

**COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

ROBERT WARNER,	:	
	:	
Plaintiff-Appellant,	:	No. 112471
	:	
v.	:	
	:	
OHIO DEPARTMENT OF JOBS & FAMILY SRVS., ET AL.,	:	
	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 7, 2023

Administrative Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-22-967947

Appearances:

Robert Warner, *pro se*.

David Yost, Attorney General, and Laurence R. Snyder,
Senior Assistant Attorney General, *for appellee*.

FRANK DANIEL CELEBREZZE, III, P.J.:

{¶ 1} Appellant Robert Warner (“Warner”) appeals from the judgment of the Cuyahoga County Court of Common Pleas affirming the decisions of the Ohio Department of Job and Family Services (“ODJFS”) and the Unemployment Compensation Review Commission (“UCRC”) denying Warner’s application for

unemployment benefits. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} On April 25, 2022, Warner submitted an application for unemployment benefits to ODJFS.

{¶ 3} Several delays occurred relating to ODJFS's attempts to verify Warner's identity. When ODJFS was finally satisfied with Warner's identity, it issued a decision finding that Warner's application was invalid. Warner appealed this decision to the UCRC, who ultimately affirmed ODJFS's decision.

{¶ 4} ODJFS and UCRC's basis for denying Warner's application was that Warner's application was not valid because he was not "unemployed" at the time he filed, one of the requirements necessary for filing an application for unemployment benefits.

{¶ 5} Warner filed a request for review of the decision. Warner appeared before a hearing officer via telephone and argued his case. The hearing officer ultimately agreed with ODJFS and UCRC and found that Warner was not unemployed at the time he applied for benefits.

{¶ 6} Warner then exercised his right to appeal to the Cuyahoga County Court of Common Pleas pursuant to R.C. 4141.282. In the complaint, Warner averred that ODJFS erred in its factual findings and that he was in fact unemployed at the time that he applied. The complaint detailed the ODJFS "mis-determined the order of missives to me, and misstated the dates of those letters, resulting in a

misconstruing of relevant facts” and concluded that ODJFS and UCRC erred in finding that his application for benefits was invalid.

{¶ 7} ODJFS appeared, and the trial court set a briefing schedule. Warner filed his brief and assignments of error on October 17, 2022. The brief reasserted most of Warner’s points in his complaint, arguing that ODJFS erroneously determined that he was employed at the time he filed his application and made erroneous factual findings relating to the sequence of events giving rise to his unemployment.

{¶ 8} ODJFS filed a responsive brief arguing that the record contained competent, credible evidence supporting ODJFS’s decision.

{¶ 9} In February 2023, the trial court issued its decision, finding that UCRC’s decision was not unlawful, unreasonable, or against the manifest weight of the evidence and affirmed the decision. It is from this judgment that Warner appeals, assigning eight errors for our review.

I. That Court erroneously determined that the August 11, 2022 decision by the Unemployment Compensation Review Commission was not unlawful, unreasonable, or against the manifest weight of the evidence.

II. That Court construed all interactions between Amazon.com and myself, occurring after April 23, 2022, as interactions between an employer and an employee when they were, in fact, interactions between a company and one of it’s [sic] EX- employees.

III. That Court erroneously determined that I was employed at the time that I filed the application, April 25, 2022. When filed, I was unemployed, having been fired. All other events occurred well after that date.

IV. That Court misconstrued ORC 4141.01(R) to mean that all conditions enumerated in that section must be true for a person to be considered unemployed when, in fact, a person is considered unemployed if any - even just one - of those enumerated conditions are true.

V. That Court erroneously accepted the claim that I had asked for my job back.

VI. That Court erroneously determined that I had been reinstated to my employment on April 29, 2022; I never agreed to reinstatement and never actually had the chance to agree (or to disagree), as the offer of reinstatement was withdrawn within just over 4 hours after being offered.

VII. That Court allowed the employer, which fired me, to unilaterally establish a new employee/employer relationship between me and them without my agreement. No agreement or contract can be considered valid unless all parties agree to enter into such an agreement.

VIII. That Court misapplied, and misdefined, the term “remuneration”.

II. Law and Analysis

{¶ 10} We begin by noting that nearly all of Warner’s assignments of error are discrete, factual issues that are inherently decided by deciding his first assignment of error: whether UCRC’s decision was unlawful, unreasonable, or against the manifest weight of the evidence. We therefore elect to address all of Warner’s assignments of error together for ease of discussion and understanding.

