

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

Richard Fellure, :
Appellant, : **Case No. 12CVF11-14497**
vs. : **JUDGE SERROTT**
Ohio Department of Job & Family :
Services, et al., :
Appellees. :

**DECISION AND ENTRY AFFIRMING THE ORDER OF APPELLEE
DIRECTOR, OHIO DEPARTMENT OF JOB & FAMILY SERVICES
AND
NOTICE OF FINAL APPEALABLE ORDER**

Rendered this 19th day of March, 2013

SERROTT, J.

This case is before the Court on an administrative appeal from the Order of Appellee, the Director of the Ohio Department of Job & Family Services, disallowing further review of the Ohio Unemployment Compensation Review Commission's decision finding that Appellant was not eligible for unemployment compensation for the week ending May 26, 2012 and had been overpaid benefits of \$288.00. The relevant facts and procedural history are as follows.

I. FACTS

Appellant was previously employed by Appellee D&M Distributor's, Inc.. On April 17, 2012, Appellant underwent back surgery for a non-work related fall and took a short medical leave of absence. Appellant returned to work for a brief period, but was then informed by his boss that D&M Distributors could not allow him to return to work due to the manner in which his medical release was written. Appellant then filed for

unemployment compensation benefits, which were approved on June 1, 2012. However, on June 4, 2012, the decision was vacated based on a finding that Appellant was on a medical leave of absence and had not proven that he was able and available for work. Appellant sought further review, and the matter came before a Hearing Officer on October 11, 2012.

At the hearing, Appellant testified that he took two weeks off of work to recover from his back surgery, and then was cleared by his surgeon to return to work for light duty. Appellant went back to work and was performing such tasks as answering the phones and working the counter. He testified that his boss, Thomas Cameron, stated he would need to “go get some kind of paper because he didn’t want to be held liable.” (Hearing Transcript, pp. 14-15). He further testified that “basically my boss was wanting to see when I could come back full go.” (Id. at 15).

However, Mr. Cameron testified that at no point did Appellant ever indicate that he had been released to return to light duty work. Mr. Cameron stated that Appellant came in and said that he felt like he could return to work. Mr. Cameron told Appellant that he would be glad to have Appellant return, but would need a release from a physician. (Id. at 10-11). Apparently, Appellant did come back to work briefly, but upon the advice of counsel, Mr. Cameron told Appellant that he needed a medical release clearing him to return to work. (Id. at 10).

Appellant produced a release from his surgeon, dated May 9, 2012, and stating that he would be able to return to work in “3-4 weeks-- pending results for therapy.” Mr. Cameron told Appellant that, based upon what was stated by the physician, he could not allow Appellant to return to work. He testified: “[W]e wanted a release from the doctor before I put him back to work. And he told me the doctor would not give him a

release.” (Id. at 10). Mr. Cameron stated that Appellant’s job was held open for a period of time, but then it was eventually filled as he never heard anything further from Appellant. (Id. at 12).

Based on the testimony and evidence presented at the hearing, the Hearing Officer issued a Decision noting the following findings of fact:

On April 17, 2012, claimant had back surgery due to a non-work related injury. Claimant returned to work briefly following his surgery and performed some light duty work. He was asked for medical documentation releasing him to return to work and presented the employer with a document dated May 9, 2012, which stated that he would not be released for an additional three to four weeks pending the results of therapy. The document did not state that claimant could work in a light duty capacity. Claimant was informed that he could return to work when he provided documentation releasing him to return. Claimant has not submitted any additional medical documentation to the Director, Review Commission, or the employer regarding his ability to work.

On his application dated May 15, 2012, claimant reported that he was totally unemployed due to a lack of work. The employer filled claimant’s position several months later after he failed to submit medical documentation releasing him to return to work. The Hearing Officer does not have jurisdiction to rule on that separation in this decision.

Claimant received benefits of \$288.00 for the week ending May 26, 2012.

(Decision, October 17, 2012, pp. 3-4).

The Hearing Officer determined that “Claimant is not eligible to receive benefits during the period beginning May 13, 2012 as he was on a leave of absence from D&M Distributors, Inc. and was not involuntarily unemployed. Claimant is also not eligible to receive benefits during the period beginning May 13, 2012 until the agency is provided

evidence that the issue no longer exists and claimant is otherwise eligible because he was not able to work as required by law. Claimant remains overpaid benefits of \$288.00 for the week ending May 26, 2012. Claimant's application remains allowed." (Id. at 5).

Appellant then filed a Request for Review From Decision of Hearing Officer. Attached to the Request was a Questionnaire completed by his physician and indicating that Appellant was under his care from April 18 through October 11, 2012. The form further indicated:

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

Yes. I restricted him completely after 4-18-2012, then partially after May 9, 2012 to light duty and restricted hours until therapy was completed.

After a review of the record, the Unemployment Compensation Review Record concluded the Request for Review should be disallowed. Appellant then initiated this administrative appeal.

