

[Cite as *New Carlisle v. Pratt*, 2015-Ohio-1398.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY**

CITY OF NEW CARLISLE

*Appellee*

v.

DANNY PRATT, et al.

*Appellants*

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Appellate Case Nos. 2014-CA-112 and  
2014-CA-114

Trial Court Case No. 2014-CV-221

(Civil Appeal from  
Common Pleas Court)

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OPINION

Rendered on the 10th day of April, 2015.

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WELBAUM, J.

{¶ 1} In this case, Appellants, Danny Pratt and the Director, Ohio Department of Job and Family Services (“ODJFS”), appeal from a trial court judgment reversing the decision of the Unemployment Compensation Review Commission (“UCRC”). Previously, the UCRC found that Pratt had been discharged without just cause by Appellee, City of New Carlisle (“City”). In support of his appeal, Pratt contends that the trial court erred by failing to make a finding that UCRC’s decision was not supported by some evidence in the record. Pratt further contends that the trial court erred by reversing UCRC’s decision because the agency’s decision is supported by some evidence in the record. ODJFS argues that the trial court erred in reversing the decision because it was not unlawful, unreasonable, or against the manifest weight of the evidence.

{¶ 2} We conclude that the trial court’s reasoning is not apparent in view of its brief decision, which fails to discuss the facts or applicable law. Nonetheless, our standard of review is the same as that of the trial court, and we conclude that the trial court erred in reversing the decision of the UCRC. The agency’s decision was supported by competent credible evidence, and was not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the judgment of the trial court will be reversed, and we will enter a judgment affirming the decision of the UCRC.

#### I. Facts and Course of Proceedings

{¶ 3} Danny Pratt was hired by the City in November 2000 to work in the City’s Wastewater Treatment Plant (“WWTP”). Pratt worked there as a maintenance mechanic until September 27, 2013, when he was terminated. The grounds given for his

termination, based on Section VII of the City Employee Handbook, were: “a. negligence or willful inattention to work”; “j. negligence of safety and health rules”; and “k. performance that does not meet the City’s standards.” Director’s File, City of New Carlisle’s Completed Request to Employer for Separation Information, Ex. 3, p. 2 (originally p. 13 of Section VII of the City’s Employee Handbook). According to the testimony of the City Manager, Kim Jones, the final incident leading to termination was Pratt’s failure to perform and document preventive inspection and maintenance. For purposes of background information, the events leading to the termination were as follows.

{¶ 4} In the 1980’s, the initial staffing recommendation for the City’s new WWTP facility was six people. By 2001, or shortly after Pratt was hired, that number was reduced to five, based on the facility’s automation. The Ohio EPA (“EPA”) did not object to the reduction of one staff position based on automation. However, after a November 29, 2012 inspection, the EPA sent the City Manager a letter on December 18, 2012, outlining eight areas that needed a response. The letter noted that many of the items had been addressed in previous inspections. Item Number 8 pertained to the fact that a preventive maintenance program had not been developed and implemented. In this regard, the EPA letter stated as follows:

A preventive maintenance program has not been developed or implemented. It is our understanding the preventive maintenance is not done on a proactive basis. No later than January 31, 2012,<sup>1</sup> provide a time line for developing and implementing a preventive maintenance

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<sup>1</sup> This date was obviously intended to be January 31, 2013, since the letter was written in December 2012.

program.

Your 1991 O&M manual requires six staff to operate and maintain the WWTP. Due to automation of the WWTP, this number has been reduced to 5. Ohio EPA does not object to the reduction of one staff position based on automation; however, there has only been 4 staff operating and maintaining the WWTP since September 2005 and as a result, maintenance is suffering. In 2009, New Carlisle reported that this issue would be addressed, but as of the date of the inspection, there were only 4 staff to perform maintenance activities. What actions is New Carlisle going to implement to resolve this issue? It is imperative that New Carlisle develop and implement a preventive maintenance program.

Director's File, City of New Carlisle's Completed Request to Employer for Separation Information, Ex. 5, p. 3.

**{¶ 5}** Shortly after the EPA letter, or January 15, 2013, Pratt had knee replacement surgery. He returned to work on April 29, 2013, after having been on paid administrative leave pending an independent medical examination (IME). Although Pratt's own doctor had certified him to return to work earlier, the City sent Pratt for an IME after discovering he was taking Vicodin pain medication as a result of the knee surgery. On April 26, 2013, the City required Pratt to sign an affidavit indicating that he would not take Vicodin while at work or within six hours prior to reporting to work.

**{¶ 6}** The first day that Pratt returned to work, a meeting was held to discuss the EPA report and new procedures that were being implemented to address the EPA's concerns. Maintenance log sheets were going to be placed on clipboards at various

locations within the WWTP, as well as at several lift stations that were not located at the WWTP. Some log sheets that were not otherwise assigned around the plant were also placed on clipboards in a hallway near Pratt's desk. The City now required inspection three times per week of many items of equipment (which had never been required before), and also required bi-weekly and quarterly lubrication of various kinds of equipment. Pratt was assigned the responsibility for completing these tasks. No other employees were specifically assigned to do any of the inspections or work, nor did any other employees do the work when Pratt was on vacation, off work for medical reasons, or suspended from work.<sup>2</sup> The City also did not hire any additional personnel to help with the workload, despite the fact that the EPA report indicated that the plant was already understaffed, with maintenance items currently being neglected due to lack of personnel. In addition to his other maintenance duties, Pratt was required to read meters for a week once a month; he was not released from this obligation when he was given the additional inspection duties.

{¶ 7} According to Pratt, the new requirements significantly added to his workload. After the meeting, Pratt expressed concern to his supervisor, Don Basham, about his ability to complete the sheets, due to the fact that the WWTP was 35 years old and had frequent breakdowns. Basham told him that if he fell behind and could not complete the sheets, that he should log what he was doing in the maintenance log book. This was a log kept separately from the inspection sheets.

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<sup>2</sup> For example, after the new duties were assigned, Pratt received a total of 7 days of suspension from work in August and September 2013. The Director of Public Works testified that other employees would be responsible for doing the work if Pratt were absent, but no evidence was presented that any other employee ever conducted any inspections or did any of the work, whether Pratt were there or not.

**{¶ 8}** For a short while, Pratt was able to complete the sheets. However, according to Pratt, multiple breakdowns in the WWTP and lift stations occurred, and he was not able to keep up with the additional work. During these times, he made notations in the maintenance log book about what he was doing.

**{¶ 9}** On July 19, 2013, Pratt received a verbal warning for failure to timely report an on-the-job injury. While on weekend duty, on a Sunday, Pratt tripped over a dirt pile at the plant. He mentioned it to another employee on duty, and stated that he thought he had twisted his ankle, but felt it would be all right. When Pratt came into work on Monday, he told his supervisor, Basham, what had happened. Basham asked if he wanted to report the accident, but Pratt stated that he did not. Basham immediately reported the incident to the City Manager, who required Pratt to immediately have a drug and alcohol test, as well as a medical examination. There is no indication in the record of any positive results on the drug and alcohol tests, and Pratt did not miss any work as a result of the incident. He was given a verbal warning for failing to timely report the incident.

**{¶ 10}** Subsequently, on July 26, 2013, Pratt accidentally scraped the side of the WWTP while using a backhoe to fill in dirt around the building. No structural damage was caused to the building; the damage was only cosmetic. Pratt failed to report this accident to the City, and was given a two-day suspension from work, on August 27-28, 2013, as a result.

**{¶ 11}** On August 29, 2013, Pratt was working at the Honey Creek Lift Station throughout the day. After disabling the alarm due to work being done by Columbia Gas Company, Pratt left the lift station after the work was completed, and neglected to reset

the alarm. He also failed to set the pumps back into auto mode. After the problem was discovered the following morning, Pratt reset the alarms and pumps and then notified his supervisor. A hearing was held on this incident on September 13, 2013, and Pratt was given a five-day suspension from work, effective September 23, 2013.

**{¶ 12}** On September 13, 2013, Pratt's supervisor, Basham, informed the Director of Public Works, Howard Kitko, that Pratt's maintenance check-off logs were not being properly completed. Basham made copies of the logs and gave them to Kitko, who then informed the City Manager. Pratt had not previously received any warnings or discipline regarding his completion of the check-off logs.

