

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

MNH TRUCK LEASING COMPANY, INC.,	:	
	:	
Appellant,	:	
	:	
vs.	:	Case No. 14CVF10-10698
	:	14CVF10-10699
	:	14CVF10-10701
OHIO STATE DEPARTMENT OF JOB AND FAMILY SERVICES,	:	Judge Cain
	:	
Appellee.	:	

DECISION TO AFFIRM AND FINAL JUDGMENT

Rendered this ____ day of March 2016.

CAIN, J.

The present matter is a consolidated administrative appeal of three decisions of the Unemployment Compensation Review Commission (hereinafter the "Commission"). The parties have thoroughly briefed the issues in this matter and the Court is now ready to render its decision.

The events leading up to the filing of the present appeal are fairly straight forward. Due to the filing of a claim for unemployment benefits naming Appellant as the employer, the Ohio Department of Job and Family Services (hereinafter the "ODJFS") conducted an audit of Appellant. Via this audit, the ODJFS found that between 2009 and 2012 Appellant had misclassified 41 workers as independent contractors that should have been classified as covered employees. The ODJFS determined that Appellant had underreported wages. As a result of this determination, the ODJFS assessed the maximum penalty tax rate of 11.40% for 2012 and 10.50% for 2013.

After exhausting its administrative remedies within the ODJFS, Appellant appealed the ODJFS's determinations to the Commission. On September 9, 2014 a telephonic hearing was conducted by a hearing officer for the Commission. At this hearing, three issues were considered by the hearing officer. These issues were:

1. Did the individuals who provided truck driving services, sales work, and office work for Appellant from September 1, 2009, through the end of the audit period perform those services in employment which is covered under the Ohio Unemployment Compensation Law?
2. Did the ODJFS correctly assess a maximum penalty rate of 11.40% for 2012?
3. Did the ODJFS correctly assess a maximum penalty rate of 10.50% for 2013?

After hearing testimony from both Appellant and the ODJFS, the hearing officer found in favor of the ODJFS and upheld its determinations. The Commission mailed three separate decisions to Appellant, one as to each issue stated above, on September 17, 2014. Appellant timely filed appeals of all three of the Commission's decisions to this Court and all three were consolidated into the present appeal.

The appeal presently before the Court is governed by R.C. 4141.26, which states in pertinent part:

The court may affirm the determination or order complained of in the appeal if it finds, upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

R.C. 4141.26(D)(2). In the case of MacConnell v. Ohio DOC (10th Dist., 2005), 2005 Ohio 1960, the Ohio Tenth District Court of Appeals provided a nice summary of the law concerning the standard upon which this Court must judge administrative appeals. While

MacConnell dealt with an appeal pursuant to R.C. 119.12, the language of R.C. 119.12 and the above cited language of R.C. 4141.26 are almost identical. Therefore, the same standard applies. In MacConnell, the Tenth District stated:

Under R.C. 119.12, when a common pleas court reviews an order of an administrative agency, it must consider the entire record and determine whether the agency's order is "supported by reliable, probative, and substantial evidence and is in accordance with the law."...

In Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St. 3d 570, 589 N.E.2d 1303, the Supreme Court of Ohio defined the evidence required by R.C. 119.12:

"Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. "Substantial" evidence is evidence with some weight; it must have importance and value.

Id. at 571.

The common pleas court's "review of the administrative record is neither a trial *de novo* nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.' " (Emphasis sic.) Lies v. Veterinary Med. Bd. (1981), 2 Ohio App.3d 204, 207, 2 OBR 223, 441 N.E.2d 584, quoting Andrews v. Bd. Of Liquor Control (1955), 164 Ohio St. 275, 280, 58 O.O. 51, 131 N.E.2d 390. Even though the common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, the findings of the agency are not conclusive. Conrad, supra, at 111.

Id. at ¶¶16-18. It is with this law in mind that the Court must now render its decision in this matter.

Appellant's argument as to why the Commission's decisions are not supported by reliable, probative, and substantial evidence is somewhat unusual. Throughout the body of Appellant's brief in this matter it does not argue that the ODJFS or the Commission's findings of fact are actually wrong. Instead, Appellant attacks the Commission's decisions

on essentially procedural and due process grounds. Appellant argues that the hearing officer for the Commission overstepped her bounds and therefore, her decisions are tainted. More specifically, Appellant argues that the hearing officer allowed the ODJFS to present what Appellant characterizes as hearsay evidence. Further, in relation to the actions of the ODJFS during the audit, Appellant argues that even after being notified that Appellant was represented by counsel, the ODJFS still contacted Appellant directly. Via these two things, Appellant argues that its due process rights have been violated and as a result, all of the evidence presented by the ODJFS and relied upon by the Commission is essentially inadmissible. As such, Appellant argues that the Commission's decisions are not supported by reliable, probative, and substantial evidence.

The Court will begin by addressing Appellant's argument concerning the admission of hearsay evidence at the hearing. Appellant could not be more wrong as to this argument. At an administrative hearing, a hearing officer is permitted to consider hearsay evidence.

...The principles of due process in administrative hearings shall be applied to all hearings conducted under the authority of the commission. In conducting hearings, all hearing officers shall control the conduct of the hearing, exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record. Hearing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. No person shall impose upon the claimant or the employer any burden of proof as is required in a court of law...

R.C. 414.281(C)(2). In the case of Moore v. Ohio Unemployment Comp. Review Comm'n (10th Dist., 2012), 2012 Ohio 1424, the Ohio Tenth District Court of Appeals commented

on the issue of hearsay evidence being presented at the administrative level. In its decision, the Tenth District held:

Moore also argues that certain evidence is hearsay, and he urges this court to strike it from the record. However, "evidence which might constitute inadmissible hearsay where stringent rules of evidence are followed must be taken into account in proceedings such as [commission hearings] where relaxed rules of evidence are applied." *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 44, 430 N.E.2d 468 (1982); see also R.C. 4141.281(C)(2) ("Hearing officers are not bound by common law or statutory rules of evidence."). Thus, the hearing officer could accept hearsay evidence, and the commission could rely upon that evidence in rendering its decision.

Id. at ¶25. Via the above law, it is clear to the Court that the hearing officer properly admitted what Appellant characterizes as hearsay evidence. Since this is so, Appellant's due process rights were not violated by the admittance of such evidence and its first argument fails.

Appellant's second argument is that the ODJFS improperly contacted Appellant after being informed that Appellant was represented by counsel. Once again, Appellant's argument is wrong. Proceedings before an administrative agency are not subject to the same rules as those before an official court of law. Therefore, just because Appellant obtained counsel, that fact does not mean that the ODJFS was forbidden from contacting Appellant directly. Furthermore, Appellant has presented the Court with absolutely no law supporting its contention. In fact, all of the law concerning audits in front of the ODJFS indicates that an employer has the duty to furnish information upon request. There is nothing to suggest that the ODJFS is in anyway prohibited from contacting an employer directly during an audit. The Court finds that the ODJFS properly contacted Appellant directly during the audit even though Appellant was represented by counsel. Appellant's second argument fails.

In summation, the Court's decision in this matter is as follows. Appellant has presented nothing that disputes the factual findings made by the ODJFS or the Commission. The Court finds that Appellant's due process rights were not violated by the admission of hearsay evidence or by the contacting of Appellant directly during the audit. Since this is so, all of the evidence before the hearing officer for the Commission was properly before her. Appellant's argument as to why the Commission's three decisions are not supported by reliable, probative, and substantial evidence is of no merit. Furthermore, the Court has done an independent review of the record in this matter and finds that the Commission's three decisions are in fact supported by reliable, probative, and substantial evidence. The Court must affirm the Commission's decision.

Accordingly, the Court hereby awards judgment in Appellee's favor and against Appellant. The Unemployment Compensation Review Commission's three decisions finding against Appellant are upheld. Costs to Appellant. This is a final appealable order and there is no just cause for delay. The Clerk shall serve a copy of this decision on all parties in accordance with Civ. R. 58(B).

IT IS SO ORDERED.

Copies to:

Mark R. McBride
Counsel for Appellant

Patricia V. Hoskins
Counsel for Appellee

Franklin County Court of Common Pleas

Date: 03-22-2016

Case Title: MNH TRUCK LEASING COMPANY LLC -VS- OHIO STATE
DEPARTMENT JOB & FAMILY SERVI

Case Number: 14CV010701

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 14CV010701

Case Style: MNH TRUCK LEASING COMPANY LLC -VS- OHIO
STATE DEPARTMENT JOB & FAMILY SERVI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes