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CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Gaylene Hamen,
Appellant,

Case No. 12 CV 518

v.

JUDGE REEVE KELSEY

Director, Ohio Department of Job and
Family Services,
Appellee.

JUDGMENT ENTRY

This case is before the court on Gaylene Hamen's appeal of the Unemployment Review Commission's determination that appellant Gaylene Hamen was not eligible for unemployment benefits she received for 24 weeks in 2011 and 2012 and owes the Ohio Department of Job and Family Services \$7,778 for overpayments. On October 31, 2012, Ms. Hamen filed her brief. The Director Ohio Department of Job and Family Services ("Director") filed his response on December 4, 2012. Ms. Hamen filed a reply brief on December 17, 2012. The court will now decide this matter.

Facts

Ms. Hamen is a licensed optician who became unable to work in April 2011. She had been working as an optician at Wal-Mart and Sears stores prior to April 2011. It appears that Ms. Hamen was terminated from Wal-Mart in 2007, but received unemployment benefits because her termination was without cause. It is unclear from

the record which company employed Ms. Hamen in April 2011. It is also unclear whether she quit or was terminated. After Ms. Hamen ceased working, she applied for and received unemployment benefits beginning in April 2011. She never returned to work after that.

In October 2011, Ms. Hamen applied for SSI disability benefits. Her claim was allowed in February 2012 and benefits were retroactive to her application date in October 2011. Following the allowance of her disability claim, the Director issued a decision on March 16, 2012, that Ms. Hamen was unable to work the weeks of October 1, 2011, through March 10, 2012, and that she was overpaid for those weeks. The amount Ms. Hamen was required to repay was \$7,778.

Ms. Hamen sought a redetermination, which was issued on April 12, 2012, and found that she was unable to work from October 1, 2011, through March 10, 2012, and was overpaid by \$7,778. Ms. Hamen appealed the redetermination, and the Director transferred the appeal to the Unemployment Compensation Review Commission ("Review Commission"). A telephone hearing on the appeal was held on May 11, 2012. Ms. Hamen testified at the hearing, but no other witnesses or evidence were presented. On May 15, 2012, the hearing officer issued his decision upholding the Director's redetermination.

The hearing officer based his decision on Ms. Hamen's testimony and the questionnaire completed by Dr. Rogelio Sanchez, her treating physician. The pertinent questions and answers from the medical questionnaire read:

* * * 13. While under your care was there a time when this patient was not able to work?

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Yes

14. If yes, please provide dates: * * *

April 2011 to present

15. Have you restricted patient as to the type of work he/she may perform?

Can not [sic] stand for 8 hours a day due to the discomfort and pain in both knees. Yes

16. If yes, what type of restriction?

Can't work at a job which requires constantly standing or walking all day. * * * Claimant's physician questionnaire, Exhibit A to the Director's December 4, 2012 appellate brief.

Ms. Hamen testified that she was unable to work fulltime due to arthritis of her knees and that standing for eight hours per day was too difficult for her. She was actively looking for work in a private office setting from the time she became unemployed until her SSI disability application was approved in February 2012. She believed that she would be able to work in a private office because it would not require as much standing as the retail offices in which she had most recently worked and that she would be able to maintain such employment despite her arthritis.

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Issue and Analysis¹

The only issue before the court is whether the hearing officer's determination that Ms. Hamen was unable to work is supported by some competent, credible evidence.

The role of the court in an unemployment compensation appeal is limited to determining whether the Review Commission's decision was unlawful, unreasonable, or against the manifest weight of the evidence. It is only under one of these criteria that the court shall reverse, vacate or modify the decision. Otherwise, the Review Commission's determination must be upheld. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995); and *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985). Under R.C. 4141.282(H), all courts sitting in review of the Review Commission must apply the same standard of review.

The Review Commission's function as trier of fact remains intact. *Tzangas* at 697. Where factual matters, the credibility of witnesses, and the weight of conflicting evidence are at issue, the court should defer to the Review Commission's determination. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947); and *Angelkovski v. Buckeye Potato Chips Co.*, 11 Ohio App.3d 159, 463 N.E.2d 1280 (10th Dist.1983). The trier of fact – the Review Commission and its hearing officer – is in the best position to judge such issues. Therefore, as long as there is competent, credible evidence in the record that would support the decision of the Review Commission, its decision must stand. *Irvine*, 19 Ohio St.3d at 17-18. A decision by the

¹ The court notes that the statutes requiring that unemployment benefits be reduced by amounts received from other sources, R.C. 4141.31 & .312, do not apply to Ms. Hamen's case.

Review Commission will be against the manifest weight of the evidence only if the decision is, " * * * so manifestly contrary to the natural and reasonable inferences to be drawn from the evidence as to produce a result in complete violation of substantial justice * * *." *Sambunjak v. Bd. of Rev., Ohio Bur. of Emp. Serv.*, 14 Ohio App.3d 432, 433, 471 N.E.2d 835 (8th Dist.1984). The fact that reasonable minds may differ as to factual conclusions is not a basis upon which the Review Commission may be reversed where credible evidence existed. *Tzangas*, 73 Ohio St.3d at 697.

As a prerequisite to receiving unemployment benefits, an applicant must demonstrate that she, "[i]s able to work and available for suitable work * * *." R.C. 4141.29(A)(4)(a)(i). "Able to work" means the applicant has the physical capabilities to work, and "available to work" means the applicant is ready to work. *Hinkle v. Lennox Furnace Co.*, 84 Ohio App. 478, 83 N.E.2d 903 (3d Dist.1947), paragraph one of the syllabus, *aff'd*, 150 Ohio St. 471, 83 N.E.2d 521 (1948). It is the applicant's burden to demonstrate that she is entitled to unemployment benefits, which includes establishing that she was able to work. *Canton Malleable Iron Co. v. Green*, 75 Ohio App. 526, 62 N.E.2d 756 (5th Dist.1944), paragraph 5 of the syllabus; and *see Irvine*, 19 Ohio St.3d at 17.

After a thorough review of the record, the court cannot find that the hearing officer's decision was unlawful, unreasonable, or against the manifest weight of the evidence. The hearing officer determined that Ms. Hamen's testimony that she could work at a sedentary job was less credible than Dr. Sanchez's medical testimony that she was not able to work beginning in April 2011. The fact that the evidence in the questionnaire could have been interpreted differently does not allow the court to reverse

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a hearing officer's decision. *Irvine*, 19 Ohio St.3d at 18. Ms. Hamen argues that the hearing officer misinterpreted Dr. Sanchez's responses to the medical questionnaire, but this is insufficient to reverse the Review Commission's decision. The medical questionnaire easily could be interpreted as stating either that Ms. Hamen was unable to perform any work due to her health conditions or that she was able to work subject to standing restrictions. The hearing officer is the trier of fact and is in the best position to make those factual determinations.

Ms. Hamen argues that SSI regulations allow certain individuals over the age of 55 to be considered disabled even if they are still capable of performing some type of gainful work, but has not submitted any evidence to show that such a finding was made in her case. Ms. Hamen has the burden of proving that she is entitled to unemployment benefits, and the court cannot reverse the hearing officer's decision because Ms. Hamen failed to bring pertinent facts to the hearing officer's attention. The court must decide this appeal based on the record made during the administrative proceedings, and the record contains competent, credible evidence supporting the hearing officer's determination.

Because the record contains competent, credible evidence supporting the hearing officer's decision that Ms. Hamen was unable to work, and the decision was not unlawful, unreasonable, or against the manifest weight of the evidence, Ms. Hamen's appeal will be denied.

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IT IS ORDERED that the appeal of appellant Gaylene Hamen is denied.

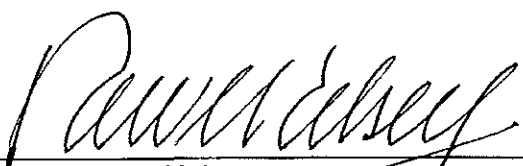
IT IS ORDERED that the decision of the Unemployment Compensation Review Commission issued on May 15, 2012, is affirmed.

IT IS ORDERED that appellant Gaylene Hamen is not entitled to unemployment benefits for the weeks ending October 1, 2011, through March 12, 2012.

IT IS ORDERED that appellant Gaylene Hamen is ordered to repay the Ohio Department of Job and Family Services \$7,778 for unemployment benefits paid from October 1, 2011, through March 12, 2012.

Costs from deposit.

2/27/13
Date


Paul Reeve Kelsey

CERTIFICATE

Clerk to furnish a copy of the foregoing Judgment Entry to counsel of record and unrepresented parties.

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