[Cite as *Jelic v. Bur. of Unemp. Comp.*, 2004-Ohio-46.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82285

MIKE JELIC Plaintiff-Appellant vs. BUREAU OF UNEMPLOYMENT COMPENSATION Defendant-Appellee	:	JOURNAL ENTRY and OPINION

DATE OF ANNOUNCEMENT OF DECISION:	January 8, 2004
CHARACTER OF PROCEEDING:	Civil appeal from Common Pleas Court Case No. CV-470209
JUDGMENT:	AFFIRMED.
DATE OF JOURNALIZATION:	_____

APPEARANCES:

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ANTHONY O. CALABRESE, JR., J.

{¶1} Plaintiff-appellant Mike Jelic ("appellant") appeals from the decision of the Unemployment Compensation Review Commission ("Review Commission") and the Cuyahoga County Common Pleas Court. On December 9, 2002, the Cuyahoga County Common Pleas Court affirmed the Review Commission's initial December 26, 2001 determination. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

I

{¶2} Appellant in this case began working for G & J Automatic Systems as a machinist on April 3, 2000. Appellant was employed at G & J for approximately 14 months. Appellant reported for work on June 27, 2001, and had a problem with a tool that he broke. Appellant's supervisor told appellant to go home, which he did. Later, the next day, appellant went to work where he turned in his uniforms, obtained his paycheck, and left the building.

{¶3} Appellant applied for unemployment compensation, and the Ohio Department of Job and Family Services ("ODJFS") issued its initial decision on December 26, 2001, denying appellant unemployment compensation. On January 23, 2002, the ODJFS affirmed the initial determination. Appellant then filed an appeal of the ODJFS' redetermination. ODJFS, pursuant to R.C. 4141.28(G), transferred the appeal to the Review Commission. The Review Commission held an evidentiary hearing before a hearing officer. On February 28, 2002, the hearing officer affirmed the ODJFS' redetermination decision, holding that the appellant quit his job without just cause. After the Review Commission affirmed the ODJFS, the appellant then appealed his case to the Court of Common Pleas. The Court of Common Pleas agreed with the ODJFS and the Review Commission and affirmed the prior decision. Appellant is now appealing the decision of the Court of Common Pleas.

II

{¶4} Appellant's five assignments of error are substantially related and will, therefore, be addressed together.

{¶5} Appellant is representing himself pro se and has failed to submit his errors in standard format. However, in order to provide additional clarification, this court will now list appellant's five assignments of error verbatim below.

{¶6} Appellant's first assignment of error states:

{¶7} "Bureau, Director, hearing officer, the Common Pleas Court have erred in refusing to recognize and accept black on white paper NO answer to the first question on the page 2 of the form JFS00447, mailed on the date 11-07-2001. The same gang erred again, when has accepted manager's statements (lies), with none of any prove (the proof), on the same form #JFS00447 (Rev. 12-2000), and the same page."

{¶8} Appellant's second assignment of error states:

{¶9} "Bureau's bureaucracy and Common Pleas Court erred in refusing to accept the statement by supervisor Mr. J on Examiner's fact-finding report - 1 dated 01-21-02 and statement by the witness dated January, 7 - 2002."

{¶10} Appellant's third assignment of error states:

{¶11} "Hearing officer erred in suppressing and stopping the cross examinations of company's witness, manager by my attorney Mr. Joseph P. McCafferty."

{¶12} Appellant's fourth assignment of error states:

{¶13} "Hearing officer and Common Pleas Court erred in accepting the lie (intentionally) on the form JFS00447 page 01 mailed on 11-07-01."

{¶14} Appellant's fifth assignment of error states:

{¶15} Bureau's administration and Common Pleas Court erred in accepting the following form JFS00876 mailed on 11-20-01. The same form is null and void."

{¶16} As previously stated, appellant's atypically phrased assignments of error are

all substantially interrelated and will, therefore, be addressed together.

{¶17} An appellate court may reverse the unemployment compensation board of review's "just cause" determination only if it is unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp.Serv.* (1995), 73 Ohio St.3d 694. As the Review Commission is in the best position to weigh evidence and assess the credibility of the witnesses, a reviewing court may not infringe on that primary jurisdiction and replace its judgment with that of the Review Commission. *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41. In fact, appellate courts are not permitted to make factual findings, and are limited to determining whether the commission's decision is supported by credible evidence in the record. *Tzangas, Plakas & Mannos*, supra.

{¶18} According to the record, appellant's non-union employment relationship with G & J Automatic Systems ended only after appellant: (1) was sent home for the day;[1] (2) was reprimanded by his supervisor;[2] (3) informed his co-workers that he was quitting;[3] (4) turned

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[1]Tr. p. 7.