II. STANDARD OF REVIEW AND LEGAL ANALYSIS

In reviewing unemployment compensation cases, "[a]n appellate court may reverse the board's decision if the court finds the decision unlawful, unreasonable, or against the manifest weight of the evidence." *Wash. County Eng'r v. Adm'r*, 4th Dist. No. 95CA34 (Sept. 25, 1996) (citing *Tzangas, Plakas & Mannos v. Adm'r*, 73 Ohio St.3d 694 (1995), paragraph one of the syllabus). "This standard applies to courts of common pleas and courts of appeals." *Id.* (citing *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 696). "In its review, a court determines whether 'some competent, credible evidence'

supports the board's conclusion.” Id. (quoting *Central Ohio Joint Vocational Sch. Dist. Bd. of Edn. v. Adm’r*, 21 Ohio St.3d 5, 8 (1986)). “The resolution of purely factual questions, including the credibility of conflicting testimony and the weight given to the evidence, is primarily within the province of the board.” Id. (citing *Tzangas, Plakas & Mannos*, 73 Ohio St.3d at 697). “[A]ppellate courts are obligated to defer to the board's findings and have no authority to make their own findings.” Id. “A court may not substitute its judgment for that of the Administrator or the board.” Id. (citing *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45(1982)).

“At an administrative hearing, the claimant has the burden of proving her eligibility for unemployment compensation benefits.” Id. (citing *Irvine v. State Unemp. Comp. Bd. of Rev*, 19 Ohio St.3d 15, 17 (1985)). R.C. 4141.29(A)(4)(a)(i) provides that “[n]o individual is entitled to * * * benefits for any week unless the individual * * * “is able to work and available for suitable work[.]” Thus, “[t]o qualify for unemployment compensation, one must be available for work. By definition, a person on a medical leave of absence is not available for work.” *Lawrence v. Deaconess Hosp.*, 8th Dist. No. 49956 (Jan. 30, 1986).

“The Unemployment Compensation Act was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own.” *Tucker v. Home Health Connection*, 10th Dist. No. 03AP-1262, 2005-Ohio-848, ¶13 (quoting *Salzl v. Gibson Greeting Cards*, 61 Ohio St.2d 35, 39 (1980)). “Generally, ‘the basic eligibility for unemployment benefits depends upon the establishment of an ‘employment’ relationship followed by ‘involuntary unemployment.’” Id. (quoting *Mathieu v. Dudley* (1967), 10 Ohio App.2d 169, 174 (10 Dist. 1967)).

Appellant argues that his request for review should have been allowed and that the Commission erred in not considering the physician's statements set forth in the questionnaire. He contends that this additional medical evidence establishes that he was able to perform light duty work during the time frame at issue. He further argues that the Hearing Officer erred in finding that he was on a medical leave of absence since the evidence showed that his position has been filled and is no longer available to him.

The Commission found that Appellant was not entitled to benefits for the time frame at issue for the reason that he did not prove that he was available for work. Appellant argues that the subsequent evidence showing that he was cleared for light duty work as of May 9, 2012 should have been considered and proves that he was available to work. However, Appellant ignores that the primary basis for the Commission's ruling. Regardless of whether his physician had cleared him for light duty, the only medical documentation he produced prior to filing for unemployment benefits did not actually clear him to return to work.

The Court must defer to the Hearing Officer's factual findings and can only reverse the underlying decision if it is unlawful, unreasonable, or against the manifest weight of the evidence. The Court finds that there is evidence in the record to support the Hearing Officer's findings and conclusions. Appellant was told he could not return to work without a medical release. Appellant represented that he was able to work light duty. When asked for documentation, he produced a document dated May 9, 2012 and stating he could return to work in three to four weeks, dependent upon the results of his therapy. There was no mention that he could perform light duty or be on restricted hours. Appellant was told that the documentation was not a release and that he could not return to work until cleared by his doctor. Appellant instead immediately filed for

unemployment benefits and never submitted any further documentation to his employer. After holding his job open for several months with no contact from him, his employer filled the position. Appellant produced medical documentation stating that he could work light duty as of May, 2012 five months after the fact. However, this subsequent clarification is of no consequence. His employer could not allow him to work in May, 2012 because the medical release produced at that time said he would not be cleared for another three to four weeks. He was not “available for work” due to the lack of a proper medical clearance, and therefore, he did not qualify for unemployment benefits.

The Court finds that there is some competent and credible evidence to support the Commission’s finding. Accordingly, the underlying decision is hereby AFFIRMED. No costs will be assessed due to Appellant’s indigent status.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 03-19-2013
Case Title: RICHARD FELLURE -VS- OHIO STATE DEPT JOB FAMILY
SERVICES DIRE ET AL
Case Number: 12CV014497
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Mark Serrott". The signature is written over a blue circular seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Mark Serrott

Court Disposition

Case Number: 12CV014497

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

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes