

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

FOLLY TOMETY,

Appellant,

VS.

**OHIO DEPT. OF JOB AND
FAMILY SERVICES, ET AL.,**

Appellees.

CASE NO.: 16CVF-09-8389

JUDGE: WOODS

DECISION AND ENTRY
AFFIRMING THE AUGUST 10, 2016 DECISION
OF THE COMMISSION

WOODS, J.

This action comes before the Court on an appeal of the Unemployment Compensation Review Commission's, (Commission) August 10, 2016 Decision. Appellant named the Department of Job & Family Services, (Appellee) As set forth below, the Decision of the Commission is **AFFIRMED**.

STATEMENT OF THE CASE

This appeal involves the Appellant's request to overturn the Decision issued by the Commission terminating his right to participate in the unemployment compensation.

STATEMENT OF THE FACTS

This case deals with a Decision from the Commission that ended the Appellant's attempt to receive benefits. Said decision was issued on August 10, 2016. Appellant initially applied for unemployment compensation benefits. On May 11, 2016, the Appellee issued a Determination denying benefits which was then sent to the last known address of the Appellant by regular U.S. Mail. R. A. Appellant received the Determination prior to June 1, 2016. On June 12, 2016,

Appellant filed an appeal by fax. (Hrg. Trans., p. 5, lines 1-9). On June 27, 2016, the Appellee issued a Redetermination dismissing the appeal as having been made outside the twenty-one (21) day appeal period set forth in R.C. 4141.281(A). Appellant then appealed the Redetermination on July 6, 2016. Jurisdiction was transferred to the Commission the next day.

A telephone hearing was held on July 20, 2016. (Hrg. Trans.) The Appellant testified that he had received the Determination prior to June 1, 2016, but he had not appealed as he thought he could resolve any eligibility issue through Appellee's customer service department. Only when those efforts were unsuccessful did the Appellant file his agency level appeal by fax on June 12, 2016. (Hrg. Trans., pp. 5-6.)

On July 21, 2016, a decision was issued affirming each dismissal. On July 21, 2016, the Appellant appealed each decision to the full Commission. On August 10, 2016, the Commission disallowed the appeal. On September 6, 2016, the Appellant filed his appeal with this court.

Appellant's Brief was due on November 15, 2016 and his Reply – if any – was due on December 6, 2016. As of the date of the drafting of this Decision, the Appellant has not filed a brief nor has the Appellant requested additional time. Appellee's Brief was due on November 29, 2016 and it was in fact timely filed on November 22, 2016.

These matters are ready for review.

STANDARD OF REVIEW

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Ohio Unemployment Review Commission.

R.C. 4141.282(H) provides:

If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or remand

the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.* (1995), 73 Ohio St.3d 694,697. The Hearing Officer and the Review Commission are primarily responsible for the factual determinations and for the judging of the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach* (1947), 148 Ohio St. 511; *Angelkovski v. Buckeye Potato Chips* (1983), 11 Ohio App.3d 159,162. If an employer has been reasonable in finding fault on behalf of the employee, then the employer may terminate the employee with just cause. Fault on behalf of the employee remains an essential component of a just cause termination. See *Tzangas* at 699.

The civil standard for the ‘manifest weight’ of the evidence is as follows:

Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. See *Chicago Ornamental Iron Co. v. Rook* (1915), 93 Ohio St. 152 , 160; *Portage Markets Co. v. George* (1924), 111 Ohio St. 775 (paragraph one of the syllabus); and 3 Ohio Jurisprudence 2d 817, Appellate Review, Section 820, and the cases cited therein. *The C. E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, at 280, 281.

This Court will defer to the Commission’s determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, Id.*, at 162. Please also note the following:

When reviewing a UCRC decision, "[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission]." *Upton v. Rapid Mailing Servs.*, 9th Dist. No. 21714, 2004-Ohio-966, at ¶11, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. In addition, "if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most

favorable to sustaining the trial court's verdict and judgment." Upton at ¶11, quoting Karches, supra.

Because the resolution of factual questions falls under the UCRC's scope of review, *Ro-Mai Industries, Inc. v. Weinberg*, 176 Ohio App.3d 151, 2008-Ohio-301, at ¶8, this Court's "role is to determine whether the decision of the UCRC is supported by evidence in the certified record." *Id.*, citing *Durgan*, supra. If such support is found, then the reviewing court may not substitute its judgment for the judgment made by the UCRC. *Id.* "The fact that reasonable minds might reach different conclusions is not a basis for [] reversal." *Irvine v. State Unemployment Comp. Bd. of Rev.* (1985), 19 Ohio St.3d 15, 18. *Curtis v. Infocision Mgmt. Corp.*, et al., 2008-Ohio-6434 at ¶¶ 7 & 8.

This case turns on the issue of statutory and administrative code construction. Please note the following relevant case law:

Moreover, in *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 533 N.E.2d 264, we held that courts must accord due deference to the State Employment Relations Board's interpretation of R.C. Chapter 4117, since the General Assembly designated it to be the proper forum to resolve public employment labor disputes. Similarly, we hold in the cause sub judice that courts must accord due deference to the State Board of Psychology in its interpretation of R.C. Chapter 4732 and the relevant provisions of the Ohio Administrative Code, given that the General Assembly has deemed it to be the proper forum to determine licensure matters concerning psychologists. *Leon v. Ohio Bd. of Psychology*, 63 Ohio St.3d 683, 687, 590 N.E.2d 1223 (Ohio 1992)

Said line of authority was followed in *Salem v. Koncelik*, 2005-Ohio-5537, 164 Ohio App.3d 597, 843 N.E.2d 799 (Ohio App. 10 Dist. 2005). Please note the following language from *Salem*:

We are cognizant that courts must give due deference to an administrative agency's interpretation of its own administrative rules. See *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 545 N.E.2d 1260. The General Assembly created these administrative bodies to facilitate certain areas of the law by placing the administration of those areas before boards or commissions composed of individuals who possess special expertise. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748, paragraph one of the syllabus. Thus, the Ohio Supreme Court has held that unless the construction is **unreasonable or repugnant** to that statute or rule, this court should follow the construction given to it by the agency. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 590 N.E.2d 1223. (Emphasis added)

From within this framework, this Court will render its decision.

ANALYSIS OF APPEAL

The Appellee has indicated that the record established that that the Appellant failed to meet a required deadline in the pursuit of his appeal. Appellee correctly relied on the following language from R.C. §4141.281(A):

§ 4141.281. Appeal to director

(A) APPEAL FILED

Any party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.

The Appellant acknowledged receiving the determination prior to June 1, 2016 and, therefore, the Appellant needed to file his administrative appeal on or before June 1, 2016. The initial determination had been mailed on May 11, 2016 making June 1, 2016 the deadline. The Appellant did not request an appeal until June 12, 2016.

The Appellee pointed out that R.C. §4141.281 does allow for an extension of the deadline under limited conditions:

(D) SPECIAL PROVISIONS

(9) EXTENSION OF APPEAL PERIODS

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences. When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday. When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period. When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is

extended to twenty-one days after the interested party actually receives the determination or decision. . . .

There was no evidence that any of the above noted exceptions apply. Hence, the Commission was well within its authority to find that the administrative appeal was untimely.

DECISION

Having applied the law to the facts; having reviewed the arguments and evidence at the administrative level; and having, when appropriate, given due deference to the Commission, this Court finds that the Commission’s Decision is appropriate and lawful. Therefore, the Decision of August 10, 2016 is **AFFIRMED**.

THIS IS A FINAL APPEALABLE ORDER.

William Woods, Judge

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Franklin County Court of Common Pleas

Date: 12-15-2016
Case Title: FOLLY TOMETY -VS- OHIO DEPT JOB FAMILY SERVICES ET AL
Case Number: 16CV008389
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "W. H. Woods", is written over a circular blue ink seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge William H. Woods

Court Disposition

Case Number: 16CV008389

Case Style: FOLLY TOMETY -VS- OHIO DEPT JOB FAMILY
SERVICES ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes