

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

JAMES WOOD,

Appellant,

vs.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES, et al.,

Appellee.

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CASE NO. 16CVF03-003128

JUDGE SCHNEIDER

DECISION AND JUDGMENT ENTRY
REVERSING THE DECISION ISSUED BY THE UNEMPLOYMENT
COMPENSATION REVIEW COMMISSION ON MARCH 2, 2016

AND

REMANDING THE CASE TO ODJFS

AND

NOTICE OF FINAL APPEALABLE ORDER

SCHNEIDER, J.

In this administrative appeal, pursuant to R.C. 4141.282, Appellant seeks review of the Unemployment Compensation Review Commission’s (“UCRC”) Decision Disallowing Request for Review mailed on March 2, 2016. This Decision affirmed the Hearing Officer’s Decision of January 21, 2016 that Appellant was not eligible to receive unemployment compensation benefits during the weeks ending September 12, 2015 through October 31, 2015 and that his overpayment of \$3,392.00 for those weeks was not due to a clerical error in a decision or an error in an employer’s report, despite the fact that the Director of ODJFS’ November 6, 2015 Notice of Determination on Eligibility for Unemployment Benefits sent to Appellant, and which changed his period of ineligibility that caused the overpayment, states that it is being issued due to a typographical and/or clerical error made by Appellee Director of Ohio Department of Job and Family Services

(“ODJFS”). As a result, the UCRC’s and Hearing Officer’s Decisions found that Appellant was required to repay the \$3,392.00 overpayment of benefits to ODJFS. For the reasons that follow, this court finds that the UCRC’s Decision and the Hearing Officer’s Decision are against the manifest weight of the evidence and, thus, are unlawful and unreasonable.

Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this court must affirm the commission’s decision unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. *See* R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). If it is, then the court must reverse, vacate, or modify the decision, or remand the matter to the commission. *Id.* If it is not, then the court must affirm the decision of the commission. *Id.*

Additionally, the court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission’s province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696. A court cannot reverse the commission’s decision merely because reasonable minds might reach different. Rather, the court must decide whether the commission's decision is supported by evidence in the record. *Tzangas* at 696; *Irvine* at 18.

Record on Appeal

In this case, a review of the record on appeal shows that the parties are generally in agreement as to the relevant facts. The uncontested facts are that Appellant Wood filed an Application for Determination of Benefit Rights, which the Director of ODJFS allowed with a benefit year beginning July 19, 2015. On August 20, 2015, ODFJS sent Appellant a Scheduled Notice, which required Appellant to attend an in-person session scheduled as part of the Reemployment Services and Eligibility Assessment (“RESEA”) program on September 3, 2015, and that his attendance was mandatory. Appellant did not attend the September 3, 2015 session because he overlooked the notice in his electronic correspondence. Appellant does not dispute the Hearing Officer’s finding that this was not good cause for failure to appear at the September 3, 2015 session.

On September 4, 2015, Appellant Wood was sent a notice of eligibility after he missed the session, and he contacted ODJFS to discuss the matter. Appellant was informed that his RESEA session would be rescheduled. On October 26, 2015, Appellant was sent a notice of a RESEA session scheduled for November 4, 2015, which Appellant attended.

On September 17, 2015, the Director of ODJFS issued a Notice of Determination on Eligibility for Unemployment Benefits to Appellant, which found that Appellant failed to comply with required RESEA activities without just cause in violation R.C. 4141.29(A)(6) and (7) based on his failure to attend the September 3, 2015 RESEA session. As a result, the Director’s Notice found that Appellant “is not eligible to receive benefits from **8/30/2015 through 9/5/2015.**” R. 12 (emphasis added). The ID number for this Notice of Determination is 228470879-1.

On November 6, 2015, after Appellant had completed the 8/30/2105 through 9/5/2015 period of ineligibility set forth in the Notice of Determination 228470879-1 and was paid \$3,392.00 in unemployment compensation for the weeks of September 12, 2015 through October 31, 2015, the Director of ODJFS issued a corrected Notice of Determination on Eligibility for Unemployment Benefits to Appellant. The ID number for this Notice of Determination is 228470879-2, meaning is it is the second, corrected notice for determination 228470879. Indeed, the November 6, 2015 Notice of Determination states that “[t]his determination corrects the determination with ID number 228470879-1, issued on September 17, 2015. **The following portion of the determination is corrected due to a typographical or clerical error in the determination.**” R. 13 (emphasis added).

The November 6, 2015 Notice of Determination issued to correct a typographical or clerical error in the September 17, 2015 Notice of Determination, changed the period of time that Appellant was not eligible to receive benefits from 8/30/2015 through 9/5/2015 to “**8/30/2015 through 10/31/2015.**” R. 13 (emphasis added). The corrected notice was issued after Appellant had already been paid benefits for the weeks of September 12, 2015 through October 31, 2015, and after the corrected ineligibility period had ended. As a result, the Notice of Determination found that Appellant “has been overpaid benefits to which he/she was not entitled for reasons determined to be ‘Non-Fraud’ (DENIED) in the amount of \$3,392.00.” R. 13.

Appellant Wood appealed the November 6, 2015 Notice of Determination. On December 16, 2015, the Director of ODFJS issued a Redetermination affirming the

November 6, 2015 Notice of Determination with the ID #228470879-2. R. 17. Appellant Wood then appealed the Director's Redetermination to the UCRC.

On January 12, 2016, a hearing was held by telephone before the Hearing Officer. Appellant appeared with legal counsel and testified. No one appeared on behalf of Appellees, and no evidence other than the November 6, 2015 Notice of Determination with the ID #228470879-2 was admitted into the record on the issue of whether there was a typographical or clerical error in a decision of ODJFS that resulted in Appellant's overpayment of benefits. At the hearing, Appellant Woods testified that he had to wait eight weeks and was not given an earlier appointment for the RESEA session, nor was he warned that he was ineligible to receive benefits until he attended the session. R. 74 Hearing Transcript (Page 10, Lines 11-26 and Page 11, Lines 1-8).

On January 21, 2016, the Hearing Officer issued his Decision upholding the Director's Redetermination. R. 95. The Hearing Officer stated that part of his reasoning for finding that Appellant was overpaid benefits with respect to the weeks ending September 12, 2015 through October 31, 2015 was that "[t]he overpayment for that week(s) was not due to a clerical error in a decision or an error in an employer's report" R. 97. However, there are no findings of facts in the Hearing Officer's Decision with regard to the clerical error issue. In fact, there is no mention of the corrected November 6, 2015 Notice of Determination with the ID #228470879-2 anywhere in the Hearing Officer's Decision. *Id.*

Appellant Woods filed a Request for Review of the Hearing Officer's Decision on February 11, 2016. On March 2, 2016, the UCRC issued a Decision disallowing Appellant's request for Review. R. 117. Appellant then filed this appeal.

Analysis

In considering Appellant's first assignment of error challenging the UCRC's finding that the overpayment of benefits to Appellant was not due to a clerical error in a decision of Appellee, the court notes that the parties are in agreement that R.C. 4141.35(B)(1)(a) governs. R.C. 4141.35(B)(1)(a) states that overpayment of benefits are to be repaid to the director of ODFJS, "provided that the repayment or withholding **shall not be required** where the overpayment is the result of the director's **correcting a prior decision due to a typographical or clerical error in the director's prior decision**, or an error in an employer's report under division (G) of section 4141.28 of the Revised Code." R.C. 3131(B)(1)(a) (emphasis added); Appellee ODJFS' Brief p. 5-6; Appellant's Brief p. 5. Indeed, R.C. 4141.28(G) provides that the Director of ODFJS may only issue a corrected determination under limited circumstances, including when the determination was "[] erroneous due to . . . [a] typographical or clerical error."

Additionally, the corrected determination may only be issued after the determination that resulted in the overpayment has become final. R.C. 4141.35(B)(1)(a). If ODFJS does not vacate the determination within twenty-one days of the mailing date of the determination notice, that determination becomes final and the "corrected determination shall take precedence over and void the prior determination." R.C. 4141.28(E) & 4141.28(G). Further, the Ohio Revised Code states that the repayment of the overpayment "shall not be required" when it is the result of a typographical or clerical error in a previous determination, not that it "may" be waived as Appellee Director ODFJS argues in this appeal. Appellee Br. p. 5.

Here, Appellee Director of ODFJS admits that “[o]n November 6, 2015, a redetermination was issued correcting the prior redetermination of September 17, 2015, which found that Mr. Wood only was ineligible for benefits for the week that he missed the September 3, 2015 training.” Appellee Br. p. 6 (emphasis added). Appellee Director of ODJFS also admits in this appeal that the November 6, 2015 “correction extended the weeks of ineligibility from August 8, 2015 through October 31, 2015 to cover the period of time until the required training was completed.” *Id.* However, Appellee Director of ODJFS claims, without any support, that no typographical or clerical error caused the overpayment and the overpayment is not subject to waiver under R.C. 4141.35(B)(1)(a). *Id.* Such argument flies in the face of the manifest weight of the evidence and Appellee’s own admission that the overpayment was caused by a typographical or clerical error of Appellee.

The only evidence in the record on appeal with regard to the clerical error issue is Appellee’s admission in the November 6, 2015 Notice of Determination that Appellee Director of ODFJS corrected Appellant’s period of ineligibility for benefits and that the correction, which resulted in an overpayment, was issued “due to a typographical or clerical error” in the Director’s prior decision. R. 13. Having made this admission, Appellee cannot now claim that the overpayment was caused by Mr. Woods’ failure to complete the required training until November 3, 2015. *See* Appellee Br. p. 6. The fact that Appellee, like the UCRC Hearing Officer, cites to no evidence in the record to support its assertion that the overpayment was not caused by a clerical error of the Director of ODFJS is telling. This is because no evidence existed before the Hearing Officer and the UCRC to support their findings that the overpayments to Appellant for

the weeks ending September 12, 2015 through October 31, 2015 were not due to a clerical error in a decision or an error in an employer's report. R. 97. Appellee Director of ODFJS admitted that the correction made to Appellee's period of ineligibility for benefits and the resulting overpayment were, in fact, due to a typographical or clerical error in a decision of ODJFS.

Consequently, the court concludes that the UCRC's decision that the overpayments to Appellant were not due to a clerical error in a decision of Appellee is not supported by some competent, credible evidence. The court finds that UCRC's Decision Disallowing Request for Review mailed on March 2, 2016 and the Hearing Officer's Decision of January 21, 2016 are against the manifest weight of the evidence and are unreasonable and unlawful. The only evidence in the record is that the overpayment of benefits to Appellant was the result of a typographical or clerical error in Appellee's September 17, 2015 Notice of Determination, which was corrected in a redetermination issued on November 6, 2015. The overpayment to Appellant must be waived because it falls under one of the two exceptions to the mandatory non-fraud recoupment statute, R.C. 4141.35.

Accordingly, Appellant Woods' first assignment of error is sustained.

Appellant's second assignment of error asserts the UCRC Hearing Officer's Decision violated Mr. Wood's due process rights and the decision was unreasonable in light of the agency's own errors in processing Mr. Wood's claim. The disposition of Appellant's first assignment of error and the court's finding that the UCRC's determination was unlawful, unreasonable and against the weight of the evidence, however, renders appellant's second assignment of error moot.

Decision

For the reasons stated above, the Unemployment Compensation Review Commission's Decision Disallowing Request for Review mailed on March 2, 2016, which disallowed Appellant's request for review of the UCRC Hearing Officer's Decision of January 21, 2016, is **REVERSED** and the matter is **REMANDED** to the Ohio Department of Job and Family Services. Appellee Director of ODJFS shall waive the requirement that Appellant repay the \$3,392.00 in overpaid benefits he received for the weeks ending September 12, 2015 through October 31, 2015, pursuant to R.C. 4141.35(B)(1)(a), as the overpayment resulted from a typographical or clerical error in Appellee's September 17, 2015 Notice of Determination decision. Additionally, Appellee Director of ODFJS shall issue a Notice of Determination on Eligibility for Unemployment Benefits to Appellant James E. Woods consistent with this decision.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY.

THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of

Court shall serve notice upon all parties of this judgment and its date of entry. Costs to Appellee.

IT IS SO ORDERED.

Copies To:

Counsel of Record

Franklin County Court of Common Pleas

Date: 12-21-2016
Case Title: JAMES WOOD -VS- OHIO STATE DEPT JOB AND FAMILY SERVICES ET AL
Case Number: 16CV003128
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 16CV003128

Case Style: JAMES WOOD -VS- OHIO STATE DEPT JOB AND
FAMILY SERVICES ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes