



D119880008

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

MICHAEL E. DALTON,

Appellant,

vs.

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

Appellees.

Case No. A 1605741

Judge Melba D. Marsh

COURT OF COMMON PLEAS  
ENTER

HON. MELBA D. MARSH

CLERK SHALL SERVE NOTICE  
TO PARTIES PURSUANT TO CIVIL  
RULE 68 WHICH SHALL BE TAXE  
DUE TO COSTS HEREIN.

ENTRY ADOPTING THE  
MAGISTRATE'S DECISION

**ENTERED**  
OCT 25 2017

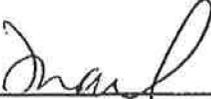
**FOR COURT USE ONLY**  
S.C.  
Line # 10

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that affirmed a decision by the Director, Ohio Department of Job and Family Services (ODJFS) that disallowed benefits to the Appellant, Michael E. Dalton, after finding that he failed to file a valid application for unemployment compensation benefits. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence.

The Appellant filed Objections to the Magistrate's Decision on July 5, 2017. On July 10, 2017, the Appellant filed a document moving this Court to take Judicial Notice of a twenty-one page article written in 2014 about the unemployment compensation system. ODJFS filed a Memorandum Contra and a Motion to Strike the article on July 17, 2017. The Court has reviewed the record of the Review Commission; the pleadings filed with the Court, and considered the oral arguments of the parties. The Court finds

that the decision of the Review Commission and the Magistrate were not unlawful, unreasonable or against the manifest weight of the evidence should be AFFIRMED. The Court will not take judicial notice of the document filed by the Appellant. The article is not appropriate for judicial notice. The Motion to Strike is SUSTAINED.

This is the final appealable order. There is no just reason for delay. Costs are to be paid by the Appellant.

  
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JUDGE MELBA MARSH



4141.01(R)(1). The Appellant appealed the Determination. A Redetermination was issued by ODJFS that affirmed the Determination. Appellant appealed from the Redetermination and ODJFS transferred jurisdiction of the appeal to the Review Commission.

On July 12, 2016, ODJFS sent a notice to the Appellant and six of his previous employers indicating that the Appellant's case had been transferred to the Review Commission. This NOTICE THAT AN APPEAL HAS BEEN TRANSFERRED BY THE DIRECTOR TO THE REVIEW COMMISSION included instructions on how to prepare for a hearing, request subpoenas and submit documents for the hearing officer to consider.<sup>1</sup> On July 13, 2016, the Review Commission issued a Notice of Hearing. The hearing was scheduled for July 26, 2016. The Notice of Hearing attached a NOTICE THAT A TELEPHONE HEARING WILL BE HELD. This document explained how to prepare for the hearing, issuing subpoenas, submit documents, obtain a copy of the file, get a postponement, and withdraw the appeal.<sup>2</sup> The case was dismissed on July 27, 2016 because the Appellant did not appear at the hearing.<sup>3</sup> The Dismissal was later vacated and another Notice of Hearing was sent to the Appellant with the same instructions that were contained in the first Notice of Hearing.

An evidentiary hearing was held before a hearing officer for the Review Commission on August 11, 2016. The hearing officer affirmed the Redetermination issued by ODJFS. The hearing officer found that the Appellant did not file a valid application for benefits. The Appellant requested further review of the claim by the Review Commission, but the full Review Commission disallowed the Appellant's request. The Appellant appealed and the case is now ripe for review.

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<sup>1</sup> July 12, 2016 Notice That An Appeal Has Been Transferred By The Director to the Review Commission.

<sup>2</sup> July 13, 2016, Notice of Hearing

<sup>3</sup> July 27, 2016, Dismissal Notice

## STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H); *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. A reviewing court must not make factual findings or determine a witness's credibility and must affirm the Review Commission's decision if there is some competent, credible evidence to support it. *Id.*

## DISCUSSION

The Court has reviewed the record provided by the Review Commission and the briefs of ODJFS and the Appellant. Before this court decides the merits of this case, it must first rule on ODJFS' Motion to Strike Exhibits Attached to Appellant's Reply Brief. On May 3, 2017, ODJFS moved to have exhibits B and C stricken from the record.<sup>4</sup> The Appellant did not file a Reply to ODJFS' Motion to Strike. The Motion to Strike Exhibits B and C is sustained. The Court will not take judicial notice of cases filed against one of the Appellant's former employers that has no relevance or precedential value to this unemployment compensation appeal.

This Court now turns to the merits of this case. In order to qualify for unemployment compensation benefits an applicant must file a valid application for determination of unemployment benefits.<sup>5</sup> For an application to be valid certain

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<sup>4</sup> Exhibit C is unlabeled but consist of a cover page for U.S. Court of Appeals Case No. 13-3265 and the entire case for *Beauford v. Actionlink, LLC*, 781 F. 3d 396 (8<sup>th</sup> Cir. 2015) referred as U.S. Court of Appeals Case No. 13-3380.

<sup>5</sup> R.C. 4141.01(R)(1).

requirements must be met. The individual filing the application 1) must be unemployed; 2) has been employed by an employer or employers subject to the Unemployment Compensation Act in at least twenty qualifying weeks within an individual's base period; and 3) earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half percent<sup>6</sup> of the statewide average weekly wage for such weeks.<sup>7</sup> The hearing officer for the Review Commission found that the Appellant did not earn at least \$243.00 during his base period<sup>8</sup> or alternate base period<sup>9</sup> to file a valid application for benefits rights.<sup>10</sup>

The Appellant appeals from the hearing officer's decision on four grounds. Three of Appellant's four Assignments of Error allege that he was denied due process and equal protection. The Appellant describes himself as handicapped and a minority.<sup>11</sup> The Appellant, pro se, failed to put forth any legal argument in his brief explaining how he was treated differently because of his handicap or ethnic status.<sup>12</sup> In the record, he argues that his equal protection rights are violated because failure to get benefits leads to public assistance which shifts the burden to taxpayers.<sup>13</sup> It is also not clear why the Appellant believes he was denied due process of law. The record of the Review Commission shows that he received notice and had an opportunity to be heard. Appellant participated in his hearing.

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<sup>6</sup> In 2016, the statewide average weekly wage was \$243.00.

<sup>7</sup> R.C. 4141.01(R)(1)

<sup>8</sup> Base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. R.C. 4101.01(Q)(1).

<sup>9</sup> Alternate base period means the four most recently completed calendar quarters preceding the first day of the individual's benefit year. R.C. 4141.01(Q)(2)

<sup>10</sup> August 12, 2016 Hearing Officer Decision

<sup>11</sup> Appt's. Brief pp. 3, 5. Appellant's reference to the Application Summary in the record of the Review Commission states that his race is "American/Indian/Alaskan and his handicap is not disclosed.

<sup>12</sup> The Appellant's Brief references multiple statutes but legal application and arguments are not developed in the brief in a manner that would allow this court to rule upon them.

<sup>13</sup> Hearing Transcript pp. 12-13.

The Appellant's other argument, gleaned from the entirety of Appellant's brief, focuses on his challenge to the wages he earned or was reported by employers during his base period and the number of weeks that should be used under prongs two and three of R.C. 4141.01(R)(1).

Employers subject to the Unemployed Compensation Act are required to report weeks of work and wages to ODJFS quarterly.<sup>14</sup> In this case, six employers reported wages and weeks for the Appellant during his base period and alternate base period. The Appellant alleges, in the record, that at least four of his six employers underreported wages by failing to report all time he worked in violation of the Fair Labor Standards Act.<sup>15</sup> The Appellant maintains that ODJFS failed to investigate the hours he worked but was not paid for.<sup>16</sup> ODJFS is not the agency given authority to investigate wage and hour violations. The employer reported wages and weeks to ODJFS' system. The hearing officer calculated the base period and alternate base period in the following manner.

### **FINDINGS OF FACT**

Claimant was unemployed when he filed his Application for Determination of Benefit Rights on June 13, 2016.

