

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

22-0011

CASE NO: CA-21-110403

TRIAL CASE NO: CV-20-942325

Plaintiff-Appellee.

DIRECTOR, OHIO DEPARTMENT

OF JOB AND FAMILY SERVICES

30 E. Broad ST 32ND Floor

Columbus, Ohio 43215

And

Lencyk Masonry Company

7671 South Avenue

Youngstown, OH 44512

On Appeal from the

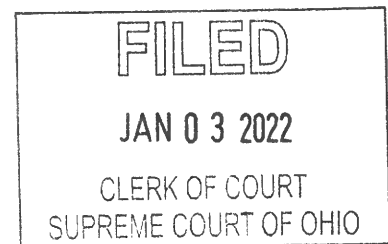
County of Appeal of Appeals

Appellate District

V.

Dwayne Pryor,

Defendant-Appellant.



NOTICE OF APPEAL OF APPELLANT

DWAYNE PYROR

Appellant brief

Pursuant to Section 4141.282, Ohio Revised Code, appellant hereby gives notice of appeal to the Court of Common Pleas of Cuyahoga County, Ohio, from the decisions of the Unemployment Compensation Review

Commission; Hearing Officer Decision No.H-2020018141, mailed on November 4 2020 and

Review Commission Decision No.C2020-018141, mailed on December 2 2020. ,
attached as exhibits A.

Respectfully submitted,

DWAYNE PRYOR

3328 Euclid apt 202

Cleveland, Ohio 44115

Phone: 216)767-7103

Dwayne.pryor357@gmail.com

A handwritten signature in cursive script that reads "Dwayne Pryor". The signature is written in black ink and is positioned below the typed contact information.

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ASSIGNMENT OF ERROR

My brief was stricken because I did not know how to long into the docket and could not find a lawyer to represent me and help submit my brief. I am here today to notify you that the reason this case has gone this far is because the law indicates you must go through the chain of command. I never wanted my unemployment case to be redetermined and that is what I am trying to prove. Unemployment has a recorded line and I never asked or requested for a redetermination. If possible, I would like for my unemployment claim to be returned to the Cleveland processing center where it was originally approved.

STATEMENT OF THE ISSUES

There was a miscommunication with the unemployment specialist (p119 5-12, Transcripts) the specialist thought that I wanted a redetermination that I never wanted. Where the determination from Cleveland I was ok with. I explained that I wanted to talk to a representative from the Cleveland office who had initially processed and accepted my unemployment claim to explain how I did not commit fraud. (p116 1-5 Transcripts) I stated that I worked two days the end of that week. I notified the foreman and the steward from Local 5 that I was leaving to go to the hospital for symptoms of pulmonary embolism and would possibly return.

STATEMENT OF THE CASE

1. Transfer to UC Review Commission on (page 49 of transcripts) 09/18/2020 did not transfer on my consent.

- 2.The decision on Quit with just cause that the Hearing Officer had made (pg110 21-26/pg111 1-16Transcripts)
- 3.Over payment of 1440.00 that accumulated over time cause of the months that I had been filling this appeal.
- 4.Why I did not Report my earnings.

ARGUMENT

Hearing officer asked why I did not report my earnings (pg115 9-15 Transcript) I Explained that I had made a mistake I was in the ICU I was given an ivy with heparin during my visit to the hospital that made me nauseous and dizzy (p118 1-4) (pg117 7-23). No visitors were allowed due to Covid, so I submitted my unemployment claim myself where I had made a mistake on few questions, submitting a check stub afterwards to clarify my mistake and on the second chance to provide proof. (pg39/124 15-26/125 1-26 Transcripts)

Docket No: H-2020018141 decision under **reasoning** second paragraph on page 188 of the transcript. The review commission stated that the client did not show proof of alleged health/medical conditions and or disclosed his alleged issue. I disclosed my health if to my business Rep as I am supposed to not the company because I have a hiring hall, so I seek work through my local 5 bricklayer union. I called to notify Lenczyk that I fell ill, and I was too sick to come into work May 26, 2020, before 6am. When I had to leave the foreman ordered the steward from local5 bricklayers union to obtain my tools because I was unable to walk to retrieve my tools. The Forman knew my condition prior to when I went to the hospital also, I have told the steward of local5 bricklayers.

Over payment had accumulated over time do to the fact that a penalty for not paying the over payment on time each month. My appeals took up numerous months (pg.124 15-26/125 1-26 Transcripts). For the lack of work, I had filed (pg.39 transcript) my doctor note explains that June 15th I would be available for work and 2 weeks of light duty work. My business agents received my doctors note to understand my condition that I am able to work. The union hall I work for is huge. If someone is not able to work another will take their place in no time. (Pg.40 transcripts) is where I sent my paystub when I was able to walk.

Under 1. Facts and Procedure History, (#4) It is not true that I “subsequently appealed the determination of unemployment benefits to the Director of ODJFS in August 2020. My conversation with unemployment specialist was recorded and therefore you are more than welcome to access the conversation and transcripts of the conversation. Lencyk Masonry Company, Inc stated that I had quit without just cause. If this is true, how come no one from the company show up at the hearing to prove otherwise? In #6 the Judge stated that I admitted to quitting the job due to health reasons. (R .114.) In my transcripts pg114 1-25 clearly states otherwise. In #16 the judge stated that I quit my job with Lencyk on May 29, 2020, and the medical documentation that was submitted shows that he was not hospitalized until June 4 2020. Moreover, there is no evidence establishing that this condition prevented Pryor from working on any days between May 29, 2020 and June 4, 2020. My steward of Local 5 bricklayers and the Foreman for Lencyk Masonry, who didn’t show up at the hearing, was informed of my condition. I specifically told the Foreman on May 29, 2020 that I would be back in 3 days due to my pulmonary embolism. During those days, I sought to tend to my condition through holistic means (beets, garlic, etc.) because I wasn’t prescribed medication at that time.

The decision on Quit without just cause that the Hearing Officer had made (pg110 16-26/pg111 1-16 Transcripts) Please understand that back grown is not law its bricklaying. I have no concept of or relating to the law or the hearing process. I was confused trying to explain my case after my first question. I did not quit; I was trying to explain the reason I had to leave. The hearing officer stated she was going to treat it as a quit not me (pg110 21-24 Transcripts) I felt rushed after she told me there was a time limit, so I was kind of in a panic and under pressure throughout the hearing. I thought the hearing was going to be a conversation between somebody from the Cleveland office that I spoke to (Diana Jarrell) (pg37 transcripts)

CONCLUSION

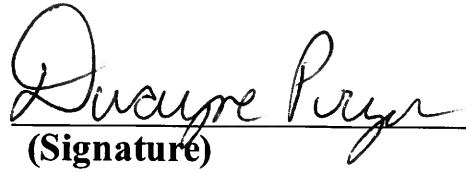
I am seeking to be compensated with back pay starting May 30th, 2020, until current.

Dwayne Pryor3328 Euclid, Ave Cleveland Ohio Cell 2160767-7103 Email:

Dwayne.Pryor357@gmail.com Appellant, Po Se

CERTIFICATE OF SERVICE

I certify that a copy of this Praecipe and Docketing Statement was served upon _____ 07/01/ 2021 on in the following manner: Patrick MacQueen 615 west superior Avenue, 11th Floor Cleveland, Ohio 44113-1899. Eric J. Ohanian PO. Box 575 Hudson, OH, 44236-0000.


(Signature)

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

DWAYNE D. PRYOR, :

Defendant-Appellant, :

No. 110403

v. :

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

Plaintiffs-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: December 9, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
 Case No. CV-20-942325

Appearances:

Dwayne D. Pryor, *pro se*.

David Yost, Ohio Attorney General, and Patrick
 Macqueeney, Assistant Attorney General, *for appellee*
 Ohio Department of Job and Family Services.

