

**FILED**  
**COURT OF COMMON PLEAS**

**DEC 16 2013**

**LINDA K. FANKHAUSER, CLERK,**  
**PORTAGE COUNTY, OHIO**

**IN THE COURT OF COMMON PLEAS**  
**PORTAGE COUNTY, OHIO**

<b>EDWARD J. KRUGER,</b>	)	CASE NO. 2013 CV 0510
	)	
Plaintiff-Appellant,	)	
v.	)	JUDGE JOHN A. ENLOW
	)	
	)	
<b>DIRECTOR, OHIO DEPARTMENT OF</b>	)	<b><u>ORDER AND JOURNAL ENTRY</u></b>
<b>JOB AND FAMILY SERVICES, et al</b>	)	
	)	
Defendants-Appellees.	)	
	)	
	***	

This matter is before the Court upon appeal by Plaintiff-Appellant Edward J. Kruger ("Claimant") of the Unemployment Compensation Review Commission ("Review Commission") disallowing unemployment compensation benefits to Claimant due to his pension benefits.

In an unemployment appeal, the decision of the Review Commission may be overturned only if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H); *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17; *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, paragraph 1 of the syllabus. A common pleas court may not reverse the Review Commission's decision upon the facts if that decision is supported by some competent, credible evidence going to all the essential elements of the dispute. *Frato v. Ohio Bur. of Emp. Serv.* (1991), 77 Ohio App.3d 193, 196, citing *Angelkovski v. Buckeye Potato Chips Co.* (1983), 11 Ohio App.3d 159, 161. On close questions,

where the administrative body might reasonably decide either way, a reviewing court has no authority to overturn the administrative decision. *Irvine, supra*, at 18. In all cases, the claimant has the burden of proving entitlement to unemployment compensation benefits. *Id.*, at 17.

The transcript of proceedings establishes that Claimant filed for unemployment benefits with the Department of Job and Family Services ("Department"). Claimant's last work day with his employer, Interstate Brands Corporation ("Employer"), was December 21, 2012. Employer had filed for bankruptcy leaving Claimant unemployed due to lack of work. The Department allowed Claimant's application for unemployment benefits. Claimant's base period was determined to be July 1, 2011 to June 30, 2012, and the benefits amounted to \$413.00 weekly, or about \$1,776.00 monthly. Claimant had applied to take his pension and was going to receive a monthly pension of \$3,724.00. Applying R.C. 4141.312, the Department subtracted Claimant's pension from the unemployment benefit and concluded that Claimant was not eligible for benefits.

Claimant appealed for redetermination, but the decision was affirmed. He then filed an appeal to the Review Commission.

At the Review Commission level, it was determined that Employer had contributed pension funds to the International Association of Machinists National Pension Fund ("Union Pension Fund") for the benefit of Claimant. But when Employer filed for bankruptcy these contributions were terminated. The last contribution was made on July

8, 2011. Claimant complained that the Employer failed to increase the pension contributions by \$2.80 per hour, which apparently was included in the union bargaining agreement. Claimant also provided correspondence from the Union Pension Fund. These letters confirmed that Employer was a contributing employer to the Union Pension Fund. It was confirmed that the last pension contribution was received on July 8, 2011. After considering the evidence, the Review Commission's hearing officer found that Claimant had worked until December 21, 2012, Employer had contributed to the Union Pension Fund, and Claimant was to receive a \$3,724.00 monthly pension benefit beginning on January 1, 2013. Applying R.C. 4141.312, the hearing officer concluded that as Claimant's pension was greater than the employment benefit, Claimant was not entitled to receive benefits.

Claimant requested further review, which was denied. This appeal followed.

R.C. 4141.31(A)(3) requires that a claimant's unemployment benefit be reduced by the amounts of retirement or pension payments he receives. R.C. 4141.312 applies the reduction of unemployment benefits as follows:

"(A) \* \* \* [T]he amount of benefits payable to a claimant for any week with respect to which the claimant is receiving a governmental or other pension, retirement or retired pay, annuity **or any other similar periodic payment which is based on the previous work of the individual**, shall be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity **or other**

**payment** which is reasonably attributable to that week, except that the requirements for this division shall apply to **any pension, retirement or retired pay, annuity, or other similar periodic payment** only if both of the following apply:

"(1) The payment is under a plan maintained or **contributed to by a base period employer or chargeable employer. \* \* \*.**"

"(2) In case of a payment under a plan \* \* \* [for] services performed for such employer by the [employee] after the beginning of the base period, or remuneration for such services, affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment." (Emphasis added).

Here, Claimant's pension was a "periodic payment" which was "based on the previous work of the [Claimant]." Employer contributed to Claimant's pension, and Employer was a "base period employer." Employer provided its last contribution on July 8, 2011, which was within the "base period" and increased Claimant's pension. Thus, the requirements of R.C. 4141.312(A) were satisfied.

As Claimant's pension was greater than the unemployment benefit, it was apparent that he was not eligible for unemployment benefits.

This Court concludes that the administrative decision is lawful, reasonable, and supported by the manifest weight of the evidence. The transcript of the administrative proceedings supports the determination of the Review Commission that Claimant's pension was to be a set off against unemployment benefits. Thus, the Review Commission decision to disallow Claimant unemployment benefits must

be affirmed.

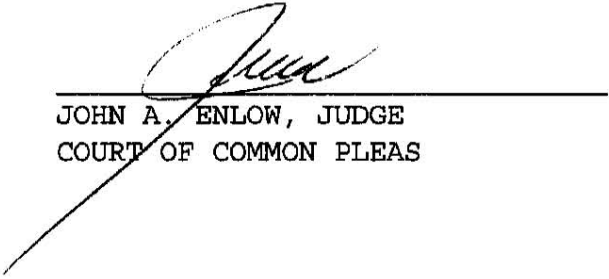
Therefore, upon review and consideration of the motions, memoranda, and record of proceedings, the Court finds that Claimant's appeal is not well taken.

IT IS THEREFORE ORDERED that the appeal of Plaintiff-Appellant Edward J. Kruger be and hereby is denied, and the decision of the Unemployment Compensation Review Commission is affirmed.

Costs taxed to Claimant.

The Clerk is directed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ. R. 58(B).

SO ORDERED.



\_\_\_\_\_  
JOHN A. ENLOW, JUDGE  
COURT OF COMMON PLEAS

cc: Michael A. Creveling, Attorney for Appellant  
Susan M. Sheffield, Attorney for Director

**NOTICE: AN ORDER HAS BEEN FILED  
IN THE CASE IDENTIFIED BELOW:**

Notice is being mailed by regular mail or by facsimile on or before the 3<sup>rd</sup> day after the filing date of the entry to each attorney of record or each party with no attorney of record. Notice will not be sent to parties in default for failure to appear.

**Mail to:**

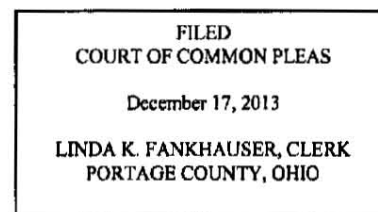
**File Copy**

**Case Number: 2013 CV 00510**

**EDWARD J KRUGER VS. DIRECTOR OHIO DEPT OF JOB AND FAMILY SERVICES et al**

**Date entry was filed: DECEMBER 16, 2013**

**Court of Common Pleas, Portage County, Ravenna, Ohio**



**Certificate of Service Completed and filed by the Clerk**

The document described above was mailed by ordinary mail or by facsimile to attys/parties by the clerk on **DECEMBER 16, 2013.**

**Linda K Fankhauser, Clerk of Courts**



**Deputy Clerk**

**cc:**

**MICHAEL A CREVELING  
SUSAN M SHEFFIELD**

**SCANNED**