[Cite as *Goodrich v. Ohio Unemp. Comp. Rev. Comm.*, 2012-Ohio-467.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cindy L. Goodrich,	:	
Appellant-Appellant,	:	
		No. 11AP-473
v.	:	(C.P.C. No. 10CVF-10-15888)
Ohio Unemployment Compensation Review Commission et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	

D E C I S I O N

Rendered on February 9, 2012

Cindy L. Goodrich, pro se.

Michael DeWine, Attorney General, and *David E. Lefton*, for appellee Director, Ohio Department of Job & Family Services.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶1} Appellant, Cindy L. Goodrich, has filed an appeal from the judgment of the Franklin County Court of Common Pleas, in which the court affirmed the decision of the Unemployment Compensation Review Commission ("commission"), appellee, a division of the Ohio Department of Job & Family Services ("ODJFS"), appellee.

{¶2} Appellant was employed by Quest Diagnostics, Inc. ("Quest"), from November 7, 2007 through March 16, 2010 as a phlebotomist. On February 25, 2010, appellant submitted a "resignation" letter to Carolyn Smith, a supervisor at Quest. In the letter, appellant informed Smith that her last day with the Cincinnati Business Unit for Quest would be March 16, 2010. She indicated that she was relocating to San Diego, California with her husband.

{¶3} On March 22, 2010, appellant applied for unemployment benefits. The application was eventually allowed, with benefits commencing March 21, 2010. In May 2010, the commission issued a re-determination disallowing the application, finding appellant quit her employment due to marital obligations. On June 4, 2010, appellant, pro se, filed an appeal with the Franklin County Court of Common Pleas.

{¶4} On April 28, 2011, the trial court issued a decision and entry denying appellant's appeal. The trial court found (1) appellant quit her employment under disqualifying circumstances due to a marital obligation pursuant to R.C. 4141.29(D)(2)(c); (2) due process requirements were met when appellant was given the opportunity to appear before an independent hearing examiner and present her case; (3) the commission did not violate appellant's due process rights when the hearing officer refused to continue the hearing and issue subpoenas that appellant purportedly requested; (4) R.C. 4141.29(D)(2)(c) is not unconstitutional and does not violate appellant's rights to due process and equal protection; (5) appellant's First and Fourteenth Amendment rights were not violated based on religious grounds because she is an atheist; and (6) ODJFS and the commission did not violate her rights under the

Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973. Appellant appeals the judgment of the trial court, asserting the following assignments of error:

> [I.] The decision of the Hearing officer finding that "Claimant contends that she submitted subpoena request to the Unemployment Compensation Review Commission to require the employer to produce documents and witness to prove that she had a right to transfer to San Diego, California. These Subpoenas were not issued. The evidence clearly demonstrates that claimant was an at-will employee. She had no contractual right to transfer to another state. Therefore, the Hearing officer refused to continue the hearing in order to have the subpoenas issued." The Hearing officer in refusing to issue the requested subpoena(s) and to continue the hearing violated Appellant[']s Fourteenth Amendment Right to Due Process. Was unlawful, unreasonable and against the manifest weight of the evidence and should be reversed under O.R.C. 4141.282(H).
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> [II.] That O.R.C. 4141.29(D)(2)(c) Denying unemployment to all individuals who "quit work to marry or because of marital, parental, filial, or other domestic obligations." Is a violation of Appellant[']s Fourteenth Amendment rights to Due Process under the United States Constitution and a violation of the Ohio Constitution Article 1 Section 2 to Equal Protection. Was unlawful, unreasonable and against the manifest weight of the evidence and should be reversed under O.R.C. 4141.282(H).
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> [III.] That O.R.C. 4141.29(D)(2)(c) Denying unemployment to all individuals who "quit work to marry or because of marital, parental, filial, or other domestic obligations." While allowing exceptions for some religious reasons and not other religious views is a violation of Appellant[']s First Amendment Rights as applied to the States thought [sic] the Fourteenth Amendment Rights under the United States Constitution and a violation of the Ohio Constitution Article 1 Section 1, 2, & 7. Which creates a violation of the Equal Protection Clause of both Federal and State Constitutions. Was unlawful, unreasonable and against the manifest weight of the evidence and should be reversed under O.R.C. 4141.282(H).
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> [IV.] That ODJFS and UCRC violated Appellant[']s rights under Americans with disabilities Act U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(7) and the Rehabilitation Act of 1973, 29

> U.S.C. § 794 by refusing to address or respond to Appellant[']s repeated and continued request for accommodations of her reading disability. This was unlawful, unreasonable and against the manifest weight of the evidence and should be reversed under O.R.C. 4141.282(H).
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> [V.] The court of common pleas incorrectly stated that pro se litigants are to be held to the same standard as an attorney. When the U.S. Supreme Court has held that is not to be the case.
>
> [VI.] That ODJFS, UCRC, and the court of common pleas rulings that Appellant did not have an implied contract and a legal right to transfer, after being transfer[ed] by employer months prior to her request. Was unlawful, unreasonable and against the manifest weight of the evidence and should be reversed under O.R.C. 4141.282(H).

{¶5} In all of appellant's assignments of error, appellant contests the trial court's affirmance of the commission's decision. A trial court and an appellate court employ the same, well-established standard of review in unemployment compensation appeals: "[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. Servs.*, 73 Ohio St.3d 694, 697 (1995); R.C. 4141.282(H). When a reviewing court (whether a trial or appellate court) applies this standard, it may not make factual findings or determine witness credibility. *Irvine v. State Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). Factual questions remain solely within the commission's province. *Tzangas* at 696. Thus, a reviewing court may not reverse the commission's decision simply because "reasonable minds might reach different conclusions." *Irvine* at 18. The focus of an appellate court when reviewing an unemployment compensation appeal is upon the commission's decision, not the trial court's decision. *Moore v. Comparison Mkt., Inc.*, 9th Dist. No. 23255, 2006-Ohio-6382, ¶ 8.

{¶6} The Unemployment Compensation Act "was intended to provide financial assistance to an individual who had worked, was able and willing to work, but was temporarily without employment through no fault or agreement of his own. * * * The Act does not exist to protect employees from themselves, but to protect them from economic forces over which they have no control. When an employee is at fault, he is no longer the victim of circumstances but is instead directly responsible for his own predicament. Fault on the employee's part separates him from the Act's intent and the Act's protection. Thus, fault is essential to the unique chemistry of a just cause termination." *Tzangas* at 697-698. Nevertheless, the unemployment compensation statutes must be liberally construed in favor of awarding benefits to the applicant. *Clark Cty. Bd. of Mental Retardation & Dev. Disabilities v. Griffin*, 2d Dist. No. 2006-CA-32, 2007-Ohio-1674, ¶ 10, citing R.C. 4141.46; *Ashwell v. Ohio Dept. of Job & Family Servs.*, 2d Dist. No. 20522, 2005-Ohio-1928, ¶ 43.

{¶7} Appellant argues in her first assignment of error that the hearing officer violated her due process rights when he refused to continue the hearing so the commission could issue subpoenas that appellant had previously requested. The trial court concluded that appellant received proper notice and a hearing consistent with due process. Appellant does not contest this finding. The trial court then found that there was no documentation in the record, other than appellant's testimony, that she requested the issuance of subpoenas. Appellant contends this is not true, and, thus, she was not given the opportunity to present the facts to demonstrate that she was entitled to unemployment benefits, citing *Atkins v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 08AP-182, 2008-Ohio-4019, citing *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 7th Dist. No. 07

MA 124, 2008-Ohio-1061 (finding the key factor in deciding whether the hearing satisfied procedural due process is whether the claimant had the opportunity to present the facts which demonstrate that she was entitled to unemployment benefits). In support of her claim that the record does, in fact, show that she requested subpoenas, appellant cites the following portion of the hearing transcript:

> Hearing Officer: Well (inaudible) our records [sic] I don't see there was ever a subpoena request made.
>
> Mr. Goodrich: We, we mailed on the 4th uh I'm sorry we emailed on the 3rd, received a response on the 4th that we had to call in number. Uh the number we called we were told that the person who does subpoena was out till Monday. We called on Monday and requested the subpoena of uh this week of the person who was doing them.
>
> Hearing Officer: Well I understand how it (inaudible) issued but no record of being issued. We have to have uh at least five full business days to process the subpoena.
>
> Mr. Goodrich: Right.

{¶8} Appellant claims that it was during the second "inaudible" section of the above excerpt that the hearing officer states appellant requested the subpoenas but they were never issued. However, we cannot rely upon appellant's unsupported claim that the inaudible section of the transcript contained the hearing officer's acknowledgment that appellant had requested the subpoenas. The language surrounding the "inaudible" notation does not illuminate the issue to any extent. We cannot say that appellant has shown that she requested subpoenas. Therefore, appellant's first assignment of error is overruled.

{¶9} Appellant argues in her second assignment of error that R.C. 4141.29(D)(2)(c) is unconstitutional, as it violates her right to due process and equal

protection. R.C. 4141.29(D)(2)(c) provides that no individual may be paid benefits if the individual quit work to marry or because of marital, parental, filial, or other domestic obligations. The trial court here concluded that appellant received due process because she was given notice and a full opportunity to be heard. We agree, as discussed under appellant's first assignment of error. As for equal protection, the trial court found appellant was not denied such because appellant failed to identify the protected class to which she belonged. If her claim is based upon gender and her status as a married women, R.C. 4141.29(D)(2)(c) is written as gender neutral.

{¶10} We note first that there is a strong presumption in favor of the constitutionality of statutes. *State v. Dario*, 106 Ohio App.3d 232 (1st Dist.1995), citing *State v. Anderson*, 57 Ohio St.3d 168 (1991); R.C. 1.47. It is a well-settled principle of statutory construction that, where constitutional questions are raised, courts will liberally construe a statute to save it from constitutional infirmities. *Woods v. Telb*, 89 Ohio St.3d 504 (2000). The party challenging a statute must prove that it is unconstitutional beyond a reasonable doubt. *Dario*.

{¶11} Here, appellant cites a 2003 study surveying the states that have laws that deny benefits to spouses who quit work due to family relocation, with Ohio being in the small minority of states with such laws. Appellant argues that Ohio's laws are in the minority and outdated. Appellant also cites a California case, *Boren v. California Dept. of Emp. Dev.*, 59 Cal.App.3d 250, 130 Cal.Rptr. 683 (1976), and a Pennsylvania case, *Wallace v. Unemp. Comp. Bd. of Rev.*, 38 Pa.Cmmw. 342, 393 A.2d 43 (1978), both of which found violative of equal protection their respective unemployment compensation

statutes that disqualified from benefits claimants who voluntarily terminated their employment for marital, filial, or domestic reasons.

{¶12} Initially, none of these authorities are controlling upon this court. Thus, we may reject them outright. Notwithstanding, many of appellant's arguments in her brief, especially those relating to the 2003 study, concern legislative prerogative, philosophy, and lawmaking, which are not within the province of this court. Questions regarding the wisdom of legislation are left to the General Assembly. If the General Assembly has the constitutional power to enact a law, its wisdom is of no concern to the court. *Ohio Pub. Interest Action Group v. Pub. Util. Comm.*, 43 Ohio St.2d 175, 183 (1975), citing *State Bd. of Health v. Greenville*, 86 Ohio St. 1, 20 (1912); *Brinkman v. Drolesbaugh*, 97 Ohio St. 171, 183 (1918). As for *Boren*, it is distinguishable from the present case. In *Boren*, the claimant's statistics showed that 99 percent of the applicants rejected under that state's unemployment provision were women. From this, the court concluded that the section affected women only and "was designed to disqualify a selected group of female claimants." There is no such statistical evidence regarding R.C. 4141.29(D)(2)(c) presented by appellant here. *Id*. at 258.

{¶13} Although the circumstances in *Wallace* are more closely akin to those in the present case, we decline appellant's invitation to strike down R.C. 4141.29(D)(2)(c) as unconstitutional. The Supreme Court of Ohio, in *Farloo v. Champion Spark Plug Co.*, 145 Ohio St. 263 (1945), addressed the predecessor statute to R.C. 4141.29(D)(2)(c), Gen.Code, 1345-6(d)(7), which similarly provided that "no individual may * * * be paid benefits for the duration of any period of unemployment with respect to which the administrator finds that such individual * * * quit work voluntarily to marry or because of

marital obligations." The court in *Farloo* held that, "when a wife definitely quits her work to live with her husband in another part of the country, it is pursuant to her marital obligation. Therefore, under the provisions of Section 1345-6, part 'd,' General Code, Mrs. Farloo was completely ineligible for unemployment benefits." *Id*. at 268. The court went on to explain that it believed this issue was within the province of the legislature:

> Other states have had a variety of statutory provisions covering the subject of unemployment compensation, some of which, in dealing with the question of disqualification, particularly as to the effect of quitting work because of marital obligation, are substantially the same as the provisions of the Ohio statute above quoted. Although there appears to have been no decisions of courts of last resort construing and applying those provisions, they have generally been administered in accordance with the conclusion to which we are impelled by force of the clear and unequivocal language employed in these statutory provisions. In our view, a contrary construction and application would be tantamount to legislative action, which is the province of the legislative and not the judicial branch of the government.