{¶ 11} In reviewing decisions of ODJFS or UCRC, an appeals court may reverse such decisions only if they are unlawful, unreasonable, or against the manifest weight of the evidence. *Irvine v. State, Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985), citing *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947). “While 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." *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696, 653 N.E.2d 1207 (1995), citing *Irvine* at 18. When reviewing a decision from the UCRC, the appellate court must refrain from making factual findings or weighing the credibility of witnesses and must instead determine whether the evidence in the certified record supports the UCRC decision. *Id.* If such evidence is found, the court may not substitute its judgment for that of the UCRC. *Wilson v. Unemp. Comp. Bd. of Rev.*, 14 Ohio App.3d 309, 310, 471 N.E.2d 168 (8th Dist.1984).

{¶ 12} The sole issue in this appeal is whether Warner was "unemployed" at the time he applied for benefits. Under R.C. 4141.29(A)(1), an individual must file a valid application for determination of benefit rights. The validity of an application is left to the discretion of the director. R.C. 4141.28(D). R.C. 4141.01(R)(1) specifies that an application is valid "if the individual filing such application is unemployed." An individual is "unemployed" for purposes of R.C. 4141.01 if,

with respect to the calendar week in which such application is filed, the individual is "partially unemployed" or "totally unemployed" as defined in this section or if, prior to filing the application, the individual was separated from the individual's most recent work for any reason which terminated the individual's employee-employer relationship * * *

R.C. 4141.01(R)(4).

{¶ 13} Pursuant to this section, there are four ways in which an individual may be deemed "unemployed" for purposes of receiving unemployment

compensation. *Rini v. Unemp. Comp. Bd. of Rev.*, 9 Ohio App.3d 214, 459 N.E.2d 602 (8th Dist.1983).

{¶ 14} ODJFS and UCRC determined that Warner’s application was invalid because he was not “totally unemployed,” which occurs “in any week during which the individual performs no services and with respect to such week no remuneration is payable to the individual.” R.C. 4141.01(M). “Remuneration” is defined by the statute as “compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash[.]” R.C. 4141.01(H)(1). The section has been interpreted to mean that “[o]ne who either performs services or receives remuneration in a given week is not ‘totally unemployed.’” *Rini* at 215, citing *Richards v. Ohio Bur. of Emp. Servs.*, 8th Dist. Cuyahoga No. 37419, 1978 Ohio App. LEXIS 10410, 6 (May 25, 1978).

{¶ 15} ODJFS argues that because Warner accepted his pay for the week of April 24, 2022, and remained employed with Amazon until April 28, 2022, he was not “totally unemployed” when he applied for benefits on April 25, 2022, and therefore, the ODJFS and UCRC did not err in determining that he did not file a valid application for benefits.

{¶ 16} Warner argues that the applicable portion of R.C. 4141.01(R)(4) is the portion that reads: “if, prior to filing the application, the individual was separated from the individual’s most recent work for any reason which terminated the individual’s employee-employer relationship[.]” Warner claims that it is unambiguous and clear that prior to filing for benefits, he was terminated from his

employment with Amazon and therefore, he meets the statutory definition of “unemployed.”

{¶ 17} We acknowledge that Warner’s arguments are supported by evidence in the record. Most notably, there is a letter confirming that Warner’s employment was terminated on April 23, 2022. The record also includes a paystub from Amazon for dates worked between April 17, 2022, through April 23, 2022, demonstrating Warner’s earnings — \$183 and indicating that the earnings would be deposited on April 29, 2022. Bank statements provided by Warner show the \$183 payment posted to his account on April 29, 2022. In the appeal form submitted to UCRC, Warner wrote:

While [Amazon] did tender to me an amount equal to a weekly paycheck the next week, that payment was NOT a paycheck, was NOT for work done and I NEVER, after that firing on April 23, 2022, went back to work for them and I NEVER accepted any offer of re-employment from them. I didn’t ask for that money. I never agreed to any such arrangement, and it was NOT a paycheck. When they deposited that money in my account, we had absolutely NO relationship. I have never set foot on their property, done a second of work for them, or accepted any offer of re-employment after being fired on April 23, 2022. Rather than being money paid for work done, I assert that that payment, the firing, and subsequent offers of re-employment were blatant attempts to undercut a civil rights lawsuit that I filed against Amazon.

{¶ 18} There is also a letter from Amazon dated May 4, 2022, confirming that Warner would be reinstated to his position effective May 1, 2022. The letter also notes that “[a]s of today, 5/4/2022 you have not returned to work. If you do not return to work by Sunday, 5/15/2022, we will presume that you have rejected this unconditional offer of reinstatement.”

{¶ 19} However, there is contradictory evidence in the record that could allow a factfinder to conclude that Warner was not “totally unemployed” and supports a finding that Warner was not “separated from [his] most recent work” as required by the definition of “unemployed” in R.C. 4141.01(R)(4). We now discuss the evidence corroborating this finding.

{¶ 20} Regarding whether Warner was “separated from [his] most recent work,” evidence in the record does support that he was *not* separated from his most recent work at the time he filed. First, the record contains a letter that was attached to an email dated April 29, 2022, informing Warner that the date of his involuntary termination of employment from Amazon was on April 28, 2022; the existence of this letter implies that Warner *was* employed at Amazon on the date that he submitted his application, April 25, 2022.

{¶ 21} There are also several emails from Amazon’s human resources department that were made part of the record. On April 23, 2022, an email sent to Warner at 12:42 a.m. indicated that he had a negative UPT balance and requested that Warner contact the human resources department immediately to discuss the negative time balance. The email further indicated that if Amazon did not “receive a response” by April 25, 2022, at 2 p.m., Amazon “will assume that you are no longer interested in working for Amazon, and your employment will be separated.” Warner responded to the email at 11:27 a.m., and raised concerns about how his hours were documented on April 10, 2022. That same day, at 2:55 p.m., Warner received the letter from Amazon informing him that his employment was terminated. It is

unclear from the record before us, what, if anything, prompted Amazon to send this letter on April 23, 2022.

{¶ 22} Also evidencing that Warner was not totally unemployed or separated from his position at the time that he applied for benefits, are several emails exchanged on April 28, 2022. On the date that the April 28, 2022 termination letter was sent, Warner exchanged several emails with Sara, a representative of Amazon. Sara's initial email on April 28, 2022, reads:

Good Afternoon Mr. Warner: My name is Sara and I've attempted to reach out to you via the phone number we have on file but have been unsuccessful. Is there a time and phone number that best works for us to connect. *At this time your employment with Amazon is still active.* My apologies on the confusion. I'd like to talk to you about returning to work and clear up any other questions you may have. Please let me know when would be a good time to connect.

{¶ 23} Warner responded to this email:

Since this is all utterly the fault of you people and because your time records are completely fouled up and it is utterly impossible to tell what hours I've taken off, *I'd like to be paid for all the time I missed* and I'd like to have the full 20 hours of UPT [unpaid time] put back on my account.

(Emphasis added.)

{¶ 24} Amazon responded requesting to speak to Warner on the telephone, which he declined, noting that he would like to have written records of all communications. Amazon's responded:

Of course. Happy to communicate to you via email.

At this time we've coded your time missed this week as paid time. You will receive 40 hours of pay for the week of April 24th.

The error in your UPT balance came from inaccurate time clock punches and missed punch submissions. When you return your balance will be zero (0) UPT based on our review of your time card. We will not be giving you an additional 20 hours of UPT.

If you are in agreement, you can return to work this Sunday, May 1st 2022 at your normally scheduled time of 6:30pm. If this day does not work for you please let me know.

(Emphasis added.)

{¶ 25} If there was a response to this email, it is not contained in the record.

We note specifically that Warner expected payment from Amazon, did not seem to debate that he was still employed by Amazon, and evidenced an intent to return to work by asking for his UPT balance.

{¶ 26} Regarding whether Warner received remuneration for the days that he missed, Warner's bank statement reflects a \$554.01 deposit on May 6, 2022, presumably corresponding to Amazon's email agreeing to pay Warner for the week of April 24, 2022, in response to Warner's request for payment. We note that this evidence demonstrating that Warner demanded payment for the "missed" week and that Amazon complied with his request by depositing such payment, directly conflicts with Warner's claims that he did not ask for payment for the weeks that he missed work and that it was not a paycheck.

{¶ 27} This appeal presents a unique situation where Warner's status as "unemployed" is unclear and not patently apparent due to what could be described as technical errors and miscommunication by both parties. Therefore, Warner's employment status at the time he applied required a factual determination based on

the totality of the evidence in the record. Further, it was incumbent upon Warner to present both ODJFS and UCRC with evidence demonstrating that he was unemployed, and we cannot say that ODJFS or UCRC erred in determining that Warner did not meet this burden.

{¶ 28} After reviewing the evidence in the record and applying the definition of “unemployed” as espoused in R.C. 4141.01(R)(4), we cannot say that ODJFS or UCRC’s decision that Warner was not unemployed at the time of the application was unlawful, unreasonable, or against the manifest weight of the evidence. In making this determination, we are mindful of our limited appellate review and defer to ODJFS and UCRC’s determinations as to factfinding and witness credibility. “The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [UCRC’s] decision.” *Irvine* 19 Ohio St.3d at 18, 482 N.E.2d 587, citing *Craig v. Bur. of Unemp. Comp.*, 83 Ohio App. 247, 260, 83 N.E.2d 628 (1st Dist.1948).

III. Conclusion

{¶ 29} It is clear that there is evidence in the record from which both ODJFS and UCRC could find that Warner did not fit the statutory definition of “unemployed” at the time he applied for benefits, rendering his application invalid.

{¶ 30} 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 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.

FRANK DANIEL CELEBREZZE, III, PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
EMANUELLA D. GROVES, J., CONCUR