filed. This matter is now properly before the Court.

I. FACTS AND PROCEDURAL HISTORY

The Court finds that the Appellee has adequately set forth the facts and procedural history, which are quoted as follows:

The Claimant filed an Application for Determination of Benefit Rights on May 27, 2008. The application was allowed with benefit year beginning May 25, 2008, and a benefit year ending date of May 23, 2009. The Claimant filed an application for [Emergency Unemployment Benefits ("EUC")] EUC benefits on February 20, 2009. This application was also allowed. The Claimant filed a new Application for Determination of Benefit Rights (transitional application) on April 19, 2010. This application was allowed with an effective

date of January 3, 2010. (Ex. 1). This application was based on the fact that the Claimant worked for Macy's from January 1, 2009 until December 21, 2009 and earned \$11,130.37 during that period which qualified her for regular unemployment benefits. *Id.*

On January 4, 2001, the Director issued a Redetermination which held that the Claimant was overpaid benefits in the amount of \$3,318.00, for the weeks ending January 9, 2010 through April 3, 2010, and ordered the Claimant to repay this amount to the Ohio Department of Job and Family Services ("ODJFS"). The Claimant appealed the Redetermination. ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.282(C). An evidentiary hearing was held before a hearing officer for the Review Commission on April 13, 2011. At the hearing, the Claimant admitted that she worked between January 1, 2009 and December 31, 2009 for 51 weeks with earnings of about \$11,130.37. (Tr. p. 4.). This employment meets the week and income requirements in a base period to establish eligibility for regular unemployment benefits. R.C. 4141.01(R)(1). The hearing officer issued a decision that affirmed the Redetermination.

During the hearing the Claimant contended that the overpayment from January through April, 2010 was not due to her fault. (Tr. p. 4). The Claimant noted that the office of unemployment benefits told her that the reason why her application did not go through until April was because it was backed up and the claim didn't come up until April 13, 2010 (Tr. p. 5). This is the reason why the Claimant's unemployment benefits were backdated. *Id.* The hearing officer conceded in the decision that the Claimant was not at fault for the overpayment. (Ex. 1). However, the hearing officer held that it was not contrary to equity and good conscience to require the Claimant to repay the payment she received as EUC because she was qualified for regular unemployment benefits.

The Claimant filed a request for further review of the adverse decision to the Review Commission. The Review Commission disallowed the Claimant's request for further review. The Claimant then appealed to this Court, seeking reversal of the hearing officer's decision that the Claimant was overpaid benefits.

Response at pp. 2-3.

II. LAW AND ANALYSIS

A. STANDARD OF REVIEW

A common pleas court sitting in an appellate capacity has a limited power of review. *Irvine v. The State of Ohio, Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18, 482 N.E.2d 587. Such court is not permitted to make factual findings or to determine the credibility of witnesses. *Id.* The court is to determine whether the decision of the board is supported by the evidence in the record. *Id.* The board's decision cannot be reversed based on the fact that reasonable minds might reach different conclusions. *Id.* The court may reverse, vacate, or modify board determinations if "the decision of the Commission was unlawful, unreasonable, or against the manifest weight of the evidence." R.C. § 4141.282(H); see also *Irvine*, 19 Ohio St.3d at 17-18. The courts have no authority to upset the board's decisions on close questions (i.e., where the board might reasonably decide either way). *Irvine*, 19 Ohio St.3d at 18.

B. FEDERAL EMERGENCY UNEMPLOYMENT ACT OF 2008

The overpayment to Ross was in the form of emergency unemployment compensation, which is a creature of federal law. The relevant portions of the Act are as follows:

(b) Repayment. In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

(2) such repayment would be contrary to equity and good conscience.

Pub. L. No. 110-252, Title IV, § 4005(b), 122 Stat. 2353 (codified as 26 U.S.C.A. § 3304).

Ross maintains that because the overpayment of benefits was not her fault, but rather due to the state's oversight, she should not have to repay the \$3,318.00. There is no dispute that the overpayment occurred through no fault of Ross. The hearing officer's decision expressly states in her decision that "[t]he Hearing Officer recognizes that, in this case, the claimant was not at fault for the overpayment." Exhibit 1 – Decision of Hearing Officer. Appellee does not dispute this in the *Response* brief.

Rather, Appellee argues that waiver of repayment is optional with the state, and implicitly argues that because Ohio's statutory scheme does not provide for waiver of repayment (as opposed to other states), Ohio has elected never to waive. However, in the hearing officer's decision requiring repayment, the hearing office underwent an analysis of whether "...requiring repayment would be contrary to equity and good conscience under Federal law..." *Id.* In making this determination, the hearing officer applied the following test: requiring repayment would be contrary to equity and good conscience under Federal law if "the claimant has no financial means with which to repay the overpayment now or in the future." *Id.* Applying this test, the hearing officer found as follows:

Because claimant had monetary entitlement to regular UI benefits beginning on January 3, 2010, regular UI benefits may be used to offset most, if not all, of the overpayment of EUC benefits. Therefore, the Hearing Officer cannot find that requiring repayment would be contrary to equity and good conscience and the overpayment of EUC benefits will not be waived.

Id. The hearing officer did not cite any authority in Ohio that would provide guidance on whether Ohio may waive repayment or not. See *id.* This Court's own research has likewise uncovered no case law in Ohio

applying the provisions of the Federal Act. Given that the law in this area is unclear, this Court is disinclined to rule that the law in Ohio precludes waiver of repayment. Rather, this Court finds that determining waiver of repayment should be done in accordance with the applicable provisions in federal law.