Id. at 269.

{¶14} Judge Rogers, in his dissenting opinion in *Wallace*, agreed that any conferring of unemployment benefits upon those who quit work for marital reasons belongs to the legislature. Judge Rogers stated, "the history of unemployment compensation in Pennsylvania is one of increasingly larger benefits conferred on more and more people. This history, together with the exception made for domestic causes for quitting, convince me that the Legislature is aware both of the needs of the unemployed and of the problems of funding the program. We should not interfere with the Legislature's policy in this case on this record." *Id*. at 354-355.

{¶15} Furthermore, the Supreme Court of Ohio explained the rationale behind denying unemployment benefits under such circumstances in *Brown-Brockmeyer Co. v. Holmes*, 152 Ohio St. 411 (1949). In that case, the court, citing *Farloo*, explained "[t]his court and other courts look with disfavor on the allowance of unemployment compensation where work is available but is refused upon some caprice of the employee. Where a person regularly employed removes himself to a point or causes a situation where work is unavailable, while hi[s] former type of employment is continuously available, he, in the opinion of this court, waives his right to unemployment compensation benefits as to an employer offering such employment." *Id*. at 415.

{¶16} In his dissenting opinion in *Wallace*, Judge Rogers shared the same rationale discussed in *Brown-Brockmeyer*. Judge Rogers contended the majority "entirely overlooks the reason why the disqualification of persons who quit their work for domestic reasons passes constitutional muster carefully explained in [*Unemp. Bd. of Rev. v. Jenkins* 23 Pa.Cmmw. 127, 350 A.2d 447 (1976)] that the purpose of unemployment compensation is to provide temporary assistance to persons who are suddenly without employment for causes over which they have little or no personal control." *Id*. at 354.

{¶17} In addition, the decision in *Wallace* has been recently criticized by one member of the same court. In *Procito v. Unemp. Comp. Bd. of Rev.*, 945 A.2d 261 (2008), Judge Leavitt stated in his concurrence that he believed *Wallace* was wrongly decided. After noting that *Wallace* was decided by a close four-to-three vote, with one of the four votes a concurrence in the result, he stated the jurisprudence expressed in *Wallace* was dated and not consistent with more recent holdings of the United States and Pennsylvania Supreme Courts that economic legislation nearly always survives a

rational-relationship challenge. *See id*. at 269. Judge Rogers, in his dissenting opinion in *Wallace*, also explained the economic reasons behind the legislation. He stated, "it seems to me that the added cost of providing benefits to persons who leave work for domestic reasons is a reason for denying them benefits, and a very good one indeed. The payment of benefits to spouses who follow their partners to new places of employment * * * or to persons with one or more of a myriad of other domestic reasons for quitting employment which could be conjured, could place an unimaginable burden on the program." *Id.*

{¶18} These authorities convince us that any change in Ohio law, in this respect, should be left to the legislature. We have no indication that the Supreme Court of Ohio has changed its view on this type of legislation, and we decline to find R.C. 4141.29(D)(2)(c) unconstitutional without some suggestion from that court in this regard. Therefore, appellant's second assignment of error is overruled.

{¶19} Appellant argues in her third assignment of error that allowing exceptions to R.C. 4141.29(D)(2)(c) for some religious reasons while not allowing exceptions for other religious views is a violation of her First Amendment and equal protection rights, citing the decision of the First District Court of Appeals in *Marvin v. Giles*, 11 Ohio App.3d 57 (1st Dist.1983). In *Marvin*, the appellate court found that a claimant who left his employment after he had a religious experience telling him to move to his home in Alabama to take care of his deceased sibling's children was entitled to unemployment compensation. Here, appellant claims that she is a professed atheist, and *Marvin* grants an exception to R.C. 4141.29(D)(2)(c) that permits benefits for those people who believe in a God but not for those who do not believe in a God.

{¶20} However, *Marvin* was not decided by this appellate district, and it is not controlling. Notwithstanding, we agree with the trial court that there is nothing in the record showing that her employer was aware of or considered appellant's religious views. The commission was also not aware of appellant's religious views until she raised them in her June 3, 2010 letter appealing her denial of benefits. The commission never cited her religious views in any determination, and appellant fails to show that it considered them in any way. Importantly, unlike *Marvin*, there is nothing in the record demonstrating that appellant quit her job based upon her religious views. Therefore, we find *Marvin* is irrelevant to this case, and whether a claimant may receive unemployment compensation after leaving her job based upon religious convictions is inapposite to the matter before us. Appellant's third assignment of error is overruled.

