

IN THE COURT OF COMMON PLEAS

2013 MAR -7 AM 11:35

ROSS COUNTY, OHIO

ROSS COUNTY COMMON PLEAS
CLERK OF COURTS
TY D. HINTON

TONDA L. VANDERPOOL,

APPELLANT,

CASE NO. 12 CI 267

-VS-

JUDGE ATER

ADENA HEALTH SYSTEM, INC. et al.,

JOURNAL ENTRY,

APPELLEES.

* * * * *

This cause came to be heard on the Notice of Appeal from the decision of the Unemployment Compensation Review Commission filed by Appellant, Tonda Vanderpool. The Appellant and the Appellee, Director, Ohio Department of Job and Family Services, have filed written briefs for the Court's consideration in this matter.

The first matter that needs to be addressed by the court is Appellees assertion that this matter is not properly before the court because the court lacks subject matter jurisdiction because the appeal was not timely filed. The Court would note that the appeal is file stamped by the Ross County Clerk of Court on May 4, 2012. However, the clerk of court actually received the notice of appeal on April 30, 2012 and returned the notice of appeal to Appellant, on that same date, for failing to pay the entire filing fee.

The Ohio Revised Code requires the clerk to endorse the date of filing on each document filed in a case, and the file-stamped date is presumed to reflect

the actual date of filing. *Ins. Co. of N. Am.*, 89 Ohio App. 3d at 790 However, that presumption can be refuted by evidence showing that the clerk received the document on a different date. *Kloos v. Ohio Dept. of Rehab. & Corr.*, 1988 Ohio App. LEXIS 1744 (May 3, 1988), Franklin App. No. 87AP-1215, unreported.

The clerk, as a ministerial officer of the court, has a duty by law to accept and file documents tendered to him or her. *State ex rel. Dawson v. Roberts* (1956), 165 Ohio St. 341, 342, 135 N.E.2d 409, 409-410; *State ex rel. Millenbaugh v. Timmons*, 1994 Ohio App. LEXIS 3808 (Aug. 29, 1994), Fulton App. No. 94FU000025, unreported. See, also, *Pollock v. Rashid* (1996), 117 Ohio App. 3d 361.

In an original action brought in the Ohio Supreme Court, the court stated: It is the duty of the clerk of this court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filing fee. The power to make any decision as to the propriety of any paper submitted or as to the right of a person to file such paper is vested in the court, not the clerk. *State ex rel. Wanamaker v. Miller* (1955), 164 Ohio St. 176, 177, 128 N.E.2d 110, 110.

In this case Appellee argues that the failure to pay the appropriate filing fee, with the appeal, requires the clerk to not accept the document as having been timely filed and thus requires this court to find it does not have subject matter jurisdiction. This Court would note that some courts have held that documents were appropriately deemed to have been filed on the date that the

clerk refused to accept them even though they were not accompanied by the proper filing fee. *Huntington Natl. Bank v. Miller* (1987), 36 Ohio App. 3d 208, *Ricart North, Inc. v. B. W. Towing, Inc.*, 1999 Ohio App. LEXIS 2376 (May 25, 1999), Franklin App. No. 98AP-926, unreported.; see, also, *Pollock*, 117 Ohio App. 3d at 366-367. Under the circumstances of this case, the Court believes fundamental fairness requires that the Court deem Vanderpool's Appeal to have been timely filed. Therefore, the Court finds that it does have subject matter jurisdiction.

This matter commenced when Ms. Vanderpool applied for unemployment compensation benefits. On September 24, 2009, the Ohio Department of Job and Family Services allowed the original claim on the basis that Appellant had been discharged without just cause from his employment. Upon the appeal filed by Appellant's employer, Adena, the Appellee, Ohio Department of Job and Family Services, transferred jurisdiction to the Unemployment Compensation Review Commission. A hearing was held before a Hearing Officer of the Unemployment Compensation Review Commission on June 1, 2010 and June 23, 2010. The Hearing Officer, in a decision mailed July 2, 2010, determined that Appellant had been discharged from her employment for just cause and disallowed Appellant's claim of unemployment compensation benefits. Appellant filed a request for a review of the Hearing Officer's determination. The Unemployment Compensation Review Commission disallowed appellant's request for review, thereby affirming the disallowance of unemployment

compensation benefits. Pursuant to O.R.C. 4141.282, Appellant has filed this instant appeal to this Court.

O.R.C. 4141.282 (H) provides the appropriate standard of review. This section provides:

“The court shall hear the appeal upon receipt of the certified record provided by the commission. If the court finds that the decision 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.”

Reviewing courts cannot make factual findings or determine the credibility of witnesses, but must determine whether the Commission’s decision is supported by evidence in the record. Tzangas, Plakas, Mannos v. Ohio Bureau of Employment Services (1995), 73 Ohio St. 3d 694. The reviewing court must make every reasonable presumption in favor of the judgment and findings of fact. Karches v. Cincinnati (1988), 38 Ohio St. 3d 12. The Administrative Agency and the Court have a duty to construe the Unemployment Compensation Act liberally for the claimant’s benefit, however, neither the agency nor the Court has a duty to construe the facts more favorably to either party. Shephard v. Ohio Department of Job and Family Services, 166 Ohio App. 3d 747, 2006 – Ohio – 2313.

Appellant was found to have been discharged for good cause. A claimant is ineligible for unemployment compensation if she was discharged for just cause in connection with the individual’s work. O.R.C. 4141.29 (D)(2)(a). “Just cause” has been defined as “that which to an ordinarily intelligent person is a justifiable

reason for doing or not doing a particular act". Irvine v. Unemployment Compensation Board of Review (1985), 19 Ohio St. 3d 15. The critical issue is whether the employee by his actions demonstrated an unreasonable disregard for his employer's best interest. Piazza v. Ohio Bureau of Employment Services (1991), 72 Ohio App. 3d 353.

The record in this matter provides that Appellant reported to work on August 18, 2009, clocked in, and then departed the work site in the same car that brought her to the worksite. Appellant claims she returned to work shortly afterwards by driving around the parking lot and entering a different door. Adena was unable to verify this by viewing security camera tapes. When confronted with the allegation that she failed to work that day Appellant became irate, and stated that she did not want to work for an employer who would question her in such a manner. Appellant then left the meeting. Appellant then went to Adena's administration offices where she was irate and highly emotional. She had to be escorted off Adena's property. The hearing officer determined that she failed to fully cooperate with the employer concerning its investigation.

Under the standard of review required by O.R.C. 4141.282 and case authority, the Court finds there was sufficient evidence in the record to support the Hearing Officer's decision. The Court finds the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. Accordingly, the decision of the Review Commission disallowing unemployment compensation benefits is hereby affirmed.

Costs to Appellant.