

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

BETH DODRIDGE,	:	
	:	
Plaintiff-Appellee,	:	Case No. 09CA3292
	:	
vs.	:	
	:	Released: February 12, 2010
ADMINISTRATOR, OHIO	:	
DEPARTMENT OF JOBS AND	:	
FAMILY SERVICES, et al.,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendants-Appellants.	:	

APPEARANCES:

Richard Cordray, Attorney General of Ohio, Robin A. Jarvis, Assistant Attorney General, Cincinnati, Ohio, for Defendant-Appellant.

Beth Dodridge, Plaintiff-Appellee, pro-se.¹

Per Curiam:

{¶1} Defendant-Appellant, the Administrator of the Ohio Department of Jobs and Family Services, appeals the decision of the Scioto County Common Pleas Court granting Plaintiff-Appellee, Beth Dodridge, a new hearing before the Unemployment Compensation Review Commission. Dodridge failed to appear at her initial compensation claim hearing. As a result, her claim was dismissed. Appellant argues the trial court erred in

¹ Appellee failed to file before this court an appellate brief meeting the requirements of App.R. 16 and 19.

ordering a new hearing. Because Dodridge did not show good cause for her failure to appear, we agree with Appellant. As such, we reverse the decision of the trial court and uphold the Review Commission's decision to dismiss Dodridge's claim.

I. Facts

{¶2} Beth Dodridge filed an application for unemployment compensation in November 2007. The Ohio Department of Jobs and Family Services disallowed her claim and Dodridge appealed the decision to the Ohio Unemployment Compensation Review Commission. The Review Commission scheduled a hearing on the merits for February 28, 2008, at 10:45 A.M., which was to be conducted by phone. A notice of the hearing was sent to Dodridge which stated, in bold print, "To begin the hearing, you will call one of the following toll-free numbers 15 minutes before the hearing is scheduled to begin * * *." Dodridge failed to call as required by the hearing notice. She called later that day and was told that, because she missed the hearing, her claim had been dismissed.

{¶3} Dodridge filed a request to vacate the dismissal which was denied. She then appealed that decision and the Review Commission held a hearing to determine whether she had good cause for failing to appear at the hearing on the merits. After determining Dodridge's stated reason for

failing to appear – that she had been led to believe that the Review Commission would initiate the telephone hearing – did not constitute good cause, the Review Commission issued a decision finalizing the dismissal of Dodridge’s appeal.

{¶4} Following that decision, Dodridge appealed the matter to the Scioto County Court of Common Pleas. After considering the parties’ briefs, the trial court determined that Dodridge should be granted a new hearing on the merits, thus reversing the Review Commission’s decision. Following the trial court’s decision, Appellant herein, the Administrator of the Ohio Department of Job and Family Services, timely filed the current appeal.

II. Assignments of Error

1. THE TRIAL COURT ERRED BY REVERSING THE DECISION OF THE OHIO UNEMPLOYMENT COMPENSATION REVIEW COMMISSION.
2. THE TRIAL COURT ERRED BY UTILIZING THE WRONG STANDARD OF REVIEW.

III. Standard of Review

{¶5} When reviewing a decision of the Unemployment Compensation Review Commission, a reviewing court must affirm unless it concludes that the decision was unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73

Ohio St.3d 694, 697, 1995-Ohio-206, 653 N.E.2d 1207. All reviewing courts, whether common pleas or appellate, must apply this same standard. Id. at 696-697. As such, we focus on the decision of the Review Commission rather than that of trial court. *Pfeifer v. Veterans Affairs*, 4th Dist. No. 08CA781, 2009-Ohio-766, at ¶15. Further, we note that the Review Commission remains the finder of fact. The fact that reasonable minds may have reached a different decision than the Review Commission is not a basis for reversal. *Tzangas* at 697.

IV. First Assignment of Error

{¶6} In his first assignment of error, Appellant argues that the trial court erred in reversing the Review Commission's decision to dismiss Dodridge's claim. The trial court's decision did not reach the merits of the compensation claim. Instead, the trial court simply reversed the Review Commission's decision to dismiss Dodridge's claim for her failure to appear at the initial hearing.

{¶7} R.C. 4141.281(D)(5) states, in pertinent part:

{¶8} "For hearings at either the hearing officer or review level, if the appealing party fails to appear at the hearing, the hearing officer shall dismiss the appeal. The commission shall vacate the dismissal upon a showing that written notice of the hearing was not sent to that party's last

known address, or good cause for the appellant's failure to appear is shown to the commission within fourteen days after the hearing date.”

{¶9} Accordingly, the question before us is whether the Review Commission’s determination that Dodridge lacked good cause in failing to appear was unlawful, unreasonable, or against the manifest weight of the evidence.

{¶10} Dodridge testified that approximately a month before the date of her initial hearing, she called the Review Commission to ask how the hearing would proceed. According to Dodridge, a service representative told her that a hearing officer would contact her and set up a conference call. Dodridge admitted that she timely received a hearing notice. It is undisputed that the notice stated, in bold print, “To begin the hearing, you will call one of the following toll-free numbers 15 minutes before the hearing is scheduled to begin * * *.” In its decision, under Findings of Fact, the Review Commission stated that “Claimant told the Hearing Assistant that she had not read the Notice of Hearing and had been unaware of this requirement.” Dodridge argued that, because she was allegedly told that a hearing officer would call her to arrange the hearing, she was provided misinformation which resulted in her missing the hearing. The Review

Commission decided that Dodridge's explanation did not constitute good cause for her failure to appear.

{¶11} In its decision, the Review Commission stated the following:

{¶12} "The Ohio Unemployment Compensation Law does not define the term, 'good cause.' However, in this context, the Review Commission considers good cause to mean a substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create a reasonable excuse for an act or a failure to act. In this case the facts show that the appellant did not have such a substantial reason for failure to appear at the hearing and good cause has not been established."

{¶13} We cannot say that such finding was unlawful, unreasonable or against the manifest weight of the evidence. Had Dodridge read and followed the unambiguous instructions plainly stated in the hearing notice, she would not have missed the hearing. Regardless of any possible misinformation she may have received, Dodridge was at least partially culpable in not reading and following such instructions. In similar circumstances, when the non-appearing party has some culpability, prior decisions have determined that good cause for failure to appear is not established. See, e.g., *Arn v. Leibold*, (June 17, 1993), 10th Dist. No. 93AP-394; *Altizer v. Board of Review* (March 12, 1996), 10th Dist. No. 95APE10-

1310. *Payton v. Board of Review* (June 5, 1997), 10th Dist. No. 96APE09-1266. Accordingly, we reverse the decision of the trial court and uphold the Review Commission's decision to dismiss Dodridge's claim. As Appellant's first assignment of error is dispositive, we decline to address the second assignment of error.

JUDGMENT REVERSED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and that the Appellant recover of Appellee costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

McFarland, P. J., Harsha, J. & Kline, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland
Presiding Judge

BY: _____
Judge William H. Harsha

BY: _____
Judge Roger L. Kline

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.