**{¶ 13}** A hearing was held on September 24, 2013. After finding Pratt guilty of violations of City standards of conduct a., j., and k ("Negligence or willful inattention to work"; "Negligence of safety and health rules"; and "Performance that does not meet the City's standards"), Pratt was terminated on September 27, 2013. Director's File, City of New Carlisle's Completed Request to Employer for Separation Information, Ex. 3, p. 2 (originally p. 13 of Section VII of the City's Employee Handbook).

**{¶ 14}** In the decision, the City Manager concluded that Pratt had negligently, or at worst, willfully failed to complete the maintenance logs. The manager also stated in her decision that Pratt had improperly taken logs to his desk, where he "pencil-whipped" them (or completed them after-the-fact at a place of easy-access) to indicate that the work had been done. However, dishonesty was not listed as a ground of termination.

**{¶ 15}** At the hearing before the UCRC, Pratt stated that he had never altered the original documents; he testified that the only time he removed the sheets from their clipboards in the plant was on September 20, 2013, when he learned that he was going to

be called for a disciplinary hearing due to the fact that the sheets had not been completed. According to Pratt, he took the sheets off the clipboards to make copies. He also made a copy of the maintenance log book. He found some entries where he had done the work but had not put his initials on the clipboard out in the plant. He stated that he then made notations on the copies, but did not alter the originals.

**{¶ 16}** Following his termination, Pratt applied for unemployment compensation with ODJFS. Initially, ODJFS concluded that he had been discharged with just cause. After Pratt appealed, the decision was affirmed on November 20, 2013. Upon further appeal, the matter was transferred to the UCRC, which heard testimony in January and February 2014. At the hearing, the City presented testimony from its City Manager and its Director of Public Service, while Pratt presented the testimony of an operator at the WWTP, as well as his own testimony.

**{¶ 17}** During the hearing, in addition to the matters discussed above, Pratt presented evidence that after his termination, an individual named Les Ellison was hired to do his job. Ellison had been an intern with the WWTP for the better part of a year before he was hired to replace Pratt in November 2013. Records submitted to the UCRC indicated that after Ellison was hired, other employees, in addition to Ellison, completed the maintenance sheets. Although the City maintained in the hearing that this was a result of Ellison being assisted during his six-month probationary period, the testimony of Scott Strayer, a WWTP employee, indicated that he and Ellison were splitting the duties, because there were some inspections that Ellison needed to perform throughout the week. Strayer stated that he would do inspections in the front part of the plant and Ellison would do them in the back part of the plant. Many of the inspection sheets



indicate that on some weeks, Ellison performed inspections on his own, and other employees performed inspections on alternate weeks, without Ellison.

**{¶ 18}** After hearing the evidence, the hearing officer reversed the prior decision, and concluded, under *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 653 N.E.2d 1207 (1995), that Pratt had been discharged without just cause because the requirements of the job had changed from Pratt's date of hire. The City then appealed from this decision, and the UCRC disallowed further review.

**{¶ 19}** In April 2014, the City appealed to the Clark County Common Pleas Court, and the administrative record was filed with the court in June 2014. After briefs were filed, the trial court issued a decision on September 17, 2014, reversing the decision of the UCRC and disallowing Pratt's claim for unemployment. Pratt and ODJFS now appeal from the judgment of the trial court.

## II. Failure to Make Prerequisite Findings

**{¶ 20}** Pratt's First Assignment of Error states that:

The Court of Common Pleas Erred in Reversing a Decision of the Unemployment Compensation Review Commission by Not Making the Prerequisite Finding that the Commission's Decision Was Not Supported by Some Evidence in the Record.

**{¶ 21}** Under this assignment of error, Pratt contends that the trial court erred by failing to make the required finding that UCRC's decision was unlawful, unreasonable, or against the manifest weight of the evidence.

**{¶ 22}** R.C. 4141.282(A) allows aggrieved parties to appeal decisions of the

UCRC to the court of common pleas. The standard of review for the common pleas court is outlined in R.C. 4141.282(H), which states that “[i]f 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 modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.”

**{¶ 23}** “This limited standard of review applies to all appellate courts.” (Citation omitted.) *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. “Thus, a reviewing court may not make factual findings or determine a witness's credibility and must affirm the commission's finding if some competent, credible evidence in the record supports it. \* \* \* In other words, a reviewing court may not reverse the commission's decision simply because ‘reasonable minds might reach different conclusions.’ ” *Id.*, quoting *Irvine v. Unemp. Comp. Bd. of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

**{¶ 24}** In arguing that the trial court's decision did not contain the required findings, Pratt notes that the decision contains only five sentences, and no analysis. Specifically, the trial court's entire reasoning consists of the following statements:

This case is before the Court on Appellant's appeal of a decision of the Ohio Unemployment Compensation Review Commission.

Based on a review of the certified record, exhibits, memorandum and briefs of the parties, the Court finds, Appellee Danny Pratt was terminated for just cause.

THEREFORE, the Court ORDERS the February 5, 2014 UCRC's decision REVERSED and finds Appellee's claim for unemployment is

DISALLOWED.

September 17, 2014 Entry, Doc. #10, p. 1.

{¶ 25} The trial court's brief statements fail to discuss the facts or applicable law, and we are, therefore, unable to determine the basis of the trial court's decision. Pratt concedes that this alleged error does not determine the appeal, because we are required to focus on the UCRC's decision, rather than that of the common pleas court. We agree with this assertion. See, e.g., *Howard v. Electronic Classroom of Tomorrow*, 10th Dist. Franklin No. 11AP-159, 2011-Ohio-6059, ¶ 12 (noting that "[t]he focus of an appellate court when reviewing an unemployment compensation appeal is upon the commission's, not the trial court's, decision.") (Citation omitted.)

{¶ 26} Given that our standard of review is the same as that of the trial court, and given our resolution of the remaining assignments of error, we will not reverse the court's decision based on this point. Compare *Nationwide Mut. Ins. Co. v. Cano*, 6th Dist. Erie No. E-07-014, 2007-Ohio-5354, ¶ 14 (noting that in "absence of any legal basis or rationale within the de minimis text of the disputed summary judgment ruling to serve as a starting point," the court would compare the theories in the motion for summary judgment to decide whether relevant and persuasive evidence was presented in support of summary judgment motion).

{¶ 27} Accordingly, we will consider the remaining assignments of error, and will overrule the First Assignment of Error as non-dispositive of this matter.

### III. Evidence in the Record

{¶ 28} The assignments of error presented by Pratt and ODJFS are similar and will

be considered together. Pratt's Second Assignment of Error states that:

The Court of Common Pleas Erred in Reversing the Decision of the Unemployment Compensation Review Commission Because there is Evidence in the Record to Support the Commission's Decision.

**{¶ 29}** Similarly, ODJFS's sole assignment of error states that:

The Common Pleas Court Erred in Reversing the Decision of the Unemployment Compensation Review Commission as that Decision Was Not Unlawful, Unreasonable, or Against the Manifest Weight of the Evidence.

**{¶ 30}** As was noted, our review of unemployment compensation appeals is quite limited, and we cannot decide matters of credibility. However, reviewing courts “ ‘do have the duty to determine whether the board's decision is supported by the evidence in the record.’ ” *Silkert v. Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 78, 2009-Ohio-4399, 919 N.E.2d 783, ¶ 26 (2d Dist.), quoting *Tzangas*, 73 Ohio St.3d at 696, 653 N.E.2d 1207.

**{¶ 31}** “Claimants are not eligible for benefits if they are discharged for just cause in connection with their work.” *Silkert* at ¶ 27, citing R.C. 4141.29(D)(2)(a). “Traditionally, just cause, in the statutory sense, is that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Id.*, citing *Irvine*, 19 Ohio St.3d at 17, 482 N.E.2d 587.

**{¶ 32}** In concluding that Pratt was discharged without just cause, the hearing officer relied on *Tzangas*, in which the Supreme Court of Ohio held that:

An employer may properly find an employee unsuitable for the

required work, and thus to be at fault, when: (1) the employee does not perform the required work, (2) the employer made known its expectations of the employee at the time of hiring, (3) the expectations were reasonable, and (4) the requirements of the job did not change substantially since the date of the original hiring for that particular position.

*Tzangas* at paragraph four of the syllabus.

{¶ 33} In this regard, the hearing officer concluded that not all the criteria in *Tzangas* had been met, because Pratt's job requirements changed from his date of hire. The City criticizes this conclusion because the hearing officer failed to repeat the word "substantial." However, since the hearing officer had just quoted the holding in *Tzangas* before concluding that Pratt's job requirements had changed, the hearing officer's meaning is clear.

{¶ 34} The City also contends that the change in Pratt's job was not substantial, and that a review of the job sheets indicates that only a minor amount of effort was required to complete the tasks. After reviewing the record, we find there is evidence to support the UCRC's finding.

{¶ 35} According to the City's brief, no change occurred in Pratt's duties, and he was performing the same duties that his job had always required, i.e., regular inspections and maintenance. However, there is no evidence that Pratt had previously been required to perform the type of inspection and maintenance that he was required to do after he returned to work in May 2013. To the contrary, Pratt testified that the change involved a lot of added work, and the Director of Public Services testified that he told the employees in the meeting in May 2013 that they would have to change the way their

duties at the WWTP were being performed – although it appears that Pratt was the only individual who was actually given additional duties.

**{¶ 36}** Moreover, contrary to the City’s argument that Pratt failed to show that inspections were any different after his return to work than they were before, the EPA report of December 18, 2012 stressed that “preventive maintenance is not being done on a proactive basis” and that due to the low staffing levels since 2005, “maintenance is suffering.” Director’s File, City of New Carlisle’s Completed Request to Employer for Separation Information, Ex. 5, p.3. In this regard, the City’s Director of Public Works, Kitko, also testified before the UCRC that the EPA had given the City ultimatums to bring its maintenance back to par, and that the City’s maintenance had been “reactive” as opposed to “proactive.” Review Commission File, Transcript of February 3, 2014 Hearing, p. 10.

**{¶ 37}** “Proactive” is defined as “acting in anticipation of future problems, needs, or changes.” See <http://www.merriam-webster.com/dictionary/proactive> (Accessed March 18, 2015). In contrast, “reactive” is defined as “done in response to a problem or situation: reacting to problems when they occur instead of doing something to prevent them.” See <http://www.merriam-webster.com/dictionary/reactive> (Accessed March 18, 2015). There was evidence to support the conclusions that the inspections and maintenance were substantially different after Pratt returned to work.

**{¶ 38}** In support of its position that the change in duties was only minor, the City relies on *Carter v. Univ. of Toledo*, 6th Dist. Lucas No. L-07-1260, 2008-Ohio-1958. According to the City, the change involved in *Carter* is “no different” than the change in Pratt’s duties. See Brief of Appellee, City of New Carlisle, p.12. There was evidence to

support the conclusion that the change in Pratt's duties was substantial.

{¶ 39} In *Carter*, a clerical worker was transferred to a different supervisor, but the only aspect of her job that was altered was that “[a] change was made in the way that [the employee] handled checks. Specifically, the checks were turned over to [the employee’s supervisor] before they were processed instead of the checks remaining in the possession of [the employee].” *Id.* at ¶ 21.

{¶ 40} Ultimately, the employee was fired based on her decision not to do her work, and her failure, after being given a 90-day performance plan, to improve a number of deficiencies, such as “(1) continual inadequate date entries, (2) tardy check processing, (3) inability to get along with the employees in the payroll department, (4) customer service follow-up, (5) unorganized filing and, (6) lack of a working knowledge of insurance issues.” *Id.* at ¶ 16. The Sixth District Court of Appeals concluded that “[s]uch a change [in the system of processing checks] can hardly be called a ‘substantial’ change in duties as that term in [sic] used in *Tzangas*.” *Id.* at ¶ 21. We agree with this statement, but the facts in *Carter* differ from those of the case before us. As we have indicated, there was evidence to support the UCRC’s conclusion that change in Pratt’s duties was substantial.

{¶ 41} As a final matter, we note the City’s argument that Pratt’s alleged “dishonesty” in altering the inspection sheets and in giving conflicting testimony about it at the UCRC hearing was just cause for termination. However, a later event, such as testimony at an unemployment compensation hearing, could not be grounds for a termination that occurred many months earlier. It could bear on credibility, but the hearing officer apparently found Pratt credible. Specifically, in her decision, the hearing

officer adopted Pratt's explanation of his actions regarding the inspection logs, stating in the findings of fact that when Pratt "received notice that a pre-disciplinary hearing was to be held on September 24, 2013, on allegations that [he] was not properly completing the maintenance logs \* \* \* he made copies of the logs for his use at the hearing, and made notes on his copies of the logs." UCRC Hearing Officer's Decision, p. 2. In this regard, we stress that the hearing officer was not required to believe the testimony of the City's witnesses. And, as we said, appellate courts are not permitted to judge credibility when they review UCRC decisions. *Williams*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, at ¶ 20.

{¶ 42} Furthermore, the City did not raise "dishonesty" as a ground for termination. Although the City's Standards of Conduct and Discipline include "Theft or dishonesty" and "Falsification of records" as grounds "d." and "i." for disciplinary action, the City did not assert either ground as a reason for termination. Director's File, City of New Carlisle's Completed Request to Employer for Separation Information, Ex. 3, p. 2 (originally p. 13 from Section VII of the City's Employee Handbook). Instead, as was noted above, the grounds that resulted in termination were: "a. Negligence or willful inattention to work"; "j. Negligence of safety and health rules"; and "k. Performance that does not meet the City's standards." *Id.*

{¶ 43} The City also did not mention dishonesty as a reason for discharge in responding to the ODJFS request for separation information. See Director's File, City of New Carlisle Completed Request to Employer for Separation Information, Fact-Finding Questions for Discharge (page 4 of an October 15, 2013 Fax from the City to ODJFS).

{¶ 44} "A just-cause determination cannot be based on a reason never stated by



the employer as a justification for discharge.” *LaChapelle v. Ohio Dept. of Job & Family Servs.*, 184 Ohio App.3d 166, 2009-Ohio-3399, 920 N.E.2d 155, ¶ 19 (6th Dist.), citing *Provost v. J.C. Penney Co., Inc.*, 6th Dist. Lucas No. WD-98-021, 1998 WL 667291 (Sept. 30, 1998). (Other citation omitted.) “ ‘Ohio law is clear that the [UCRC] cannot consider any other justifiable reason for the discharge than the reason or reasons stated by the employer or the actual reason for discharge.’ ” *Id.*, quoting *Provost* at \*3.

{¶ 45} In addition, as was noted, the City failed to assert Pratt’s alleged dishonesty in responding to the agency’s request for the grounds of dismissal. The City, therefore, has waived such an argument. “ ‘The rule compelling a party to present all legitimate issues before the administrative tribunal is required in order to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play.’ ” *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 82, 679 N.E.2d 706 (1997), quoting *Bohn v. Watson*, 130 Cal.App.2d 24, 37, 278 P.2d 454 (1954). See, also, e.g., *Leslie v. Ohio Dept. of Dev.*, 171 Ohio App.3d 55, 2007-Ohio-1170, 869 N.E.2d 687, ¶ 47 (10th Dist.); *State ex rel. Yester v. Indus. Comm.*, 10th Dist. Franklin No. 06AP-866, 2007-Ohio-2525, ¶ 21; and *Louis A. Green, P.S. v. State Bd. of Registration for Professional Engineers & Surveyors*, 2d Dist. Greene No. 05CA121, 2006-Ohio-1581, ¶ 19.

{¶ 46} After reviewing the administrative record, we conclude that the UCRC’s decision was supported by competent credible evidence, and was not unlawful, unreasonable, or against the manifest weight of the evidence. *Folck v. Patton*, 2d Dist. Clark No. 2013-CA-105, 2014-Ohio-2304, ¶ 23. As was noted, the UCRC found in Pratt’s favor on factual issues, and we are not permitted to judge credibility, nor may we

make factual findings. *Id.*

{¶ 47} Based on the preceding discussion, Pratt's Second Assignment of Error and ODJFS's sole assignment of error are sustained. As a result, the judgment of the trial court will be reversed, and we will enter a judgment affirming the decision of the UCRC. See App.R. 12(B).

#### IV. Conclusion

{¶ 48} Pratt's First Assignment of Error is overruled, and his Second Assignment of error is sustained. In addition, ODJFS's sole assignment of error is sustained. Accordingly, the judgment of the trial court is reversed, and we hereby enter judgment affirming the decision of the UCRC.

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DONOVAN, J. and HALL, J., concur.

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