During claimant's base period (the period from the beginning of the 1<sup>st</sup> quarter of 2015 through the end of the 4<sup>th</sup> quarter of 2015), he worked for six employers covered by the unemployment compensation laws of the State of Ohio. These employers were Actionlink, LLC, Cb Quality Staffing, LLC, Employer Solutions Staffing Group LLC, Marketsource, Inc., Mueller Services Inc., and Queen City Gutter Systems, Inc. The employer reported weeks and wages to ODJFS shows that the claimant worked for Actionlink, LLC for thirteen weeks in the 1<sup>st</sup> quarter of 2015 and earned \$1,822.00 in wages, in the 2<sup>nd</sup> quarter of 2015 he worked for Actionlink, LLC for two weeks and earned \$9.00 and he worked for Cb Qualify Staffing, LLC for two weeks and earned \$409.00, in the 3<sup>rd</sup> quarter of 2015 he worked for Employer Solutions Staffing Group LLC for one week and

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<sup>14</sup> R.C. 4141.20

<sup>15</sup> Appt's. Reply Br. Ex. A.; Appt's. Brf. pp. 3-4.

<sup>16</sup> Appt's. Br. p. 9.

earned \$96.00, for Mueller Service Inc. for eight weeks and earned \$1,203.00 and he worked for Marketsource, Inc. for one week and earned \$23.00. In the 4<sup>th</sup> quarter of 2015 the claimant worked for Queen City Gutter Systems, Inc. for 0 weeks and earned \$365.00, and he worked for Mueller Services Inc. for 10 weeks and earned \$2,353.00. Claimant's total weeks of employment during the base period were 37 and he earned \$6,280.00 in wages.

During claimant's alternate base period (the period from the beginning of the 2<sup>nd</sup> quarter of 2015 through the end of the 1<sup>st</sup> quarter of 2016), he worked for six employers covered by the unemployment compensation laws of the State of Ohio. These employers were Actionlink, LLC, Cb Quality Staffing, LLC, Employer Solutions Staffing Group LLC, Marketsource, Inc., Mueller Services Inc., and Queen City Gutter Systems, Inc. The employer reported weeks and wages to ODJFS shows that in the 2<sup>nd</sup> quarter of 2015 he worked for Actionlink, LLC for two weeks and earned \$9.00 and he worked for Cb Qualify Staffing, LLC for two weeks and earned \$409.00, in the 3<sup>rd</sup> quarter of 2015 he worked for Employer Solutions Staffing Group LLC for one week and earned \$96.00, for Mueller Service Inc. for eight weeks and earned \$1,203.00 and he worked for Marketsource, Inc. for one week and earned \$23.00. In the 4<sup>th</sup> quarter of 2015 the claimant worked for Queen City Gutter Systems, Inc. for 0 weeks and earned \$365.00, and he worked for Mueller Services Inc. for 10 weeks and earned \$2,353.00. In the 1<sup>st</sup> quarter of 2016 the Claimant worked for Queen City Gutter Systems, Inc. for 2 weeks and earned \$1,470.00. Claimant's total weeks of employment during the alternate base period were 26 and he earned \$5,928.00 in wages.<sup>17</sup>

The Appellant disagreed with the wages reported by Actionlink during the hearing.<sup>18</sup> The hearing officer asked the Appellant how many weeks he worked at Actionlink in the first quarter of 2015. The Appellant indicated that the information is not available.<sup>19</sup> The Appellant stated that the qualifying weeks were underreported but the hearing officer points out that Actionlink reported the maximum number of weeks they could report.<sup>20</sup> The Appellant then challenges the wages reported by Actionlink but the Appellant is unable to give the hearing officer a wage amount because he states his

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<sup>17</sup> Hearing Officer's Decision p. 4.

<sup>18</sup> Hearing Tr. pp. 4-5.

<sup>19</sup> Hearing Tr. p. 4

<sup>20</sup> Id.

work was off the clock.<sup>21</sup> The Appellant does not have a W-2 from Actionlink for 2015 to present.<sup>22</sup> The Appellant does not have any documents for any of the six employers. The hearing officer then states to the Appellant "Just tell me how many weeks you worked and how much you think you earned. You can at least do that. I'm sure you have some idea. Why don't you tell me what the answer is?"<sup>23</sup> The Appellant is unable to respond. The Appellant is also unable to tell the hearing officer when he started working for Actionlink.<sup>24</sup> The Appellant then admits he is not prepared for the hearing because he was out looking for work, is not at home and out of state.<sup>25</sup> The Appellant did not subpoena any documents or witnesses from the time he received any of the notices from the Review Commission explaining how to proceed. Appellant's request for a continuance was denied.

The Appellant then indicates various ways that his work history can be used to obtain twenty weeks of work and meet the \$243.00 average weekly wage.<sup>26</sup> The hearing officer points out that the weeks must be in the base period and are not selected at random.<sup>27</sup>

The Appellant takes issue with the manner in which ODJFS calculates the weeks. ODJFS counts the weeks and wages as reported by each employer. The Appellant, at some point, worked for more than one employer at the same time. Appellant argues that ODJFS should combine the weeks he works for multiple employers which would decrease his number of work weeks and thereby make his average weekly wage increase. R.C. 4141.01(O)(1) defines a qualifying week.

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<sup>21</sup> Hearing Tr. p. 5.

<sup>22</sup> Hearing Tr. p. 6

<sup>23</sup> Hearing Tr. p. 8.

<sup>24</sup> *Id.*

<sup>25</sup> Hearing Tr. pp. 8-9

<sup>26</sup> Hearing Tr. p. 10

<sup>27</sup> Hearing Tr. p. 11

- (1) "Qualifying week" means any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to this chapter. A calendar week with respect to which an individual earns remuneration but for which payment was not made within base period, when necessary to qualify for benefit rights, may be considered to be a qualifying week. The number of qualifying weeks which may be established in a calendar quarter shall not exceed the number of calendar weeks in a quarter.  
R.C. 4141.01(O)(1)

ODJFS' manner of calculating qualifying weeks does not appear to violate the statute. The statute states that a qualifying week means any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration. The only restriction is that the number of qualifying weeks which may be established in a calendar quarter shall not exceed the number of calendar weeks in a quarter.

In this case, the number of qualifying weeks in each quarter of the base period or alternate base period does not exceed thirteen calendar weeks. Actionlink reported thirteen weeks in the first quarter of 2015. The qualifying weeks for other employers never exceed ten in any quarter.

As to the wages reported, the Appellant was not able to offer any evidence contrary to what Actionlink reported and the wages reported by other employers were not challenged during the hearing. As the hearing is about to close, the Appellant indicates that for the thirty-seven weeks in the base period the wages should have been \$9,250.00.<sup>28</sup> The Appellant argues that the hearing officer was compelled to utilize this figure in computing his base period. The hearing officer was not required to blindly accept the Appellant's testimony that his wages were \$9,250.00 when had already testified that he didn't know when he started work at Actionlink, how much money he

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<sup>28</sup> Hearing Tr. p. 13.

earned there and how many weeks he worked there.<sup>29</sup> Moreover, there was no testimony about Appellant's challenge to wages reported for all the other employers.

### **DECISION**

The decision of the Review Commission denying the Appellant's application for unemployment compensation benefits is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight of the evidence. The Appellant's claim for unemployment benefits was properly denied. Further, the Appellant's Exhibits B and C attached to his Reply brief is hereby STRICKEN.



**MICHAEL L. BACHMAN  
MAGISTRATE,  
COURT OF COMMON PLEAS**

### **NOTICE**

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

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<sup>29</sup> Hearing officers can exclude irrelevant or cumulative evidence, and give weight to the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of serious affairs. R.C. 4141.281(C)(2). The trier of fact may believe a witness completely, in part, or not all. *Royster v. Bd. of Rev.*, 4<sup>th</sup> Dist. No. 89CA 1826, 1990 WL 54962 (April 13, 1990).

Copies sent by Clerk of Courts to:

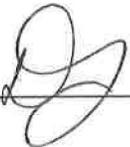
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 6/6/17

Deputy Clerk:  \_\_\_\_\_