

THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

DONALD LONG,

2015 SEP 14 P 2:08

CASE NO. CV 10 731332

Appellant )  
COURT OF COMMONS )  
CUYAHOGA COUNTY )

vs. )

OHIO DEPARTMENT OF JOB )  
AND FAMILY SERVICES, )

Appellee )

**OPINION AND ORDER**  
**REVERSING THE DECISION**  
**OF THE UNEMPLOYMENT**  
**COMPENSATION REVIEW**  
**COMMISSION**

**José A. Villanueva, J.:**

This matter comes before the court on an appeal by Appellant Donald Long from a decision by the Unemployment Compensation Review Commission pursuant to Ohio R.C. 4141.282. The Commission found that Claimant Long received deductible severance pay in an amount exceeding his weekly benefit amount during the period beginning February 18, 2007 through July 21, 2007. For the reasons that follow, the court finds that the Commission's determination was unlawful, unreasonable, and against the manifest weight of the evidence. The court reverses the Commission's decision.

**FACTUAL BACKGROUND**

On February 19, 2007, Donald Long was laid off from his job at Ford Motor Company, Inc. due to lack of work. After his lay off, Mr. Long filed weekly claims for unemployment benefits for the weeks ending February 24, 2007 through July 7, 2007. On July 1, 2007, Ford Motor Company offered Mr. Long an early retirement incentive of \$35,000. Mr. Long agreed to the early retirement incentive. On July 22, 2007, Mr. Long received full payment from Ford. Mr. Long did not file additional claims for unemployment benefits after he received this payment from Ford.

On December 5, 2007, the Director issued a determination of unemployment compensation benefits finding that Mr. Long had been overpaid benefits to which he was not entitled for the period from February 18, 2007 through July 21, 2007. Apparently, Ford Motor Company reported that this lump-sum payment was allocated to Mr. Long from February 18, 2007 through July 21, 2007.

On April 22, 2010, a hearing was held by telephone before Hearing Officer Joseph Blaker. Mr. Long testified on his own behalf. Charles Gonzalez, a human resource associate with Ford at the time of the hearing, testified on Mr. Long's behalf. Thaddus Jackson, former Union Benefit Representative for Ford, also testified on Mr. Long's behalf. Mr. Jackson handled the retirements, the unemployment, the health care, and the 401K plans. He also personally assisted Mr. Long with his retirement. Ford Motor Company did not participate in the hearing.

Mr. Long testified that he was offered an incentive from Ford in exchange for early retirement. His official retirement date was July 1, 2007. Mr. Long accepted and received a check for \$35,000 from Ford on July 22, 2007. Mr. Long testified that he was never advised that his acceptance of early retirement would affect his prior receipt of unemployment benefits, and would not have accepted the incentive if he knew it would affect his unemployment benefits.

Mr. Gonzales testified that Mr. Long's date of retirement was July 1, 2007. Mr. Gonzalez also submitted a statement indicating that Mr. Long retired from Ford on July 1, 2007. (Claimant's Exhibit 1). Mr. Gonzalez testified that Mr. Long did not receive any severance or other incentive pay from Ford during the time he was laid off.

Both Mr. Gonzalez and Mr. Jackson stated that they did not know why Ford reported that the early retirement incentive was paid to Mr. Long during the period of time that Mr. Long was laid off, when it was clearly not. Mr. Jackson went so far as to testify that this must have been a

mistake on the company's part because retirees cannot receive retirement benefits until after they retire. Since Mr. Long did not retire until July 1, 2007, he could not have received his incentive payment until after that date. Mr. Jackson also confirmed that Mr. Long actually received the \$35,000 check in late July 2007.

Despite this testimony, on May 10, 2010, the hearing officer affirmed the decision denying Mr. Long's entitlement to unemployment benefits. The officer found that Mr. Long received severance pay for the period February 18, 2007 through July 21, 2007 and was overpaid unemployment benefits in the amount of \$6,682.00. Mr. Long appealed this decision.

### **STANDARD OF REVIEW**

The trial court may reverse, vacate, or modify the Unemployment Compensation Review Commission's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H); *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.*, 73 Ohio St. 3d 694, 697, 1995-Ohio-206. The duty of the court is to determine whether the decision of the Commission is supported by the evidence in the record. *Irvine v. State, Unemployment Compensation Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). Further, the trial court should not usurp the fact finder's role to make factual findings or to determine the credibility of witnesses. *Id.* The trial court must give deference to the Commission's decision in its role as finder of fact, and may not reverse the Commission's decision simply because reasonable minds might reach different conclusions. *Id.*

### **DISCUSSION**

The court reverses the Commission's decision and finds that Mr. Long was not overpaid unemployment benefits because the Hearing Officer's decision was unlawful, unreasonable, and against the manifest weight of the evidence.

It is undisputed that Mr. Long accepted an early retirement package from Ford in lieu of returning to work. He officially retired from Ford on July 1, 2007 and received his incentive payment on July 22, 2007. Mr. Jackson testified that Ford made a mistake by allocating the incentive payment to February 2007 because Mr. Long did not retire until July 1, 2007 and retirees cannot receive benefits until after they retire. No one testified on Ford's behalf to rebut this argument or clarify why Ford would allocate the payment prior to Mr. Long's date of retirement.

Additionally, pursuant to the Ohio Supreme Court's decision in *Ford Motor Company v. Administrator, Ohio Bureau of Employment Services, et al.*, 571 N.E.2d 727, 59 Ohio St. 3d 188 (1991), an employee who elects voluntary termination under a plan or policy adopted by the employer to reduce the number of its employees due to lack of work in the employer's overall work force is entitled to unemployment compensation under R.C. 4141.29(D)(2)(a)(ii).

In this case, Mr. Long elected a voluntary termination intended to reduce Ford's overall number of employees due to lack of work. There is no dispute that Mr. Long was laid off from February 18, 2007 until July 1, 2007 for lack of work. Therefore, he was entitled to receive unemployment benefits during this period.

**CONCLUSION**

Accordingly, the court reverses the Commission's decision finding that Mr. Long received overpayment of unemployment compensation benefits for the period February 18, 2007 to July 7, 2007. The court orders the Commission to repay any amount that Mr. Long re-paid in response to its May 10, 2010 decision.

**IT IS SO ORDERED.**

**DATE: September 14, 2015**



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**JOSE A. VILLANUEVA, JUDGE**

**CERTIFICATE OF SERVICE**

A copy of the court's **Opinion and Order Reversing the decision of the Ohio Unemployment Compensation Commission** has been sent by ordinary U.S. mail this 14<sup>th</sup> day of September, 2015 to the following:

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JOSE A. VILLANUEVA, JUDGE