The Act states that a State may waive repayment if the individual was not at fault (first prong) *and* such repayment would be contrary to equity and good conscience (second prong). The Court notes preliminarily that these dual requirements seem contradictory. Presumably, one entitled to receive unemployment benefits needs and relies on those benefits to survive. Absent a situation where overpayment of benefits was so gross as to alert any reasonable person that they were being overpaid, it would seem, by definition, that to require the individual to be liable for overpayments made through no fault of the individual would be contrary to equity and good conscience. Indeed, even an individual with a well paying job (as that term is defined by the current economy) generally does not have three thousand dollars or more to part with at any given moment in time, or at least not without suffering some degree of adverse impact to his or her financial circumstances.

Appellee provides two cases as illustrations of the second's prong's application. *Wise v. Bd. of Review, Dept. of Labor*, 2011 N.J. Super. Unpub. Lexis 2284 was New Jersey case where the claimant was actually induced by the unemployment office into applying for emergency benefits, only to find out after receipt of those benefits that she was not entitled to them. Specifically, a "Division of Unemployment and Disability Insurance [] employee told Wise she would be eligible for Emergency Unemployment Compensation [] benefits. The employee processed such a request on behalf of Wise, who was found eligible..." *Id.* The director of the division later determined that the \$14,000.00 of EUC Wise had received was to be repaid. Wise did not properly perfect her appeal on the issue of waiver. Nevertheless, the Superior Court of New Jersey addressed the issue, in dicta, and held that the repayment determination would have been upheld, notwithstanding Wise's waiver argument. New Jersey statutory law specifically provides for waiver, and states that the director may grant a waiver where "recovery of the overpayment...would be patently contrary to the principals of equity." *Id.* The statute further defines the standard by stating that "[f]or purposes of determining...whether the recovery of the overpayment would be 'patently contrary to the principles of equity,' the Director and Controller shall consider whether the terms of a reasonable repayment schedule would result in economic hardship to the claimant." The *Wise* court reasoned that because "Wise

was directed to make repayment at the rate of fifty dollars per month, giving her more than eight years to repay the remaining [balance of overpayment] in EUC benefits she improperly received and spent[,] [and] given that Wise fortunately [became] reemployed, such a payment plan [did] not appear onerous.” *Id.*

The other case cited by Appellee is from a Commonwealth Court of Pennsylvania—*Stelter v. Unemployment Compensation Bd. of Review*, 14 A.3d 929, 2011 Pa. Commw. Lexis 65. In *Stelter*, the Commonwealth Court upheld a determination of repayment on similar reasoning to that of the *Wise* court. Although the claimant in *Stelter* had not been reemployed, the *Stelter* court reasoned that because the overpayment would be repaid via periodic deductions from the claimant’s continuing unemployment compensation, repayment would not be contrary to equity and good conscious. *Id.*

Here, the hearing officer applied a similar standard when she assessed Ross’ financial means with which to repay the overpayment now or in the future. However, the decision of the hearing officer is ambiguous as to the precise method of repayment. In the “reasoning” section of the decision, the hearing officer appears to recommend that the repayment come from deductions from prospective unemployment benefits, although it is not clear. Under the heading “decision,” the hearing officer makes repayment “in full within forty-five days of a decision becoming final.” Exhibit 1. Even under the existing deferential standard of review, this Court cannot concur with the hearing officer’s decision that Ross be required to pay the full amount in one lump sum. In light of the fact that the overpayment was not Ross’ fault, this Court finds that while the decision to require repayment is not unreasonable and is consistent with the case law, to require repayment in one lump sum would be contrary to equity and good conscience. To the extent the decision of the hearing officer requires repayment in this manner to comport with equity and good conscience, the Court finds said decision to be unreasonable.

III. CONCLUSION

This Court cannot say that refusal to waive repayment is unlawful, unreasonable, or against the manifest weight of the evidence. On the other hand, the Court finds that to require repayment in one lump sum is unreasonable, and contrary to equity and good conscience. However, there is nothing in the record before the Court indicating whether the money has been already repaid, or whether it has remained with Ross pending this appeal. If the \$3,318.00 has remained with Ross pending this appeal, then the Court hereby modifies the decision of the hearing officer, and remands the matter for the establishment and

implementation of a reasonable payment plan. If, however, the money has been repaid, then the Court's finding that mandatory repayment is not unreasonable is dispositive, and the Court affirms the decision of the hearing officer.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. LANGER

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

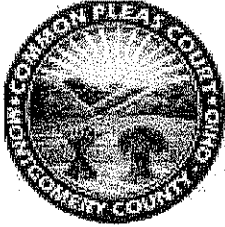
ROBIN A JARVIS
(513) 852-3497
Attorney for Defendant, Ohio Department Of Job And Family Services

ROBIN A JARVIS
(513) 852-3497
Attorney for Defendant, Review Commission

Copies of this document were sent to all parties listed below by ordinary mail:

CATHY ROSS
2225 CREW CIRCLE
DAYTON, OH 45439
(937) 718-8845
Plaintiff, Pro Se.

JULENE POWERS, Bailiff (937) 225-4055 powersj@montcourt.org



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

Case Title: CATHY ROSS vs OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES
Case Number: 2011 CV 05748
Type: Decision

So Ordered

A handwritten signature in black ink, appearing to read "Dennis J. Langer".

Dennis J. Langer