EILEEN T. GALLAGHER, J.:

{¶ 1} Defendant-appellant, Dwayne D. Pryor ("Pryor"), appeals a judgment of the Cuyahoga County Court of Common Pleas affirming a decision of the Ohio Unemployment Compensation Review Commission ("the Review Commission")

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that denied his claim for unemployment benefits. Pryor, pro se, claims the following error:

My brief was stricken because I did not know how to log into the docket and could not find a lawyer to represent me and help submit my brief. I am here today to notify you that the reason this case has gone this far is because the law indicates you must go through the chain of command. I never wanted my unemployment case to be redetermined and that is what I am trying to prove. Unemployment has a recorded line and I never asked or requested a redetermination. If possible, I would like for my unemployment claim to be returned to the Cleveland processing center where it was originally approved.

{¶ 2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} Pryor filed an application for unemployment benefits with the Ohio Department of Job and Family Services ("ODJFS") in April 2020. The claim was allowed for a benefit year beginning March 29, 2020, and awarded Pryor a weekly benefit in the amount of \$480.00 per week, up to a total of \$12,480.00. (R. 19.)

{¶ 4} Pryor subsequently appealed the determination of unemployment benefits to the Director of ODJFS in August 2020. On September 9, 2020, the Director of ODJFS issued a redetermination, finding that Pryor quit his job with Lencyk Masonry Company, Inc. ("Lencyk") without just cause and that he had been overpaid unemployment benefits. Consequently, Pryor's benefits were suspended until he worked six weeks of covered employment, earned at least \$1,614, and was otherwise eligible.

{¶ 5} Pryor appealed the redetermination to the Review Commission. A Review Commission hearing officer heard sworn testimony from Pryor and Diane

Jarrell ("Jarrell"), a fraud investigator with the ODJFS. Jarrell testified that the ODJFS received a report from Lencyk indicating that Pryor began employment with Lencyk in May 2020, after his unemployment application had been approved. Lencyk also reported that Pryor quit the job after two days. (R. 120.)¹

{¶ 6} Pryor admitted at the hearing that he worked for Lencyk for two days in May 2020 and that he quit the job due to health reasons. (R. 114.) Pryor also admitted that he did not disclose the fact that he had been hired by Lencyk to ODJFS. (R. 115.) He claimed he failed to report the hiring by mistake. (R. 115-116.) Jarrell testified that, during her investigation, she questioned Pryor regarding his employment with Lencyk. In response to her inquiry, Pryor sent Jarrell a copy of his Lencyk paystub and medical information indicating he was unable to work due to a health condition. (R. 120-121.) When Jarrell asked if Pryor had quit his employment at Lencyk, he denied quitting. (R. 121.) When asked if he was available for, or able to, work, Pryor indicated he was available and able to work. (R. 121.)

{¶ 7} Jarrell testified that Pryor worked for Lencyk and did not report it and subsequently separated himself from that employment and did not report the separation. Jarrell explained that the denial of a claim prohibits the ability to collect unemployment benefits going forward. (R. 122.) Consequently, the ODJFS determined it had overpaid Pryor the sum of \$1,440.00.

¹ The pages of the Review Commission hearing transcript are numbered according to each page's place in the administrative record rather than the pagination of a transcript filed independent of its place in the entire record. We, therefore, follow the page numbers included in the transcript as they appear in the record.

{¶ 8} The hearing officer affirmed the ODJFS's decision and found that (1) Pryor was not eligible for unemployment benefits because he quit his job at Lencyk without just cause, and (2) the denial of his unemployment claim resulted in an overpayment of unemployment benefits. The hearing officer noted in her decision that Pryor had participated in the unemployment compensation process several times in the past and that he was more familiar with the process than a first-time applicant. The hearing officer's decision further states, in relevant part:

The Hearing Officer did not find Claimant's testimony credible. Claimant maintained that he did not intend to fail to disclose his employment with Lencyk Masonry Company, Inc., but the evidence establishes otherwise. Claimant's work with this employer was his most recent employment. Claimant answered "no" to a question that he knew he should have answered "yes." He did not err, he lied. Therefore, it was not believable that Claimant "forgot" to disclose the existence of this employment, it seems more plausible that Claimant never intended to disclose that he quit this job due to a concern that this separation in this manner might jeopardize his ability to continue receiving unemployment compensation benefits. Moreover, Claimant's evasiveness during the hearing coupled with his remark that he did not think that he had to disclose the job because he had only worked for a few days also confirmed that the failure to disclose the employment was intentional.

In addition, although Claimant stated that he quit his employment with Lencyk Masonry Company, Inc. due to health problems, there is no record that Claimant established the existence of an alleged health/medical condition and/or that he disclosed this alleged issue at the time that he elected to quit. It is also noted that the documentation submitted by the Claimant in support of this contention, fails to actually support Claimant's claimed basis.

The medical documentation Claimant submitted herein, addresses a period *after* his separation from his employment with Lencyk Masonry Company, Inc. The documentation reflects a period after the separation at issue herein. Consequently, the documentation fails to

establish just cause for the Claimant's decision to quit his employment with Lencyk Masonry.

Accordingly, the Hearing Officer finds that Claimant has not established that he had just cause to quit his employment with Lencyk Masonry Company, Inc. making his separation from this employer, a disqualifying event. Claimant's benefits rights should have been suspended due to this disqualifying separation from employment. However, because Claimant failed to disclose his employment with and subsequent disqualifying separation from Lencyk Masonry Company, Inc., he continued to receive unemployment compensation benefits after benefits should have been suspended.

Based upon the findings herein, for the period from week ending May 30, 2020 through September 5, 2020, Claimant received unemployment compensation benefits to which he was not entitled. As a result, Claimant remains required to repay those benefits to the Ohio Department of Job and Family Services.

{¶ 9} Pryor appealed the Review Commission's decision to the Cuyahoga County Court of Common Pleas. After reviewing the record and transcript from the Review Commission, the common pleas court concluded it was "unable to find that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence." (Journal entry dated Mar. 23, 2021.) Therefore, the common pleas court affirmed the Review Commission's decision pursuant to R.C. 4141.282(H). Pryor now appeals the common pleas court's decision.

II. Law and Analysis

{¶ 10} R.C. 4141.282(H) governs the standard of review to be applied by all appellate courts reviewing decisions made by the Review Commission. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 653 N.E.2d 1207 (1995). Courts hearing appeals from the Review Commission must determine

the appeal based on the certified record provided by the Review Commission. *Id.* at 696. If the court finds that the Review Commission's decision 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 Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H). "This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in [the Ohio Supreme Court]." *Tzangas* at 696.

{¶ 11} In reviewing the certified record, appellate courts are not permitted to make factual findings or to determine the credibility of witnesses. *Id.* at 696. The reviewing court must determine whether the Review Commission's decision is supported by the evidence in the record. *Id.*, citing *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 17-18, 482 N.E.2d 587 (1985); see also *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031. If the appellate court finds that the Review Commission's decision is supported by the certified record, the reviewing court cannot substitute its judgment for that of the Review Commission. *Hampton v. JKB Mgmt. Co.*, 10th Dist. Franklin No. 18AP-719, 2020-Ohio-277, ¶ 12; *Kent State Univ. v. Hannam*, 11th Dist. Portage No. 2018-P-0109, 2019-Ohio-2971, ¶ 10.

{¶ 12} In the sole assignment of error, Pryor argues the common pleas court's judgment should be reversed because he made a mistake when he failed to disclose his employment with Lencyk. He asserts that he was hospitalized at the time he

completed the unemployment forms and that he “made a mistake on a few questions.”

{¶ 13} As previously stated, the Commission determined that Pryor was not eligible for unemployment benefits because he quit his employment at Lencyk without just cause. Under R.C. 4141.29(D)(2)(a), no individual who has “quit work without just cause or has been discharged for just cause in connection with the individual’s work” is eligible for unemployment compensation. “The word ‘quit,’ for purposes of unemployment compensation, connotes a voluntary act of the employee not controlled by the employer.” *Meinerding v. Coldwater Exempted Village School Dist. Bd. of Edn.*, 3d Dist. Mercer No. 10-19-06, 2019-Ohio-3611, ¶ 20, citing *Watts v. Community Health Ctrs. of Greater Dayton*, 12th Dist. Warren No. CA2015-07-068, 2015-Ohio-5314, ¶ 15.

{¶ 14} “Just cause” is “that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act.” *Shephard v. Dir., Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006-Ohio-2313, 853 N.E.2d 335 ¶ 19 (8th Dist.); *see also Tzangas* at 697. The determination as to whether an individual had just cause to quit his or her job “depends on the ‘unique factual considerations’ of a particular case and is, therefore, primarily an issue for the trier of fact.” *Shephard* at ¶ 19, quoting *Irvine*, 19 Ohio St.3d at 18, 482 N.E.2d 587.

{¶ 15} Pryor quit his employment at Lencyk due to an alleged health condition.

“[G]enerally[,] employees who experience problems in their working conditions must make reasonable efforts to attempt to solve the problem before leaving their employment. Essentially, an employee must notify the employer of the problem and request it be resolved, and thus give the employer an opportunity to solve the problem before the employee quits the job; those employees who do not provide such notice ordinarily will be deemed to quit without just cause and, therefore, will not be entitled to unemployment benefits.”

Shephard at ¶ 26, quoting *DiGiannantonio v. Wedgewater Animal Hosp., Inc.*, 109 Ohio App.3d 300, 307, 671 N.E.2d 1378 (10th Dist.1996); *see also Irvine* at 19 (“[A]n employee’s voluntary resignation on the basis of health problems is without cause within the meaning of R.C. 4141.29(D)(2)(a) when the employee is physically capable of maintaining a position of employment with the employer, but fails to carry her burden of proving that she inquired of her employer whether employment opportunities were available which conformed to her physical capabilities and same were not offered by her employer.”).

{¶ 16} Pryor admitted at the hearing that he quit his employment with Lencyk after two days due to an alleged health condition. (R. 114.) However, there is no evidence that Pryor informed Lencyk of his alleged medical condition before he quit or that he requested any work that conformed to his physical capabilities. Pryor also failed to provide any medical evidence demonstrating he was unable to work on the day he quit Lencyk. Although there is evidence that Pryor was hospitalized for a pulmonary embolism, Pryor quit his job with Lencyk on May 29, 2020, and the medical documentation he submitted shows that he was not hospitalized until June 4, 2020. (R. 39, 114.) Moreover, there is no evidence

establishing that this condition prevented Pryor from working on any days between May 29, 2020, and June 4, 2020.

{¶ 17} An employee seeking unemployment benefits bears the burden of proving that he or she quit work with just cause and is, therefore, entitled to unemployment benefits under R.C. 4141.29(D)(2)(a). *Irvine* at 18; *Shephard* at ¶ 20. Despite being afforded the opportunity for a fair hearing, Pryor failed to meet his burden of proof in this case. We, therefore, agree with the common pleas court's finding that the Review Commission's decision is not against the manifest weight of the evidence.

{¶ 18} The sole assignment of error is overruled.

{¶ 19} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

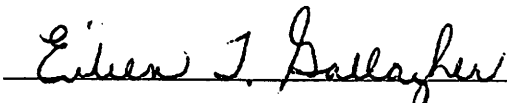
The court finds there were reasonable grounds for this appeal.

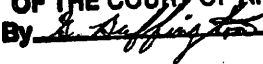
It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

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

RECEIVED FOR FILING

DEC X 9 2021


EILEEN T. GALLAGHER, JUDGE

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

ANITA LASTER MAYS, P.J., and
LISA B. FORBES, J., CONCUR

The State of Ohio, } ss.
Cuyahoga County.

I, NAILAH K. BYRD, Clerk of the Court of

Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 12/09/2021, CA 110403 of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 12/09/2021, CA 110403 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 09 day of December A.D. 20 21

NAILAH K. BYRD, Clerk of Courts

By Gabriel Hoffington Deputy Clerk

