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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SHERRY ROBERSON
Plaintiff

2017 SEP 20 A 9: 41

Case No: CV-14-834035

CLERK OF COURTS
CUYAHOGA COUNTY

Judge: JOAN SYNENBERG

STATE OF OHIO COMPENSATION REVIEW
COMMISSION
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

THIS CAUSE IS BEFORE THE COURT PURSUANT TO R.C. 4141.282 ON APPELLANT SHERRY ROBERSON'S AMENDED APPEAL, FILED 1/19/2017, FROM THE DECISION OF THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION ("UCRC"). APPELLANT FAILED TO FILE A BRIEF IN SUPPORT OF THE APPEAL. ATTACHED TO THE AMENDED APPEAL IS AN UNSIGNED DOCUMENT NOT REFERENCED OR CONTAINED IN THE CERTIFIED TRANSCRIPT OF THE RECORD OF THE PROCEEDINGS IN THIS MATTER, AND APPELLANT APPEARS TO OFFER THE DOCUMENT AS NEW EVIDENCE. THE DOCUMENT IS STRICKEN BECAUSE IT IS NOT AUTHENTICATED BY AFFIDAVIT OR OTHER METHOD, IT IS OTHERWISE UNRELIABLE, AND THE COURT FINDS THE CERTIFIED RECORD IS COMPLETE.

UPON DUE CONSIDERATION OF THE CERTIFIED RECORD, THE COURT DOES NOT FIND THE DECISION OF THE UCRC WAS UNLAWFUL, UNREASONABLE, OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. THE DECISION WAS SUPPORTED BY EVIDENCE THAT APPELLANT WAS INELIGIBLE FOR BENEFITS FOR THE PERIOD IN QUESTION. THE HEARING OFFICER DETERMINED THAT APPELLANT WAS "TOTALLY UNEMPLOYED" PURSUANT TO R.C. 4141.29, BUT WAS INELIGIBLE BECAUSE SHE WAS NOT "ABLE TO WORK" PURSUANT TO R.C. 4141.29(A)(4).

THE CERTIFIED RECORD CONTAINED MEDICAL DOCUMENTATION FROM APPELLANT'S HEALTHCARE PROVIDER, JOHN H. NICKELS, M.D., SUBMITTED TO HER EMPLOYER, WHICH STATES: "I RECOMMEND ABSENCE AT THIS TIME - UNKNOWN RETURN TO WORK DATE[.]" THE DOCUMENTATION WAS SUBMITTED AS PART OF APPELLANT'S REQUEST TO HER EMPLOYER FOR AN ADA ACCOMMODATION DUE TO CONTINUED INABILITY TO RETURN TO WORK AND NEED FOR AN INDEFINITE LEAVE OF ABSENCE BECAUSE OF A HEALTH CONDITION. AT THE HEARING, APPELLANT TESTIFIED THAT SHE WAS ABLE TO WORK BUT WAS NOT RELEASED FROM HER DOCTOR TO RETURN TO WORK, AND FAILED TO SUBMIT ANY MEDICAL EVIDENCE TO ESTABLISH THAT SHE IS NOW ABLE TO PERFORM HER JOB DUTIES.

PURSUANT TO R.C. 4141.29(A)(4), NO INDIVIDUAL IS ENTITLED TO BENEFITS FOR ANY WEEK UNLESS THE INDIVIDUAL "IS ABLE TO WORK[.]" R.C. 4141.46 REQUIRES R.C. 4141.29 TO BE LIBERALLY CONSTRUED. THE PHRASE "ABLE TO WORK" HAS BEEN CONSTRUED TO MEAN "PHYSICAL CAPABILITY TO WORK," NOT "READINESS TO WORK." HINKLE V. LENNOX FURNACE CO., 84 OHIO APP. 478, 486-487, 83 N.E.2D 903 (3D DIST.1948). APPELLANT'S LAY TESTIMONY, IN THE ABSENCE OF ANY CORROBORATING MEDICAL EVIDENCE OR WORK HISTORY, DOES NOT DISPLACE THE RECOMMENDATION OF HER HEALTHCARE PROVIDER; THUS, THE UCRC'S CONSTRUCTION OF THE APPLICABLE STATUTE AND DECISION WAS NOT UNLAWFUL, UNREASONABLE, OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. THE DECISION IS AFFIRMED. FINAL. NO COURT COSTS SHALL BE IMPOSED.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.


Judge Signature

9/19/17
Date