

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

LINDA HOWARD,		CASE NO. 12CVF06-07445
Appellant,		JUDGE SHEERAN
vs.		
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al.,		
Appellees.		

**DECISION AND JUDGMENT ENTRY AFFIRMING DECISION OF OHIO
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**

SHEERAN, J.

This case is a Revised Code 4141.282 administrative appeal, by Linda Howard, from a “Decision Disallowing Request for Review” that was issued by the Ohio Unemployment Compensation Review Commission on May 17, 2012. The record that the Commission has certified to the Court reflects the following facts.

From June 23, 2009 to January 7, 2012, Ms. Howard was employed as a customer service representative by Express Payroll Advance of Ohio, Inc., doing business as Check\$mart.

Transcript (T.) 4-5. Ms. Howard quit her job on January 7, 2012 because she suffered from relapsing-remitting multiple sclerosis (RRMS), a chronic progressive neurologic disease that made it difficult for her to continue performing her job responsibilities. *T. 5-11.*

Ms. Howard applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment-compensation benefits. In a Determination issued on January 12, 2012, ODJFS found that Ms. Howard quit her employment without just cause, disallowed her application, and

ordered her to repay benefits that she had already received for the week ending January 7, 2012, in the amount of \$269. Ms. Howard appealed the Determination to the Director of ODJFS.

In a Director's Redetermination issued on February 29, 2012, the Director affirmed the earlier Determination. Ms. Howard appealed the Director's Redetermination, and the Director transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission.

On March 26, 2012, a Hearing Officer for the Commission conducted a telephone hearing on the appeal. Ms. Howard participated in the hearing and testified to the facts recited above. Ms. Howard also submitted several letters from her nurse practitioner, Mary Pat Bartoszek. In a letter dated February 3, 2012, Ms. Bartoszek reported:

Linda Howard is followed at The Ohio State University Multiple Sclerosis Center. She carries the diagnosis of relapsing remitting multiple sclerosis. Her initial symptoms began in 1993 with optic neuritis. She was officially diagnosed in 2000 and has been consistent with disease modifying therapy ever since her diagnosis.

RRMS is a chronic, progressive, neurologic disease characterized by periods of relative remission and unpredictable relapses or flares. There is no cure for multiple sclerosis. Disease modifying therapies are aimed at slowing progression of disease.

Physically Mrs. Howard experiences motor weakness and imbalance. She has had several falls. Her gait is abnormal and she requires at least unilateral assistance to ambulate.

Of even greater detriment are Linda Howard's symptoms of impaired cognition and fatigue. Linda suffers with pathologic MS-related fatigue. Fatigue is the most common symptom experienced by MS patients with a prevalence of 85%-97%. This significantly impairs health-related quality of life, including a negative impact on the ability to work. Additionally it is a major cause of unemployment ***.

Cognitive dysfunction occurs in 40%-70% of patients with MS. Like fatigue, it is a major contributor to poor health related quality of life in patients with MS and interferes with a person's ability to work, although physical disability may be

minimal ***. She relates difficulties with memory, focus, and executive function. Tasks that were easily accomplished in the past present significant difficulty now.

Unfortunately, Linda Howard is unable to be consistently productive in the workplace due to MS related impairment in cognition and pathologic fatigue. As the disease is productive, **she is permanently disabled.** (Emphasis added.)

In a letter dated March 1, 2012, Ms. Bartoszek changed her assessment that Ms. Howard was “permanently disabled,” and instead reported:

*** Ms. Howard would require a sit down job with flexible hours to allow for her fluctuation of symptoms. She would require part time hours. The description of the job would need to exclude more than minimal decision making and/or change of duties.

In a letter dated March 8, 2012, Ms. Bartoszek further explained her changed assessment, and reported:

*** Ms. Howard would require a sit down job with flexible hours to allow for her fluctuation of symptoms. The description of the job would need to exclude more than minimal decision making and/or change of duties. If these needs are met, she would be able to pursue full time work.

In a Decision issued on March 30, 2012, the Hearing Officer found that Ms. Howard quit her employment with just cause, because she was no longer able to perform her job duties due to her disease. The Hearing Officer also found, however, that, inasmuch as Ms. Howard was unable to work during the week ending January 7, 2012, she was not entitled to the benefits in the amount of \$269 that she received for that week, and she was required to repay that amount to ODJFS. Ms. Howard appealed the Hearing Officer’s decision to the Commission.

On May 17, 2012, the Commission issued a “Decision Disallowing Request for Review,” in which the Commission concluded that Ms. Howard’s request for review should be disallowed.

On June 8, 2012, Ms. Howard appealed the Commission’s decision to this Court pursuant to R.C. 4141.282. In her notice of appeal, Ms. Howard has asserted that she has “not been

overpaid and is eligible for unemployment benefits.” Ms. Howard has not filed a brief in support of her appeal.

Revised Code 4141.282(H) 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.”

The Court’s role is to determine whether the evidence presented to the Commission supports its finding that Ms. Howard was unable to work during the week ending January 7, 2012, and whether that finding was unlawful or unreasonable. R.C. 4141.282(H). The Commission is the trier of fact, as determined from the evidence adduced at the administrative hearing level. R.C. 4141.281(C)(2). A reviewing court does not make factual findings, determine the credibility of witnesses, or substitute its judgment for that of the Commission. *Rubin v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 11AP-674, 2012-Ohio-1318, ¶10. Where the Commission might reasonably decide either way, the courts have no authority to upset the Commission’s decision. *Henderson v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-154, 2012-Ohio-5382, ¶29.

An individual is not eligible for unemployment-compensation benefits for any week unless the individual is “**able to work** and available for suitable work and *** is actively seeking suitable work[.] (Emphasis added.)” R.C. 4141.29(A)(4)(a)(i). In the nurse practitioner’s March 8, 2012 letter, which was written almost nine (9) weeks after the week ending January 7, 2012, the nurse practitioner reported that Ms. Howard was able to work full-time, subject to certain accommodations. However, in the February 3, 2012 letter, which was written only four

(4) weeks after the week ending January 7, 2012, the nurse practitioner reported that Ms. Howard was “permanently disabled.” Accordingly, the evidence presented to the Commission (by Ms. Howard herself) supports the Commission’s finding that Ms. Howard was, indeed, unable to work during the week ending January 7, 2012.

It is important to note that the subject of the Commission’s decision, and the subject of this appeal, is a single week in 2012 for which Ms. Howard sought unemployment-compensation benefits. The evidence before the Commission, specifically the February 3, 2012 letter from Ms. Howard’s nurse practitioner, supports the Commission’s finding that, during that week, Ms. Howard was unable to work. Because Ms. Howard was unable to work during that week, she was precluded, by R.C. 4141.29(A)(4)(a)(i), from receiving unemployment-compensation benefits for that week. However, the Commission’s decision and this Court’s decision have no bearing on Ms. Howard’s eligibility for unemployment-compensation benefits for any other period of time, or her eligibility for any other form of compensation, such as, for example, disability benefits.

Accordingly, having reviewed the certified record provided by the Commission, the Court does not find that the Commission’s May 17, 2012 “Decision Disallowing Request for Review” was unlawful, unreasonable, or against the manifest weight of the evidence. Pursuant to and in accordance with R.C. 4141.282(H), therefore, the Commission’s decision is hereby **AFFIRMED.**

Copies to:

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Franklin County Court of Common Pleas

Date: 02-04-2013
Case Title: LINDA D HOWARD -VS- EXPRESS PAYROLL ADVANCE
ET AL
Case Number: 12CV007445
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "Patrick E. Sheeran". The signature is written over a circular official seal of the Franklin County Court of Common Pleas. The seal contains the text "FRANKLIN COUNTY OHIO" and "COURT OF COMMON PLEAS".

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 12CV007445

Case Style: LINDA D HOWARD -VS- EXPRESS PAYROLL
ADVANCE ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes