

[Cite as *Wilson v. Ohio Dept. of Job & Family Servs.*, 2010-Ohio-5611.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94692

LINDA R. WILSON

PLAINTIFF-APPELLANT

vs.

**DIRECTOR, OHIO DEPARTMENT OF JOB AND
FAMILY SERVICES, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-699001

BEFORE: Blackmon, P.J., Dyke, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: November 18, 2010

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PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Appellant Linda R. Wilson appeals the trial court's decision affirming the Unemployment Compensation Review Commission's ("the Commission") determination that she failed to show good cause for failing to appear at a hearing before the Review Commission. Wilson assigns the following error for our review:

“I. The court’s judgment entry to uphold the decision of the Ohio Unemployment Review Commission that I failed to appear at a scheduled hearing and failed to show just cause for failing to appear at the hearing.”

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court’s decision. The apposite facts follow.

{¶ 3} On January 2, 2009, Wilson filed an application for unemployment compensation. On February 9, 2009, appellee, the Director of the Ohio Department of Job and Family Services (“ODJFS”), determined Wilson had quit her employment with Monica’s Caribbean Bakery & Café without just cause. Wilson filed an appeal. Upon appeal, the ODJFS affirmed its initial determination. Thereafter, Wilson appealed to the Commission.

{¶ 4} On March 19, 2009, the Commission notified Wilson that a hearing was scheduled for March 30, 2009, at 8:45 a.m., via telephone. In the notice, the Commission advised Wilson that she needed to call one of the toll-free numbers provided 15 minutes before the hearing was scheduled to begin.

{¶ 5} In her brief to this court, Wilson claims that sometime prior to the date of the hearing, she called to request that the hearing be rescheduled.

As grounds for the request, Wilson indicated that she was experiencing financial hardship, that she only had a cell phone with insufficient minutes, but was expecting an income tax refund, which she could use to obtain more

minutes. Wilson indicates that she was advised that the hearing could only be rescheduled if she was in flight or out of the country.

{¶ 6} Wilson further claims in her brief that on the date of the hearing, she called the toll-free number from a payphone, gave them her cell phone number as the call back number, and told them that she only had one minute available on her phone. Wilson claims that she was advised to address her concerns to the hearing officer. According to Wilson, when the hearing officer returned her call, she attempted to explain the situation, but her cell phone ran out of minutes before she could complete the call.

{¶ 7} On March 30, 2009, the Commission issued a dismissal notice to Wilson on the grounds that she failed to appear at the telephone hearing.

{¶ 8} On April 10, 2009, Wilson filed a request for a hearing to determine whether she could show good cause for not appearing at the hearing previously scheduled for March 30, 2009. In her request, Wilson claimed she was unable to attend the hearing because she was unable to purchase a phone card and did not have access to a land-line telephone. On April 30, 2009, the Commission notified Wilson that it was not vacating the dismissal of the appeal because she had not shown good cause for her failure to appear on March 30, 2009.

{¶ 9} Subsequently, Wilson requested a hearing, which the Commission granted. On June 16, 2009, a telephone hearing was conducted, and Wilson

indicated that she failed to appear for the meeting because she was unable to purchase a phone card and did not have access to a land-line telephone. After the hearing, the Commission found that Wilson had not demonstrated good cause for her failure to appear at the initial hearing.

{¶ 10} Wilson appealed the Commission's decision to the Court of Common Pleas. On January 22, 2010, the Court of Common Pleas affirmed the Commission's decision.

Unemployment Compensation Appeal

{¶ 11} In the sole assigned error, Wilson argues the trial court erred when it upheld the Commission's determination that she failed to show just cause for failing to appear at the telephone hearing.

{¶ 12} R.C. 4141.282 governs unemployment compensation appeals to the court of common pleas. *Gallagher v. Alliance Hospitality Mgt.*, 5th Dist. No. 2009CA00164, 2010-Ohio-1882. Subsection (H) states the following:

“The court shall hear the appeal on the certified record provided by the commission. If 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.”

{¶ 13} A reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.

Geretz v. Ohio Dept. of Job & Family Servs., 114 Ohio St.3d 89,

2007-Ohio-2941, 868 N.E.2d 669, ¶10, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995-Ohio-206, 653 N.E.2d 1207. “[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board’s decision is supported by the evidence in the record.” *Johnson v. Edgewood City School Dist. Bd. of Edn.*, 12th Dist. No. CA2008-11-278, 2010-Ohio-3135, quoting *Tzangas* at 696, 653 N.E.2d 1207.

{¶ 14} This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio. *Risinger v. The Kroger Co.*, 5th Dist. No. 09CA129, 2010-Ohio-3271. We are to review the commission’s decision sub judice and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. *Id.* We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶ 15} Our review of the record indicates that the trial court appropriately applied the standard of unlawful, unreasonable, or against the manifest weight of the evidence. The Commission’s determination that Wilson did not demonstrate just cause for her failure to appear for the March 30, 2009 hearing is supported in the record.

{¶ 16} “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.” *Bates v. Airborne Express, Inc.*, 186 Ohio App.3d 506, 2010-Ohio-741, 928 N.E.2d 1168, quoting *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17, 482 N.E.2d 587.

{¶ 17} In the instant case, Wilson claims that she did not have enough money to purchase a phone card for her cell phone and did not have access to a land-line telephone. However, the record indicates that the Commission provided two toll-free numbers that Wilson could have used to call in for the hearing. The instructions included with the notice of the hearing stated in pertinent part as follows:

“USE OF THE TELEPHONE: Please use a land line if at all possible, as mobile phones may not provide a reliable connection. If you must use a mobile phone please be sure your battery is fully charged and plan to remain in the area for the duration of the hearing.” Instruction for Telephone Hearings.

{¶ 18} Here, given that the Commission provided toll-free numbers, Wilson did not have to spend any money to make the telephone call to participate in the hearing. Further, given that the Commission notified Wilson on March 19, 2009, that the hearing would be conducted via telephone on March 30, 2009, Wilson had more than ten days to make arrangements to use a land-line telephone. The average person would expect that in preparation for the hearing, Wilson would have located a nearby pay phone,

or made some arrangement with a relative or friend for the use of a land-line telephone, for a matter of such importance.

{¶ 19} Nonetheless, as previously stated, in her brief to this court and also at oral argument, Wilson claimed to have called the toll-free number on the date of the hearing, and gave her cell phone number that did not have sufficient minutes as a call back number. Wilson also claimed that the hearing officer returned her call, but the call terminated prematurely for lack of minutes. However, the Commission indicated that Wilson's appeal was dismissed because she failed to call in for the hearing.

{¶ 20} In addition, when Wilson requested a show cause hearing, she indicated that she was unable to attend the telephone hearing because she was unable to purchase a phone card and did not have access to a land-line telephone. When the show cause hearing was conducted on June 16, 2009, Wilson again reiterated that she did not attend the hearing because of her inability to purchase a phone card and did not have access to a land-line telephone. At no point did Wilson indicate that she had called the toll-free number from a pay phone on the date of the hearing.

{¶ 21} Assuming *arguendo* that Wilson did in fact call the toll-free number from a pay phone and that the hearing officer's return call to her cell phone prematurely terminated, Wilson could have redialed the toll-free

number provided. The instructions for the telephone hearing that was provided to Wilson states in pertinent part as follows:

“IF YOU GET DISCONNECTED: If at any time during the hearing you lose connection or otherwise cannot speak to the Hearing Officer:

1. HANG UP YOUR TELEPHONE

2. Immediately call the toll-free number that you called at the beginning.

3. Say: ‘This is (your name) and my connection for the hearing has been cut off. * * *’

{¶ 22} During oral argument, the Commission suggested that the instant case is akin to *Payton v. Bd of Review* (June 5, 1997), 10th Dist. No. 96APE09-1266.

{¶ 23} We agree.

{¶ 24} In *Payton*, appellant filed a request for reconsideration of the Board’s denial of his application for unemployment benefits. Appellant’s request was granted and an in-person hearing was scheduled at the Board’s office, but appellant failed to appear, and the hearing examiner issued a decision, which found that appellant was discharged for just cause. Appellant filed a timely application to institute a further appeal before the Board, alleging that he did not attend the hearing because he was “confused as to the location of the address” and “went to the wrong building by mistake.” The Board disallowed the appeal, appellant appealed to the

Court of Common Pleas, which upheld the Board's decision that appellant had not demonstrated good cause for his failure to appear at the hearing.

{¶ 25} In affirming the trial court's decision, the Court of Appeals of Franklin County stated in pertinent part as follows:

“* * *appellant does not allege that he did not receive notice of the hearing, nor does he allege that he did not receive the notice in time to prepare for and attend the hearing, nor does he allege that the notice contained misleading or incorrect information that would compromise his attendance at the hearing. To the contrary, it is undisputed that appellant received the notice in a timely manner. Furthermore, contained within the notice was the correct address of the hearing site and the correct date and time of the scheduled hearing.

Moreover, appellant does not allege that the board did anything to discourage, compromise or prevent his attendance at the hearing. Thus, the only reasonable conclusion to be drawn is that appellant's failure to appear at the hearing is the direct result of his own failure to ensure that he arrive at the hearing on time. All documentation regarding appellant's claim demonstrates that at all times pertinent to the proceedings, appellant resided within the city of Columbus. Appellant does not aver that he was generally unfamiliar with the geography of the city or specifically unfamiliar with the geography of downtown Columbus (where the hearing was held). Appellant contends only that he was unfamiliar as to the location of the particular building in which the hearing

was held. However, appellant could have taken any number of steps to familiarize himself with the location of the building in order to ensure his timely appearance at the hearing, including calling the board for specific directions to the building, making a preliminary trip to the building prior to the scheduled date of the hearing, or leaving early enough to assure time enough to find the building. Furthermore, when he realized he was lost, appellant could have placed a call to the board to explain his situation and either ask for directions or request a short continuance.”

{¶ 26} Here, as in *Payton*, Wilson was duly notified of the scheduled telephone hearing, was sent detailed instructions regarding the hearing, and provided with a toll-free number to call in to the hearing. Hence, Wilson did not need to have any minutes on her cell phone to participate in the hearing. As previously noted, the instructions, which accompanied the notice of the hearing, specifically advised against using a cell phone.

{¶ 27} As such, upon review of the record, we find the trial court’s decision to uphold the Commission’s findings was not against the manifest weight of the evidence. We further find that the decision was not unlawful or unreasonable. Accordingly, we overrule the sole assigned error.

Judgment affirmed.

It is ordered that appellees recover from appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANN DYKE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR