

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

OHIO ATTORNEY
GENERAL'S OFFICE
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APR 13 2012

SCOTT A. STEIN

:

Case No. 11-CIV-136

Plaintiff/Appellant

:

TOLEDO, OHIO

vs.

:

**JUDGMENT ENTRY - DECISION
ON ADMINISTRATIVE APPEAL**

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

:

Defendants/Appellees

:

Sup. R. 37 Statistical Report
Termination

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This matter is before the court for decision on the appeal of plaintiff/appellant, Scott A. Stein, of the decision of the defendant/appellee, Director, Ohio Department of Job and Family Services (Director) disallowing Mr. Stein's request for review of the decision of Leanne Colton, hearing officer issued to the parties on May 27, 2011, wherein she found that Mr. Stein was discharged from employment with defendant/appellant Frywise, Inc. (Frywise), for just cause and therefore disallowing Mr. Stein's application for unemployment compensation benefits. Mr. Stein had filed his application for determination of benefit rights for a benefit year beginning January 23, 2011. On March 3, 2011, the Director issued a redetermination disallowing that application.

On October 20, 2011, a certified transcript of the record from the Unemployment Compensation Review Commission was filed. This court issued a briefing schedule on October 24, 2011, in accordance with which Mr. Stein filed his brief together with attachments on December 1, 2011. Frywise filed its brief in response together with attachments on December 30, 2011. In response to the Director's motion for an extension of time, the court issued an amended briefing schedule on January 5, 2012, in accordance with which the Director filed a brief on February 7, 2012. Mr. Stein filed his reply on February 21, 2012.

The court has reviewed the record from the Unemployment Review Commission, which includes all evidentiary materials submitted during the administrative determinations. The record reflects that this appeal is properly before this court for decision.

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CELINA, OHIO

The evidence establishes that Mr. Stein was employed by Frywise from December 4, 2007, until January 13, 2011. On January 6, 2011, Mr. Stein was arrested and detained in the state of Michigan. Mr. Stein's wife informed Vance Nation, Mr. Stein's supervisor at Frywise, that Mr. Stein would be absent for the following week from work at Frywise where he was employed in delivery. After a January 13, 2011, hearing on the Michigan matter, Mrs. Stein again telephoned Mr. Nation to inform him that another hearing for Mr. Stein had been scheduled for January 20 and that Mr. Stein again would be absent for the following week. She did not state when Mr. Stein intended to return to work. As a result, Mr. Stein missed a total of six days of work during this two week period. Mr. Stein was terminated from his employment with Frywise on January 13, 2011, for being absent from work during the week of January 10, which included his scheduled workdays of January 10, 12, and 13, 2011. In addition, Mr. Stein communicated through his wife to his employer, Frywise, that he would again be absent for the week of January 17, 2011, including the days of January 17, 19, and 20.

The attendance policy of Frywise allowed for an employee to be absent from work for three days without a doctor's excuse, but required such an excuse for additional days of absence. Mr. Stein had a history of failing to comply with Frywise's attendance policy as well as other employee work policies.

Much of the testimony of Mr. Stein, Mrs. Stein, and Mr. Nation, before the hearing officer was given about facts which are not relevant or material to the decision of the hearing officer that Mr. Stein was terminated for good cause, specifically for being absent from his employment and for becoming unemployed by reason of his commitment to a correctional institution.

A decision of the unemployment compensation commission or the Director of the Bureau of Unemployment Compensation may be reversed if the decision is unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.28(O), *Irvin v. Unemployment Compensation Board of Review* (1985), 19 Ohio St. 3d 15; *Tzangas Plakas & Mannos v. Ohio Bureau of Employment Services* (1995), 73 Ohio St. 3d 694. A reviewing court must determine whether the decision of the board or director is supported by the evidence and

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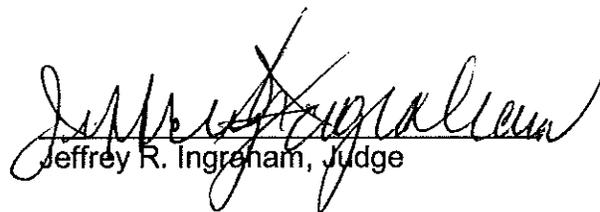
the record as certified from the administrative proceedings. If the court finds that the decision was unlawful, unreasonable, or against the manifest weight of the evidence, it is required to reverse and vacate such decision or to modify that decision and enter final judgment in accordance with such modification. Otherwise, the court is required to affirm the decision. See *Riley v. Ohio Bureau of Employment Services* (1992), 82 Ohio App. 3d 127.

Based upon the review of the evidence, the court finds that the decision of the Unemployment Compensation Review Commission filed August 11, 2011, denying unemployment benefits to plaintiff/appellant, Scott A. Stein, is supported by competent, credible evidence and is therefore not unlawful, unreasonable, or against the manifest weight of the evidence. Therefore, the court must affirm that decision pursuant to R.C. 4141.28(O).

The decision of the Ohio Unemployment Compensation Review Commission issued August 11, 2011, disallowing the request for review and thereby affirming the March 27, 2011, decision of the hearing officer to deny unemployment compensation benefits to plaintiff/appellant Scott A. Stein is hereby affirmed.

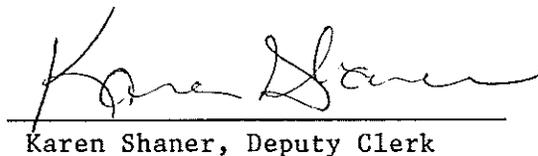
Costs are hereby assessed against plaintiff/appellant, Scott A. Stein.

IT IS SO ORDERED.


Jeffrey R. Ingraham, Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Judgment Entry - Decision on Administrative Appeal was issued by regular U.S. mail to **Scott A. Stein** (Plaintiff/Appellant), **Eric A. Baum, Esq.** (Attorney for Defendant/Appellee ODJFS, Office of the Ohio Attorney General, Toledo Regional Office, 1 Government Center, Suite 1340, Toledo, Ohio), and **Frywise, Inc.**, at their respective addresses, on this 12th day of April, 2012.


Karen Shaner, Deputy Clerk

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