

IN THE COURT OF COMMON PLEAS OF DEFIANCE COUNTY, OHIO

Andrea L. Cline, et al.

Plaintiffs

-vs-

Defiance Therapeutic Massage, etc.

Defendant

FILED
IN COURT OF COMMON PLEAS
DEFIANCE COUNTY, OHIO
Case No. 16-CV-43657

OCT 25 2017

Ray M. Halbrath
CLERK

JUDGMENT ENTRY

This action is an Employer's Appeal from the decision of the Unemployment Compensation Review Commission. The Employer/Appellant, Defiance Therapeutic Massage & Wellness Center, LLC, contends that the Appellee, Andrea L. Cline, is not entitled to unemployment compensation as a result of the termination of the parties' business relationship. In the administrative process, it was determined that Andrea L. Cline worked in covered employment at the Defiance Therapeutic Massage & Wellness Center, LLC, and was discharged without just cause.

In its merit brief, Defiance Therapeutic essentially contends that Ms. Cline was an independent contractor and not in "covered employment"

during her business relationship with Defiance Therapeutic. Defiance Therapeutic does not argue the determination that there was no just cause for her termination from her employment.

The court is bound by the standard of review set forth in §4141.282(H) of the Ohio Revised Code. The Court is required to affirm the decision of the review commission unless the court finds the decision of the commission was "unlawful, unreasonable, or against a manifest weight of the evidence..." The strict standard of review has been repeatedly upheld by the Ohio Supreme Court. *Bernard v. Unemp. Comp. Rev. Comm.*, 136 Ohio St. 3d 264. A decision of the Review Commission must be affirmed if some "competent, credible evidence in the record supports it" *Cent. Ohio Vocational School Dist. Bd. Of Edn. V. Admr., Ohio Bur. Of Emp. Servs.*, 21 Ohio St. 3d 5 (1986).

The parties have provided extensive merit briefs. The essence of Defiance Therapeutic's argument is that the twenty factors set forth in Ohio Administrative Code 4141-3-05, which are required to be used in making the determination of whether the Claimant was in "covered employment", were misapplied by the hearing officer.

The merit briefs of both parties, citing to the extensive, multi-hearing record below, set forth the details of the business relationship between Claimant and the Employer. The record from the administrative process,

as pointed out by the Appellee, is replete with evidence indicative of a covered employment relationship. The details of the day-to-day operation of the relationship, the employers use of what is essentially an "employee" handbook, the duties, responsibilities of each party and the direction and control exercised by Defiance Therapeutic over the activities of Claimant all strongly support the contention that the relationship was in fact "covered employment".

The principal argument advanced by Defiance Therapeutic that could meritorious is that the Claimant's compensation was based solely upon a percentage of the fees billed to her acupuncture clients, rather than any hourly wage or periodic salary. From this, the Defiance Therapeutic argument goes, a hearing officer should have concluded that all of the other various duties performed by the Claimant were performed without remuneration and, therefore, the extent to which Defiance Therapeutic exercised control and direction of the non-acupuncture, the duties/services performed by Claimant should not be considered in determining the existence of "covered employment". This argument, however, fails to take into account the totality of circumstances of the business relationship. It is apparent from the record and, as noted by Appellee, that the control and direction of Defiance Therapeutic was an integral part of the total business relationship, from

scheduling to client relationships to day-to-day job duties, it is apparent that the covered employment relationship existed. The mere fact that compensation for the overall relationship was calculated based upon a share of the revenue generated by the claimant's billed services does not change the overall relationship.

In addition to the day-to-day activity control exercised by Defiance Therapeutic, the record details the unusual circumstance whereby the expense of Worker's Compensation premiums were paid by Defiance Therapeutic but charged back against Ms. Cline in her compensation calculation. It appears it is an extremely unusual arrangement and one that significantly supports the covered employment determination. While, at the outset, the parties' intention may have been to create an independent contractor business relationship, clearly by the time of the termination of her services, under the factors listed in the Ohio Administrative Code, the relationship had developed to covered employment.

The record herein certainly contains competent credible evidence supporting the determination of the review commission and the decision is not unlawful, unreasonable, or against the manifest weight of the evidence.

It is therefore ORDERED, ADJUDGED and DECREED that the issues of the Unemployment Compensation Review Commission is affirmed and the within appeal is hereby dismissed. Costs assessed to the Defendant-Appellant, Defiance Therapeutic Massage and Wellness Center LLC.



Joseph N. Schmenk
JUDGE

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