

FILED  
COMMON PLEAS COURT

2012 APR 5 PM 2 46

JENNIFER DENNIS  
CLERK OF COURTS  
OTTAWA COUNTY, OHIO

CELEBRATING  
100 YEARS

IN THE COURT OF COMMON PLEAS  
OTTAWA COUNTY, OHIO

THOMAS C. DEITEMYER

Plaintiff/Appellant,

v.

DIRECTOR, OHIO DEPARTMENT  
OF JOB AND FAMILY SERVICES

Defendants/Appellees.

Case No. 11CV669F

Judge Bruce Winters

JUDGMENT ENTRY

OHIO ATTORNEY  
GENERAL'S OFFICE  
RECEIVED

APR 9 - 2012

TOLEDO, OHIO

This matter is before the Court on an Administrative Appeal from a Decision of the Unemployment Compensation Review Commission, said appeal filed under R.C. 4141.282.

The role of the Common Pleas Court in this type of appeal is limited to determining whether Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence. This is not a hearing de novo. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694 (1995). As long as there is competent credible evidence in the record that would support the Decision of the Review Commission, the Review Commission's decision must stand. *Cent. Ohio Vocational School Dist. Bd. of Edn. v. Admr., Ohio Bur. of Emp. Servs.*, 21 Ohio St.3d 5, 8 (1986).

Appellant, Thomas Deitemyer, was employed with appellee Witt & Gaines Inc. from June 1, 2008 to May 25, 2011. He voluntarily quit his position at Witt & Gaines to take a position at appellee Air-Eez Comfort Systems LLC, where he began working on

June 6, 2011.<sup>1</sup> On July 8, 2011, Mr. Deitemyer was released from employment at Air-Eez.

Mr. Deitemyer applied for unemployment benefits on July 12, 2011. His application was disallowed on August 5, 2011, on the basis that he did not meet the statutory requirements to receive unemployment benefits. The Unemployment Compensation Review Commission ultimately held that, although Mr. Deitemyer had been discharged from Air-Eez without just cause under R.C. 4141.29(D)(2)(a), he had not satisfied R.C. 4141.291(A)(2) and (3).

A threshold requirement is that a claimant must work 20 weeks to be eligible for unemployment benefits. R.C. 4141.01(R). And, in general, one who quits work is ineligible for unemployment benefits. R.C. 4141.29(D)(2)(a). R.C. 4141.291(A)(2) and (3), however, carve an exception for individuals who quit one job to accept another position. That section, in relevant part, provides that individuals remain eligible for benefits if they (1) accept an offer for a second job, (2) accept that job while still employed in the first job, and (3) work the second job for at least three weeks:

(A) Notwithstanding section 4141.29 of the Revised Code, an individual who voluntarily quits work:

\* \* \*

(2) \* \* \* to accept other employment subject to this chapter, \* \* \* where the individual obtains such employment while still employed or commences such employment within seven calendar days after the last day of employment with the prior employer, and subsequent to the last day of the employment with the prior employer, works three weeks in the new employment and earns wages equal to one and one-half times the individual's average weekly wage or one hundred eighty dollars, whichever is less;

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<sup>1</sup> Documents in Director's File portion of the record suggest that Mr. Deitemyer started work at Air-Eez on May 31, 2011. This discrepancy, however, does not affect the outcome of this administrative appeal.

(3) Shall, under the conditions specified in either division (A)(1) or (2) of this section, remove the disqualification imposed by division (D)(2)(a) of section 4141.29 of the Revised Code \* \* \*.

The dispositive question here<sup>2</sup> is whether Mr. Deitemyer's having quit work at Witt & Gaines renders him ineligible for unemployment benefits in connection with his separation from Air-Eez. With no explanation, the hearing officer summarily concluded that he is ineligible for benefits because he had not "met all three of these [R.C. 4141.291(A)(2)] requirements." *In re Deitemyer*, Unemp. Comp. Rev. Comm. No. H-2011024750 at 5 (Oct. 19, 2011).

Reviewing the record, however, it is clear that Mr. Deitemyer has in fact met the statute's three conditions: 1) he was still employed by Witt & Gaines when he accepted the position at Air-Eez, 2) he worked more than the required three weeks at Air-Eez, and 3) he earned more than \$180.00 during his employment with Air-Eez.

Further, the hearing officer incorrectly relied on *Cooper v. Ohio Bur. of Emp. Servs.*, 9<sup>th</sup> Dist. No. C.A. 9063, 1979 Ohio App. LEXIS 9423 (Feb. 14, 1979). That case is inapposite simply because the employee worked his second job for only one week, not three weeks as the statute requires. *Id.*, 1979 Ohio App. LEXIS 9423 at \*2.

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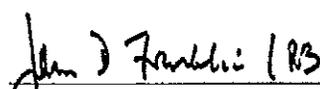
<sup>2</sup> The issue of whether Mr. Deitemyer was terminated from Air-Eez with just cause, for reasons not relevant here, is not before the Court.

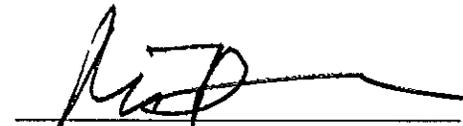
Mr. Deitemyer has met the statutory requirements to requalify for unemployment benefits under R.C. 4141.291. Accordingly, the decision of the Unemployment Compensation Review Commission is reversed.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Bruce Winters, Judge

Counsel approval (see Loc.R. 39.01)

 *per phone consent*  
\_\_\_\_\_  
John D. Franklin (0055359)  
Counsel for Plaintiff/Appellant,  
Thomas C. Deitemyer

  
\_\_\_\_\_  
Rick Baum (0052534)  
Counsel for Defendant/Appellee  
Director, Ohio Department of Job  
and Family Services

Clerk of Courts shall send copies of this order to all parties of record or their counsel within three days by regular US Mail.