[2]Tr. p. 7. Direct examination of claimant, Mike Jelic, by hearing officer. "A. Yes. And supervisor, Mr. Jay, was *** becomes angry and refused my offer and told me to go home. And I had to go home. He told me twice, go home."

[3]Tr. p. 28. Direct examination of employer's witness, David Marion. "Q. No, all right. And do you recall or were you privy to anything the following morning? A. The

in his uniforms;[4] (5) collected his paycheck; and (6) broke a tool and hid that fact from his supervisor.

{¶19} The fact that appellant returned his uniforms on a day that they were not supposed to be turned in demonstrates an intention to voluntarily end employment on the part of appellant. Moreover, after appellant turned in his uniforms, he did not talk to a supervisor to determine exactly what the company's position was. If appellant was worried about being laid off rather than quitting, he would have been less likely to leave without first ascertaining his current employment status. If an individual is quitting, he or she is more likely to leave and not care what management's position is.

{¶20} Furthermore, the witnesses' testimony in the record that appellant made statements to his co-workers that he was quitting and that he found other employment supports the lower court's finding that appellant voluntarily quit employment with G & J

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following morning, Mike come in, he had his uniforms, I asked him what he was doing and *he told me he was quitting his job.* I asked him why. He said that he felt that Jay did not like him because this was the second time he was sent home. Q. Did you say anything to him? A. Yeah, *I says, don't quit, Mike*. You know, you messed up and Jay wasn't maybe in the greatest of moods. ***" (Emphasis added.) Direct examination of employer's witness, Angie Helcbergier. "*** He did bring them in [his uniforms] and he told his co-workers, two mechanics, that he's quitting. They asked him why you bringing uniforms, what happened, and he said, I was going to quit, I found another job and no longer want to work here. Q. Who are the co-workers? A. One of them is David Marion, which is a witness here. The other one is Robert Checkic (phonetic)."

[4]Tr. p. 16.

Automatic Systems. Appellant's comments to his co-workers that his supervisor is a "freak" further supports the position that appellant wanted to voluntarily end his employment.

{¶21} The Review Commission is in the best position to weigh the evidence and assess the credibility of the witnesses. The testimony given by Angie Helcbergier, David Marion, the appellant and the record more than support the position and findings of the lower court. There is nothing in the record to indicate that the lower court's decision is unlawful, unreasonable or against the manifest weight of the evidence. Appellant's first, second, third, fourth and fifth assignments of error are denied.

{¶22} The judgment is affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

ANTHONY O. CALABRESE, JR.
JUDGE

MICHAEL J. CORRIGAN, P.J., concurs.

DIANE KARPINSKI, J., DISSENTS WITH SEPARATE OPINION.

{¶23} KARPINSKI, J., dissenting.

{¶24} I respectfully dissent because I do not find the evidence upon which the hearing officer based her decision to be credible.

{¶25} Three witnesses testified in this hearing. The claimant testified that, after learning he had broken a tool, his supervisor, Mr. Jay, told him to go home on the morning of June 27, 2002. That afternoon, claimant said, he called the plant and asked for Gregg, Mr. Jay's supervisor, but Gregg was not there. Ora, the production supervisor, answered, but she did not "know what's going on." This part of the testimony explaining claimant's first attempt to obtain information about his job was not refuted.

{¶26} The next morning, June 28th, claimant went to work before 8 AM. Claimant testified that he put his time card in the time clock. On his way to the tool room, Ora stopped him and said that Jay did not want him in the tool room. Jay was not there yet.

When Craig, the computer clerk, asked him what he was going to do, claimant answered that he would wait for Jay. When Jay arrived, claimant was told that Jay did not want to talk to him. Craig then told claimant to turn in his time card and uniform to get a paycheck for the prior week. Before he left, he "put in the time clock for out," he said, and then turned in his time card and uniform. He then took his paycheck and gave the office his phone number so that they could call when they had more work.

{¶27} One week later, he returned for his final paycheck.

{¶28} Mr. Jay never testified. The general manager, Angie Helcbergier, however, signed a report providing separation information that contradicts her testimony. In that report, dated November 16, 2001, is included the following statement from the company:

> **{¶29}** Claimant did not report to work on 6/28/01 and did not notify management about reason or absence. When he came in to pick up his paycheck, he notified management that he wishes to terminate his employment and look for a better position.

{¶30} In a separate Request for Information dated November 26, 2001, Helcbergier again wrote that "claimant did not report to work on 6/28/01." She repeated this statement a second time in the same report. The company's witness, David Marion, however, corroborates claimant's statement that he returned on June 28th and contradicts Helcbergier's report. This contradiction puts her credibility at issue. Moreover, in its brief, the state admits that claimant reported to work on June 28th–a **point that clearly**

contradicts the company's report Angie Helcbergier sent to the Ohio Department of Job and Family Services.

{¶31} Next, this witness said "I didn't see him bring it [his uniform] in, I was in the office, it was early in the morning. And I know that from the guys***from his co-workers." Tr. 16. However, later she says she wasn't there that week. Tr. 25. Another contradiction.

{¶32} In that report, Angie Helcbergier also said claimant gave management no reason for his absence or his failure to report on June 28th. That statement, of course, must be set aside, because he would not have to give a reason for an absence if he were not absent. I must conclude that credible evidence does not support the company's stated position in its written response to the State that he did not report for work the next day.

{¶33} This failure of credibility taints the rest of the evidence. It was argued that claimant's turning in his uniform is evidence that he was quitting. Claimant testified, however, that he was told by Craig to turn in his uniform and time card to receive his paycheck. The company did not call Craig as a witness to refute this testimony. If, in fact, the company had no intention of calling claimant back, then his statement that he was told to turn in his uniform is quite consistent with his claim that he was laid off.

{¶34} Also disputed is whether claimant clocked in or out of work. Claimant said he did; Angie Helcbergier said he did not. This disputed fact could have been easily resolved if

the company had provided the time card. In fact, the Hearing Officer expressly asked the company to provide it and the company said it would. That time card, however, is not in the record. The failure to provide requested material evidence, along with discrepancies in the company's testimony, affects the rest of the testimony.

{¶35} Another issue is what claimant said to his co-workers. Claimant said he saw Marion on June 28th, but did not talk to him. Angie Helcbergier testified that claimant told David Marion and Robert Checkic, co-workers, that he was quitting. The company did not bring Robert Checkic to testify. David Marion did testify; however, he also lacked credibility.

{¶36} Marion testified that claimant said he was quitting. On the other hand, the record contains a document which contradicts this statement[5]:

{¶37} January 7, 2002 Statement

{¶38} On June 27th 2001 Mike Jelic was told by the boss Mr. J to go home. Next day Mike Jelic came to work and was told go home. Mr. Jelic then understood and want (sic) home.

{¶39} Witness

{¶40} David a (sic) Marion

{¶41} (216-961-8265)

{¶42} There is a second document:

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[5] Between "told" and "go home" are four words that were crossed out at Marion's request, according to Jelic. Marion could not remember what words were crossed out. Jelic testified that Marion objected to the words "I am laid off," so they were crossed off and "go home" was added with Marion's permission. Jelic said Marion signed the document after that change was made. Both documents are handwritten. Both signatures look alike and are written in script, whereas the rest of both documents are hand printed.

{¶43} January 7, 2002

{¶44} Statement

{¶45} Mr. Mike Jelic may use my name.

{¶46} David a (sic) Marion
{¶47} (216-961-8265)

{¶48} Claimant cannot be said to have quit if he was told to go home. Witness Marion was asked about this written statement. He claims that he "only signed it once," but the signatures are quite similar. He also denied at hearing the second sentence, that is, that claimant was told to go home the second day. The witness explained that he had not "even really read it." He explained that he had a "hard time reading" and his uncle read it. He also claimed that his uncle did not read all three sentences, just the first. He also claimed there was another "one" that his uncle read to him that he could not sign because it was not the truth. Marion was then asked to read the three-sentence paragraph. The transcript recounts an accurate reading of the paragraph. Claimant's attorney then stated, without objection: "Okay. You read it just fine." Upon questioning by the Hearing Officer, the witness explained that he graduated from high school, but was in a slow learners class.

Marion's ability to read the document accurately at the hearing belies his explanation that he had a hard time reading it. Such a difference between his signed statement and his testimony, along with such a weak explanation, cannot be considered credible evidence in

order to support the Review Commission's decision that claimant quit his employment, much less quit it without just cause.

{¶49} The Review Commission, moreover, in its decision mailed February 28, 2002 relied upon a fundamental mistake of fact: that is, that the employer consistently maintained that the claimant arrived prior to the start of his shift on June 28th. On the contrary, there is documentary evidence proving that the employer initially maintained that claimant did not report to work on that date and subsequently changed this position. Because of this mistake, along with contradictions in the company's evidence, I must conclude that the decision of the Commission is against the weight of the credible evidence.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).