{¶21} Appellant argues in her fourth assignment of error that the commission and ODJFS violated her rights under the ADA and the Rehabilitation Act of 1973 when it refused to address or respond to her repeated requests for accommodations of her reading disability. Appellant asserts she was diagnosed with dyslexia, a disability under DSM-IV-TR 315.00, and she requested an exception to the policy of ODJFS and the commission that requires claims and appeals to be in writing. She contends that her disability hinders her ability to fully express herself in writing and comprehend writing.

{¶22} Title II of the ADA prohibits public entities from discriminating based on disability. In pertinent part, the ADA states: "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132. Similarly, 29 U.S.C. 794(a) of the Rehabilitation Act

provides that no otherwise qualified individual with a disability shall be excluded from, denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

{¶23} In the present case, the trial court concluded that these claims are matters for a separate lawsuit and were not part of the claims litigated before the commission. Appellant does not contest such under this assignment of error, and she acknowledges that she may pursue a separate legal action based upon these alleged violations. Appellant claims, rather, that she raises the commission's lack of accommodation to demonstrate she was denied full and fair access to an appeal. However, even if we could address this issue in the present appeal, we would find it unavailing. Appellant does not specifically explain how she was disadvantaged by her dyslexia or how she was denied full and fair access to an appeal. She states that the commission may not have fully understood her and may have been confused by her inability to understand the rules and procedure, but she gives no further explanation or examples. There is also no indication in the record that the commission did not understand appellant's filings. Our own review of her filings demonstrates that appellant ably expressed her contentions and views throughout this matter, and she filed detailed documents that included legal citations and authority to support her claims. Appellant's vague and non-specific claims are insufficient to demonstrate that she was actually prejudiced by the commission's actions or inactions in this respect. For these reasons, we overrule appellant's fourth assignment of error.

{¶24} Appellant argues in her fifth assignment of error that the court of common pleas erred when it stated that pro se litigants are held to the same standard as an attorney, when the United States Supreme Court has held that pro se litigants are to be

held to less stringent standards. In finding that appellant was afforded procedural due process, the trial court noted that Ohio law is clear that pro se litigants are held to the same standard as far as the requirement that they must follow procedural law and adhere to court rules.

{¶25} We agree with the trial court that it is well-established that pro se litigants are held to the same rules, procedures, and standards as litigants represented by counsel. The Supreme Court of Ohio has specifically held so in many cases. *See, e.g*., *Zukowski v. Brunner*, 125 Ohio St.3d 53, 2010-Ohio-1652; *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448; *Sabouri v. Ohio Dept. of Job & Family Servs.*, 145 Ohio App.3d 651 (10th Dist.2001). This court has held likewise in countless cases. *See*, *e.g*., *Fields v. Stange*, 10th Dist. No. 03AP-48, 2004-Ohio-1134, ¶ 7; *Dailey v. R & J Commercial Contracting*, 10th Dist. No. 01AP-1464, 2002-Ohio-4724, ¶ 17. It is true that a court may, in practice, grant a certain amount of latitude toward pro se litigants. *Robb v. Smallwood*, 165 Ohio App.3d 385, 2005-Ohio-5863, ¶ 5 (4th Dist.). However, the court cannot simply disregard the rules in order to accommodate a party who fails to obtain counsel. *Id*. "The rationale for this policy is that if the court treats pro se litigants differently, 'the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.' " *Pinnacle Credit Servs., LLC v. Kuzniak*, 7th Dist. No. 08 MA 111, 2009-Ohio-1021, ¶ 31, quoting *Karnofel v. Kmart Corp.*, 11th Dist. No. 2007-T-0036, 2007-Ohio-6939, ¶ 27.

{¶26} Appellant here cites to *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972) in support of her position that, as a pro se litigant, she is not held to the same procedural standards as an attorney. However, *Haines* is inapposite. In *Haines*, the Supreme Court

concluded that allegations in a pro se complaint, made by a prison inmate, would be held to less stringent standards than formal pleadings drafted by lawyers, and that in construing the complaint in such a strict manner, the trial court's dismissal was inappropriate. *Id*. at 520. To the contrary, in the present case, appellant seems to be arguing that she should be held to less stringent standards throughout the entire proceedings. However, as explained above, appellant is held to the same standards when it comes to procedures and rules. See *Monus v. Day*, 7th Dist. No. 10 MA 35, 2011-Ohio-3170, ¶ 32-35 (acknowledging that, although some latitude might be granted in the construction and formal requirements of pleadings, *Haines* does not stand for the proposition that pro se litigants should be held to a lesser standard throughout the entire proceedings). *See also Maguire v. Natl. City Bank*, 2d Dist. No. 24146, 2011-Ohio-387 (*Haines* does not alter the well-established tenet that pro se litigants are held to the same standard as licensed attorneys); *State v. Briscoe*, 8th Dist. No. 83471, 2004-Ohio-4096 (affirming that pro se litigants are held to the same standard as licensed attorneys and rejecting *Haines* as being a federal case that is not controlling over the court). Furthermore, as this court noted in *Fields*, *Haines* is a criminal case, and the United States Supreme Court, in *Mohasco Corp. v. Silver*, 447 U.S. 807, 826, 100 S.Ct. 2486 (1980) clarified that it never suggested in *Haines* that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel. For all of these reasons, appellant's fifth assignment of error is overruled.

{¶27} Appellant argues in her sixth assignment of error that the commission erred when it found that she did not have an implied contract and a legal right to transfer. Appellant first contends that the trial court erred when it stopped its analysis after finding

she was an at-will employee. Appellant maintains that case law establishes that at-will employees may still have an implied contract for employment, citing *Mers v. Dispatch Printing Co.*, 19 Ohio St.3d 100 (1985), and *Kelly v. Georgia-Pacific Corp.*, 46 Ohio St.3d 134 (1989). In *Mers*, the Supreme Court of Ohio recognized that the terms of an at-will employment relationship could be transformed into an implied contract for a definite term. *Mers*, at 103-104. In *Kelly*, the court found evidence that may demonstrate parties mutually assented to something other than at-will employment to include employee handbooks, company policies, and some oral representations. Thus, to this extent, we agree with appellant's argument.

{¶28} Appellant then argues that she proved by documentary and testimonial evidence that her transfer was approved but never complied with by Quest. Appellant asserts that Smith admitted she signed appellant's request-to-transfer form, and company policy and past history provided employees the right to transfer. We agree that Smith testified that she signed appellant's form requesting a transfer. However, we disagree with appellant's characterization of Smith's testimony that she stated company policy and past history provided employees the right to transfer. Smith only agreed with the question posed by appellant's representative that, "[I]n regards to transfer, have you ever seen an employee be able to transfer from one place to another, one business unit to another?" Thus, Smith only testified that she had seen employees transfer from one unit to another. Smith did not testify that company policy and past history provided employees any particular right to such a transfer. In fact, Smith testified, "[I]t's not a given that she will transfer. It's just a request." In addition, appellant has cited no evidence to support her assertion that appellant's transfer was approved in any manner by anyone at Quest.

Therefore, appellant's evidence, in these respects, did not support her claims, and these arguments are without merit. We also note that appellant again raises under this assignment of error the hearing officer's alleged denial of her right to issue subpoenas to produce an employee handbook and policies to support her claims. However, we have already addressed this subpoena argument above and rejected it. For these reasons, appellant's sixth assignment of error is overruled.

{¶29} Accordingly, appellant's six assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

DORRIAN, J., concurs.
TYACK, J., dissents.

TYACK, J., dissenting.

{¶30} I believe that Cindy Goodrich's and her counsel's own statements about her attempts to get subpoenas issued, especially with the detailed history about the attempts to issue the subpoenas, are sufficient to show that she tried to present her case and was prevented from doing so by bureaucratic problems in the government agency. The assertion that the person responsible for issuing subpoenas was "out until Monday" is certainly believable. I do not believe that her claim was an unsupported claim.

{¶31} I am also slow to discard her claims where the governmental agency responsible for generating a record of the hearing generates a transcript with the word "inaudible" at key places.

{¶32} Due Process of Law involves both the right to be aware of the issues to be determined and the right to contest the issues.

{¶33} Here, the government bureaucracy established the system for presenting evidence via the use of subpoenas and then issued no subpoenas. The government bureaucracy set up the systems for addressing entitlement to unemployment compensation through a hearing at which an accurate record is to be created for purposes of an administrative appeal and then failed to generate a complete record.

{¶34} I cannot say that Cindy Goodrich is entitled to unemployment benefits. I cannot say she is not. However, I can say she was not given the opportunity to fully develop her case. Due Process of Law, to me, requires that she be given that opportunity.

{¶35} I would reverse the judgment of the trial court and remand the case so a complete evidentiary hearing can be conducted.

{¶36} Since the majority does not do so, I respectfully dissent.

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