



FILED  
LORAIN COUNTY

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**LORAIN COUNTY COURT OF COMMON PLEAS**  
LORAIN COUNTY, OHIO

**RON NABAKOWSKI, Clerk**  
**JOURNAL ENTRY**  
**Christopher R. Rothgery, Judge**

Date 5/27/14

Case No. 14CV182393

PLATINUM RESTORATION  
CONTRACTORS INC

BARBARA A KNAPIC

Plaintiff

Plaintiff's Attorney (330) 433-6000

VS

JAMES P CADDELL, et al.

Defendant

Defendant's Attorney

This matter is before the Court for consideration of Plaintiff-Appellant Platinum Restoration Contractors, Inc.'s, hereinafter "Platinum," appeal of the Unemployment Compensation Review Commission's decision. Upon consideration of the Appellant's Brief, Appellee's Brief filed by ODJFS, Appellant's Reply Brief and the certified transcript of the record, this Court finds as follows.

**STANDARD OF REVIEW**

R.C. 4141.282 governs unemployment compensation appeals to the Court of Common Pleas. Subsection (H) of that statute provides as follows:

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. *Id.*

The Review Commission's function as trier of fact remains intact. As such, this Court should

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defer to the Review Commission where factual matters, the credibility of witnesses, and the weight of conflicting evidence are at issue. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Fahl v. Bd. Of Rev.*, 2 Ohio App.2d 286; *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69. As proceedings such as this are not *de novo* trials, this Court may not make factual determinations or substitute its judgment for that of the Review Commission; for “[i]f the decision is supported by credible proof, the finding may not be disturbed.” *Kilgore*, 2 Ohio App.2d at 71-73. “When reviewing the manifest weight of the evidence, ‘[t]he reviewing court \*\*\* weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.’” *Wright v. Director, Ohio Dept. of Jobs & Family Services, et al.*, 9<sup>th</sup> Dist., 2013-Ohio-2260 at ¶10 quoting *Eastley v. Volkman*, 132 Ohio St.3d. 328.

### ANALYSIS AND CONCLUSIONS OF LAW

- 1) Was the UCRC’s decision unlawful, unreasonable and against the manifest weight of the evidence?

Platinum’s first claim on appeal is that the finding of the Review Commission was against the manifest weight of the evidence. On review of purely factual questions, the common pleas court is limited to determining whether the UCRC hearing officer’s determination is supported by the evidence in the record. *Tzangas Plakas v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 697. Factual findings supported by some competent, credible evidence going to the essential elements of the controversy must be affirmed. *C.E. Morris v. Foley Constr. Co.*



(1978), 54 Ohio St.2d 279, syllabus. Therefore, this court "may only reverse an unemployment compensation eligibility decision by [UCRC] if the decision is unlawful, unreasonable, or against the manifest weight of the evidence." *Markovich v. Emps. Unity, Inc.*, 9th Dist. No. 21826, 2004-Ohio-4193 (citations omitted). "Where conflicting testimony exists, the commission, not the court, resolves the conflicts and determines the credibility of the witnesses." *Cottrell v. Director, Ohio Dept. of Job and Family Services*, 10<sup>th</sup> Dist. No. 05AP-798, 2006-Ohio-793.

The only witness to testify at the UCRC hearing was Scott Danko, General Manager at Platinum. Mr. Danko testified that James Caddell, claimant, tendered his resignation verbally on July 9, 2013. Transcript at pp. 5-6. On July 12, 2013, Mr. Caddell signed a written resignation notice prepared by Mr. Danko. *Id.* at 6. The written resignation indicated that Mr. Caddell was providing his two week notice of his resignation. *Id.* However, Mr. Danko testified that July 12, 2013 was Caddell's last day of work at Platinum because as a company they made the decision to accept his resignation immediately. *Id.* Mr. Danko did mention that Mr. Caddell expressed an interest in starting his own business and doing so as soon as possible. *Id.* at pp. 6-7. However, the testimony presented by Mr. Danko is not clear as to whether it was Platinum's decision or Mr. Caddell's to end the employment relationship on July 12 rather than at the end of the two week period. As this Court's role is limited to a determination of whether the UCRC decision is supported by evidence in the record, this Court cannot find that said decision should be reversed. This Court cannot substitute its judgment for that of the review commission. There is evidence in the record to support the decision of the UCRC. As such, this Court cannot say that the UCRC decision was unlawful, unreasonable, or against the manifest weight of the evidence.



Therefore, this Court finds Platinum's first assignment of error is not well taken and therefore is denied.

- 2) Did the Hearing Officer err when she failed to find the claimant is entitled to only two weeks of compensation per his resignation notice to employer?

Platinum's second assignment of error is that the award of \$11,180 in payable benefits to claimant was unlawful, unreasonable, against the manifest weight of the evidence and an abuse of discretion. Platinum contends that because Caddell gave his resignation with a two week notice the maximum amount of benefits available to Caddell should have been awarded only for the two week period. Platinum contends that to award benefits beyond this two week period gives claimant a windfall of benefits that he would not have been entitled to based upon his own voluntary resignation had the two week notice period been honored.

Appellee contends that because Platinum discharged Caddell prior to the expiration of the two week term, without just cause, that Caddell was entitled to unemployment benefits for the entire twenty-six week period unless he was otherwise disqualified, i.e. obtained subsequent employment. Appellee relies upon *Bank One Cleveland, N.A. v. Mason, et al.*, 64 Ohio App. 3d 723, 725.

Appellant's reliance on *Mason* is only of limited value. It is well settled, and *Mason* stands for the same proposition, that a termination prior to the effective date of an employee's prospective resignation constitutes a dismissal without just cause pursuant to R.C. 4141.29(D)(2)(a). *Id.* at 725. A resignation is voluntary only as to the date on which the employee intends the resignation takes effect. *Id.* The issue however is that the testimony before



this Court is unequivocal that Caddell was resigning and had given his two weeks notice. As such, to allow 26 weeks of unemployment compensation would create a windfall for claimant. One must keep in mind that the purpose of the Unemployment Compensation Act is to provide financial assistance to those without employment through no fault of their own. *Roberts v. Hayes*, 9<sup>th</sup> Dist., 2003-Ohio-5903 at ¶ 20 citing *Irvine v. State of Ohio Unemp. Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 17. Had Platinum simply honored the two week notice, Mr. Caddell would have been paid for the two weeks after July 12, 2013 and then would no longer be employed by Platinum and not be entitled to unemployment compensation. To reward Mr. Caddell with 26 weeks of unemployment compensation based upon the facts presented in this matter is to reward him with a windfall to which he is not entitled. Again, the purpose of the Act must remain in the forefront. As such, this Court finds that the decision of the UCRC was unreasonable and an abuse of discretion by determining that Caddell was entitled to 26 weeks of compensation. This Court finds that the Caddell should have only been permitted to receive unemployment compensation for two weeks, a total of \$860.



**CONCLUSION**

Therefore, this Court denies Platinum's appeal in part and grants Platinum's appeal in part. The decision of the UCRC is affirmed in part and reversed in part. The matter is remanded to the UCRC to carry out the terms of this Order. Case closed at Plaintiff/Appellant Platinum's costs.

IT IS SO ORDERED.

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CHRISTOPHER R. ROTHGERY, JUDGE

cc: ATTY. KNAPIC  
ATTY. SNYDER  
JAMES CADDELL

**TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.**

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