

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

MONTGOMERY COUNTY AUDITOR,

CASE NO.: 2012 CV 07991

Appellant,

JUDGE DENNIS J. ADKINS

-vs-

DOLORES KRAMER et al,

Appellees.

**DECISION, ORDER, AND ENTRY  
REVERSING THE DECISION OF THE  
OHIO DEPARTMENT OF JOB AND  
FAMILY SERVICES UNEMPLOYMENT  
COMPENSATION REVIEW  
COMMISSION**

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This matter is before the Court on a Notice of Appeal filed by the Montgomery County Auditor (“the Auditor”) on November 8, 2012. On February 14, 2013, the Auditor filed Appellant Montgomery County *Auditor’s Brief* (“*Auditor’s Brief*”) in support of the administrative appeal. On March 12, 2013, the Ohio Department of Job and Family Services (“the Agency”) filed Brief of Appellee, Director, Ohio Department of Job and Family Services (“ODJFS Brief”). On March 28, 2013, Auditor filed Appellant Montgomery County *Auditor’s Reply Brief* (“Reply”). This matter is now ripe for decision and, for the reasons contained herein, the Court REVERSES the decision of the Ohio Department of Job and Family Services Unemployment Compensation Review Commission.

**I. Facts and Procedural History**

The Court adopts the facts set forth in the Decision filed September 19, 2012 by the Ohio Department of Job and Family Services Unemployment Compensation Review Commission (“UCRC”). On January 11, 1999, Dolores Kramer (“Kramer”) began working for the Montgomery County Prosecutor’s Office (“the Employer”). Decision at 1. In the fall of 2011, the Montgomery County Board of Directors (“Board”) created a Voluntary Separation Plan (“VSP”) and offered it to all staff members due to budget

concerns. Id. The Board's purpose for offering the VSP was to save money by either filling positions vacated with employees at a lower rate of pay or leave the positions empty. Id. Thirteen employees chose to accept the VSP, including Kramer. Id. On October 13, 2011, Kramer accepted the VSP. Id. Pursuant to the VSP, her final day of work was December 23, 2011. Id. Kramer would not have been subject to lay off had she chosen not to accept the VSP. Id. Kramer's position was filled at a lower rate of pay after she left. Id.

Beginning on December 18, 2011, Kramer received severance pay of \$7,586.80 under the VSP. Ohio Department of Job and Family Services Office of Unemployment Compensation Determination of Unemployment Compensation Benefits ("Determination"), 1 (June 28, 2012). On June 11, 2012, Kramer applied for unemployment benefits. Id. The Agency found that Kramer was separated from the Employer due to lack of work and allowed Kramer's application for unemployment compensation benefits, awarding her a total of \$7,575 payable over the period of one year. Id. On July 16, 2012, the Employer appealed this Determination. Redetermination of Unemployment Compensation Benefits ("Redetermination"), 1 (August 2, 2012). The Agency affirmed the Determination and found that Kramer was separated due to lack of work and allowed her application for unemployment compensation benefits. Id. at 2.

On August 21, 2012, Employer appealed the Redetermination. Transcript of Testimony ("Transcript"), 1 (September 18, 2012). The Agency transferred the appeal to the UCRC. Notice that an Appeal has been Transferred by the Director to the Review Commission ("Notice"), 3 (August 24, 2012). The appeal testimony was heard via telephone on September 18, 2012. Transcript at 4. The witness for Employer reiterated the fact that there was no lay off planned and that a replacement was hired to fill the position Kramer vacated. Id. at 6, 7. The UCRC affirmed the Redetermination, finding that Kramer had been separated due to lack of work. Decision at 3. The Auditor filed this timely appeal.

## **II. Law and Analysis**

### **1. Standard of Review**

Ohio Revised Code Section 4141.282(H) governs the court of common pleas' review of an administrative appeal.

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.

R.C. 4141.282(H).

The Ohio Supreme Court has expanded on R.C. 4141.282(H), stating “[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Administrator, Ohio Board of Employment Services*, 73 Ohio St.3d 694, 1995-Ohio-206, 653 N.E.2d 1207.

## **2. Unemployment Eligibility and Lack of Work**

R.C. 4141.29 provides, in relevant part, that: “[N]o individual may... be paid benefits... if the director finds that... [t]he individual quit work without just cause.” R.C. 4141.29(D)(2)(a). “Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Clark v. Ohio Department of Job & Family Services*, 2nd Dist. No. 25257, 2012 Ohio 5311 ¶ 7. “A just cause determination must be consistent with the legislative purpose underlying the Unemployment Compensation Act: to provide financial assistance to individuals who are involuntarily unemployed through no fault or agreement of their own.” *Id.* at ¶ 17, citing *Tzangas*, 73 Ohio St.3d 694, (emphasis added).

One of the exceptions to the just cause rule, enumerated in R.C. 4141.29, is that employees may receive unemployment compensation benefits when they are separated from work “pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment.” R.C. 4141.29(D)(2)(a)(ii) (emphasis added).

The Agency relies on an Ohio Supreme Court case finding that an employee, who voluntarily resigned under a voluntary termination plan, was eligible for unemployment compensation benefits due to lack of work. *Ford Motor Co. v. Administrator, Ohio Bureau Of Employment Services*, 59 Ohio St.3d 188, 571 N.E.2d 727 (1991). However, the facts in *Ford Motor Co.* are distinguishable from those in the case at hand. In *Ford Motor Co.*, the court noted that “it is undisputed that Ford offered the VTP [voluntary termination plan] in order to reduce the number of its employees due to lack of work.” *Id.* at 190. In the

case at hand, Employer offered the VSP to reassess the budget for the coming fiscal year and not due to lack of work. Transcript, 6:4-6.

The Court finds that it is reasonable that the Employer hoped its higher-paid employees would accept the VSP so that it could subsequently fill their positions with workers making a lower salary. There is nothing in the record to indicate that Employer contemplated layoffs or work force reductions. "As a matter of economics, an employer will not reduce its work force, by layoffs or other means, unless it has more employees than it needs -- in other words, a 'lack of work' for some of its employees." Ford Motor Co., 59 Ohio St.3d at 190. The record reflects that Kramer's position was filled after she voluntarily left because there was more work to be done and not a lack of work. Transcript, 6:21-25. The institution of the VSP, in and of itself, is not evidence supporting a finding of lack of work in the Employer's place of business. Accordingly, the decision of the UCRC finding that Kramer was separated due to lack of work is not supported by evidence in the record, and therefore was unlawful, unreasonable, or against the manifest weight of the evidence.

### **III. Conclusion**

Based on the foregoing, the Court **REVERSES** the decision of the Ohio Department of Job and Family Services Unemployment Compensation Review Commission.

**THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.**

SO ORDERED:

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JUDGE DENNIS J. ADKINS

**To the Clerk of Courts:**

**Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.**

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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Decision  
**Case Number:** 2012 CV 07991  
**Case Title:** MONTGOMERY COUNTY AUDITOR vs DOLORES KRAMER

So Ordered

A handwritten signature in black ink, appearing to read "Dan J. Adkins". The signature is written in a cursive style with a large initial "D" and a slanted "A".