

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

RICHARD ANDERSON, :
Appellant, : CASE NO. 12CV006241
vs. : JUDGE SCHNEIDER
:
DIRECTOR, OHIO DEPARTMENT OF JOB :
& FAMILY SERVICES, et al., :
Appellees. :

DECISION AND ENTRY

SCHNEIDER, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. § 4141.282(H) from an April 25, 2012 Decision of the Unemployment Compensation Review Commission (“Commission”). On November 22, 2010 Appellant Richard Anderson filed a claim for unemployment benefits for a benefit year beginning on November 21, 2010. On December 9, 2010, Appellee Director of the Ohio Department of Job and Family Services (“Director”) issued an initial determination finding that Appellant (claimant) was discharged due to lack of work by his employer, AT&T Corporation (“Employer”), pursuant to R.C. 4141.29. The Director allowed the application with a benefit year beginning November 21, 2010. On June 7, 2011, the Director issued a Determination of Extended Unemployment Compensation in accordance with the provisions of The Unemployment Compensation Extension Act of 2008, Public Law 110-449, which allowed Appellant’s application for Tier 2 Extended Unemployment Compensation benefits.

On January 18, 2012, the Ohio Department of Job and Family Services (“ODFJS”) sent Appellant a Request for Information inquiring as to whether Appellant had ever been paid vacation pay, severance pay, pension or pay in lieu of notice. The deadline for Appellant to respond was

January 25, 2012.

On or about January 20, 2012, ODJFS received a response to form JSF-92110/82300 dated January 18, 2012 from Talk DC express, “a duly authorized agent empowered to act on behalf of the Employer,” which indicated that Appellant’s (claimant’s) last day of work with his Employer was April 9, 2011, not November 21, 2010, and that “claimant is currently on layoff, but is receiving severance pay.”

On February 8, 2012, Appellee Director issued a Redetermination in which he held that a deductible income retirement payment issue was created based upon information provided to ODJFS. The Redetermination noted that the Appellant had not responded to the request for additional information requiring that Appellant contact ODJFS and provide additional facts regarding vacation pay, severance pay, pension or pay in lieu of notice. The Director found that Appellant had not provided satisfactory evidence that no issue existed and that Appellant was otherwise eligible to receive benefits. The Director determined that Appellant had been overpaid benefits in the amount of \$21,000.00 and was ineligible from November 21, 2010 until “this issue no longer exists and claimant is otherwise eligible . . .” Appellant was ordered to repay \$21,000.00.

On February 20, 2012, an appeal from the Redetermination was filed by Appellant. On February 21, 2012, ODFJS transferred the matter to the Commission pursuant to R.C. 4141.281. On March 7, 2012, Hearing Officer Phillip Wright, Jr. held an evidentiary hearing via telephone. Appellant appeared and testified on his own behalf. Appellant admitted in the hearing that he received a “termination package” from his Employer, which he believed was different than a severance package and amounted to \$22,580.00. Appellant asserted that the \$22,580.00 was paid bi-weekly (\$2,258.00 per week) from December 11, 2010 to April 8, 2011. Appellant also admitted

that he received \$21,000.00 in unemployment compensation benefits and had not made any repayment. No other evidence was presented at the hearing. The Employer did not appear or present any evidence at the hearing.

In his March 8, 2012 Decision, the hearing officer made the following factual findings:

“The Claimant received \$22,580.00 in termination pay from December 11, 2010 through December 8, 2011. The claimant received termination pay in bi-weekly payments in the amount of \$2,580.00. The claimant received \$21,000.00 in benefits from week ending December 4, 2010 through week ending December 31, 2011.”

See March 8, 2012 Decision, p. 3 of 6.

In his March 8, 2012 Decision, the hearing officer modified the Director's Redetermination and held that Appellant received \$22,580.00 in termination pay, and thus, had deductible income from the week ending December 11, 2010 through the week ending December 10, 2011. Accordingly, the hearing officer found that Appellant was not entitled to all of the benefits in question that he had received and he was overpaid. The matter was remanded to ODJFS to recalculate Appellant's overpayment consistent with the March 8, 2012 Decision.

On March 22, 2012, the Appellant filed a Request for Review of the Hearing Officer's Decision. Thereafter, the Commission disallowed Appellant's request for review and issued a Decision affirming the findings and determination of the hearing officer. *See* April 25, 2012 Decision.

Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this Court must affirm the commission's decision unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. *See* R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985).

The Court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission's province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696.

Instead, it is the duty of this Court to determine whether the decision is supported by the evidence in the record. *Tzangas* at 696; *Irvine* at 18. "If some competent, credible evidence supports the commission's decision, then the court must affirm the decision." *Moore v. Ohio Unemp. Comp. Rev. Comm.*, 2012-Ohio-1424, ¶ 20. A court cannot reverse the commission's decision merely because reasonable minds might reach different conclusions based on the evidence in the record. *Id*; *Tzangas* at 697; *Irvine* at 18. Moreover, when evaluating whether the decision is supported by the evidence, "[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the commission]." *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988).

In the facts before the Court, the record supports the finding that the Appellant received \$22,580.00 in termination pay from December 11, 2010 through December 8, 2011, and that during that period the weekly amount of such income exceeded the Appellant's weekly benefit such that Appellant was overpaid.

Appellant's Assignment of Error

The Appellant sets forth a single assignment of error:

REVIEW COMMISSION'S FINDING THAT APPELLANT RECEIVED REMUNERATION FROM AT&T AFTER APRIL 16, 2011 WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

Appellant essentially challenges the "date range within which [the commission] found that Appellant received compensation." Appellant's Br. p. 1. He does not dispute that he received \$22,580.00 in termination pay from his Employer. Nor does Appellant dispute that a

finding that he was overpaid benefits, if substantiated, justified a determination that he had to repay the benefits he received to which he was not entitled. The Court, therefore, must determine whether the record contains competent, credible evidence supporting the Commission's finding that the Appellant had deductible income from the week ending December 11, 2010 through the week ending December 10, 2011.

Law and Analysis

R.C. 4141.281(C)(5) provides:

The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. **The commission may allow or disallow the request for review.** The disallowance of a request for review constitutes a final decision by the commission. (Emphasis added).

Although R.C. 4141.281(C)(5) mandates that the Commission shall consider a request for review, it clearly states that it is within the Commission's discretion to allow or disallow the request for review. Upon a review of the record, it is clear that the Commission complied with R.C. 4141.281(C)(5). In its April 25, 2012 Decision, the Commission states, in pertinent part:

“ . . . The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281(C)(3), Revised Code of Ohio, from the Hearing Officer's decision.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.

* * * *

The Request for Review is hereby disallowed.”

See April 25, 2012 Decision.

Accordingly, the Commission was well within its discretion to disallow further review of the Appellant's case.

Appellant Anderson has the burden of proving that he is entitled to employment compensation benefits. See *Vickers v. Ohio State Bur. of Emp. Serv.* (Apr. 22, 1999), 10th Dist. No. 98AP-656, 1999 Ohio App. LEXIS 1794. The record demonstrates that the Appellant chose to represent himself at the hearing stage of this administrative proceeding. Ohio law is clear that *pro se* litigants are to be held to the same standard as an attorney. With respect to procedural rules, *pro se* litigants are held to the same standards as a practicing attorney. *Copeland v. Rosario* (Jan. 28, 1998), 9th Dist. No. 18452 at 6, 1998 Ohio App. LEXIS 260 at *7. They are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore* (1996), 111 Ohio App. 3d 357, 363; *Harris v. Hous. Appeals Bd.*, 9th Dist. No. 20499, 2003 Ohio 724, p. 11. The *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules. *Kessler v. Kessler*, 2010-Ohio-2369, ¶ 8 (10th Dist.); *Meyers v. First Natl. Bank*, 3 Ohio App.3d 209, 210 (1st Dist.1981); *Erie Ins. Co. v. Bell*, 2002-Ohio-6139 (4th Dist.). If the court (or administrative agency) treats a *pro se* litigant differently, the court or agency begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. *Justice v. Lutheran Social Services*, Franklin Cty. No. 92AP-1153, unreported, 1993 Ohio App. LEXIS 2029 at *6 (10th Dist.).

In this appeal, there is no dispute that termination pay is deductible from unemployment benefits. R.C. 4141.31(A)(4), *Stool v. Owens Brockway Glass Container, Inc.*, Lucas App. No. L021049, 2002-Ohio-3822 (6th Dist.). See also Appellant's Br. at p. 4; Appellees' Br. at p. 4. Having admitted that his termination pay is deductible, Appellant Anderson asserts that the only evidence in the record is that he received retirement pay/deductible income through the week of April 9, 2011, not through the week of December 10, 2011, and the finding of fact by the

Hearing Officer that he received remuneration through December 10, 2011 resulted in a determination of liability for repayment far greater than Appellant's potential liability under R.C. 4141.31. Appellant's Br. p. 3-4. Appellant argues that he can only be liable for repayment of benefits received during a particular week that Appellant received his termination pay. *Id.* p. 4. According to Appellant, the financial documents that he attached to his request for review support his testimony that he only received termination pay through April 9, 2011, and, therefore, he was entitled to all of the unemployment benefits he received from April 9, 2011 to December 10, 2011.

Appellant's assertions are incorrect. First, the financial documents attached to Appellant's request for review are not part of the evidentiary record. They were not provided to ODFJS prior to the Director's Redetermination and they were not offered by Appellant into the record at the March 7, 2012 evidentiary hearing. Second, the evidentiary record shows that Appellant never responded to the January 18, 2012 Request for Information of ODJFS inquiring as to whether Appellant had ever been paid vacation pay, severance pay, pension or pay in lieu of notice. When given the opportunity to explain his termination pay, he chose not to. The record also shows that on January 20, 2012, ODJFS received from Talk DC, on behalf of Appellant's Employer, a response to form JSF-92110/82300 dated January 18, 2012 that asserted that Appellant "is currently" receiving severance pay.

While Appellant Anderson may believe that his unsupported testimony that he did not receive termination pay after April 9, 2011 is more convincing or credible than the other evidence in the record, this Court cannot reweigh the evidence. The Commission resolved the factual disputes regarding the date range within which Appellant admits he received deductible compensation in ODJFS' favor; this Court cannot change that determination. *See Moore* at ¶ 24;

Kilgore v. Bd. of Rev., Bur. of Unemp. Comp., 2 Ohio App.2d 69, 72, 206 N.E.2d 423(5th Dist.1965) (a reviewing court may neither substitute its judgment for that of the commission on questions of fact nor reassess the credibility of witnesses).

Further, the Employer did not designate a period of time for the payments to the Appellant. In such a circumstance, R.C. 4141.31(A)(6) provides in pertinent part:

. . . If there is no designation of the period with respect to which payments to an individual are made under this section then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual's separation or termination from employment of the employer making the payment until such amount so paid is exhausted. . . .

Because there was “no designation of the period with respect to which payments” were made to Appellant, the Director of ODFJS had the right to allocate the termination pay over the weeks to which Appellant was entitled to benefits, or through the week ending December 10, 2011. R.C. 4141.31(A)(6); *Toms v. Ohio Unemp. Comp. Review Comm.*, Clark Cty. App. No. 2007CA80, 2008-Ohio-4398 (2nd Dist.) (Claimant's lump-sum retirement payment not allocated by his employer was properly allocated by ODFJS at a rate equal to his average weekly wage). This allocation resulted in deductible income which exceeded the Appellant's weekly benefit amount. Therefore, the Commission properly held there was an overpayment of benefits. Based upon the foregoing, this Court concludes that competent, credible evidence supports the Commission's finding that Appellant had deductible income in the form of termination pay from the week ending December 11, 2010 through the week ending December 10, 2011.

Upon review, this Court concludes that the April 25, 2012 Decision of the Commission is lawful, reasonable and is not against the manifest weight of the evidence. Consequently, the Appellant's assignment of error is not well-taken and is **OVERRULED**.

DECISION

Accordingly, having overruled Appellant's assignment of error, this Court hereby **AFFIRMS** the April 25, 2012 Decision of the Unemployment Compensation Review Commission.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

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Franklin County Court of Common Pleas

Date: 03-13-2013

Case Title: RICHARD ANDERSON -VS- OHIO STATE DEPT JOB FAMILY
SERVICES DIRE ET AL

Case Number: 12CV006241

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 12CV006241

Case Style: RICHARD ANDERSON -VS- OHIO STATE DEPT JOB
FAMILY SERVICES DIRE ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes