[Cite as *Prendergast v. Ohio Dept. of Job & Family Servs.*, 2026-Ohio-4492.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JAMES H. PRENDERGAST,	:	
Plaintiff-Appellant,	:	No. 116339
v.	:	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 12, 2026

Administrative Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-25-128576

Appearances:

James H. Prendergast, *pro se*.

D. Andrew Wilson, Ohio Attorney General, and Brian P. Murphy, Senior Assistant Attorney General, *for appellee* Ohio Department of Job and Family Services.

Fisher & Phillips LLP, Bonnie L. Kristan, and Amanda M. Connelly, *for appellee* Riser Foods Company, Inc.

TIMOTHY W. CLARY, J.:

{¶ 1} Plaintiff-appellant James H. Prendergast ("Prendergast") appeals the trial court's April 1, 2026 judgment finding the Ohio Unemployment Compensation Review Commission's ("Commission") decision that disallowed his unemployment benefits was not unlawful, unreasonable, or against the manifest weight of the evidence. For the following reasons, we affirm the lower court's decision.

I. Factual and Procedural History

{¶ 2} This action arises from an incident on or about June 5, 2025 ("the incident"), while Prendergast was employed as a warehouse worker by defendant-appellee Riser Foods Company, Inc. ("Riser Foods").[1] Due to the incident, Riser Foods discharged Prendergast on June 18, 2025, because of alleged dishonesty, insubordination, and hostile-work environment.

{¶ 3} On June 29, 2025, Prendergast filed a written application for determination of benefit rights with the director of defendant-appellee Ohio Department of Job and Family Services ("ODJFS"). The application described Prendergast's version of the incident as follows. Prendergast received notice during his lunch break that his father's death was imminent, and Prendergast decided to head immediately to South Carolina to see his father. No member of management was present to whom Prendergast could report the reasons for his leaving work early

[1] Prendergast's complaint to the trial court identifies the date of the incident as June 6, 2025, whereas documents contained in the record indicate the incident occurred on June 5, 2025. The actual date of the incident has no bearing on this appeal. For consistency, we will reference the date as June 5, 2025, throughout this opinion.

although he informed support staff. As he left the company premises, Prendergast encountered the night-shift manager, Jameel Talley ("Talley"), in the parking lot, and Prendergast informed him he had to leave for "personal reasons/family emergency." Prendergast did not return to work that day but went to see his father out of state. Prendergast claimed that he was not aware of any company rules or policies that he had violated during the incident.

{¶ 4} The director of ODJFS allowed Prendergast's initial application for unemployment benefits. Riser Foods appealed that determination, and the director's redetermination affirmed that Prendergast was discharged without cause and entitled to benefits. Riser Foods appealed the redetermination, and on September 17, 2025, ODJFS transferred jurisdiction of the case to the Commission.

{¶ 5} The following day, the Commission issued written notice to all parties that a telephonic hearing would be scheduled and if a party was unable to attend, that party must contact the Commission to present good cause for postponement. One day later, the Commission issued to all parties written notice of a telephonic hearing to be conducted on October 1, 2025. The notice stated that the hearing would proceed even if the nonappealing party did not appear. The notice further stated that a party who failed to appear at the hearing would have 14 days following the hearing to provide a written statement demonstrating good cause for the nonappearance and, upon a showing of good cause, another hearing would be granted:

Failure to Appear

> Section 4141.281(D), Revised Code of Ohio, provides that if the party who filed the appeal fails to appear at the hearing, the Commission shall dismiss the appeal. If the non-appealing party fails to appear, the hearing shall go forward and a decision will be issued. A party who failed to appear has fourteen (14) days after the hearing to provide a written statement showing good cause for the non-appearance. Another hearing will be granted if good cause for the non-appearance is shown.

{¶ 6} On October 1, 2025, a hearing officer conducted the telephonic hearing on behalf of the Commission. Present at the hearing were Riser Foods' human resources representative, Amanda Bauer ("Bauer"); Riser Foods' Senior Director of Retail Support, Natalie Eshman ("Eshman"); and Christopher Flower as an observer. Prendergast did not attend the hearing. The hearing officer questioned Eshman, who confirmed Riser Foods received notice through the U.S. Postal Service to appear at the hearing.

{¶ 7} Eshman testified to the following events. Riser Foods employed Prendergast as a general warehouse high-lift operator from July 25, 2024, through June 18, 2025. On the date of the incident, Prendergast unexpectedly left work early. His manager, Talley, observed Prendergast outside, walking towards his vehicle, and Prendergast told him he had to leave but did not clarify why he was leaving work early. Talley inquired whether Prendergast had completed the "leave early form," a standard form employees completed when leaving work early. Prendergast responded, "F**k you, Jameel. F**k your sheet and f**k this job. I'm leaving. Do what you want to me." The verbal exchange was overheard by a union

team member, who provided a statement confirming Prendergast's use of profane language. The team member's statement was read for the hearing officer:

> I was coming in from lunch and was going through the turnstile. When Jameel Talley and the other gentleman were standing, I heard Jameel ask him why he was leaving, did he sign the early out sheet, and the gentleman began cursing for no reason. "I don't need this. No, I didn't sign it. F**k you, Jameel. I'm out of here." And then he left.

Prendergast departed from the company premises and did not return until June 18, 2025. In the interim, Prendergast contacted Riser Foods and informed his employer that his father had passed away.

{¶ 8} When Prendergast returned to work, he was questioned about the incident and Prendergast continually denied his use of profane language during the incident. As a result, Riser Foods terminated Prendergast for dishonesty, insubordination, and hostile-work environment, which are direct violations of company policy.

{¶ 9} In addition to Eshman's testimony, Bauer made a closing statement indicating that Prendergast's actions were in contravention to Riser Foods' company policies and, accordingly, the company believed his actions supported his termination.

{¶ 10} On the same day as the telephonic hearing, the Commission issued a written decision that provided the following findings of fact:

> [Prendergast] worked for Riser Foods Company, Inc. as a warehouse worker from July 25, 2024[,] to June 18, 2025. On or about June 5, 2025, [Prendergast] received a text message that his father was dying. [Prendergast] left work and was about to get in his car when he was seen by his manager, Jameel Talley. [Prendergast] informed Mr. Talley

> that [he] was leaving but did not explain about the text message he had just received or that his father was ill and possibly dying. Mr. Talley asked [Prendergast] if he had filled out a leave early form. [Prendergast] responded, "F**k you Jameel and f**k this job! I'm leaving do what you want!" [Prendergast]'s father was in South Carolina and [Prendergast] did not return to work until June 18, 2025, at which time he was discharged for insubordination.

{¶ 11} The Commission decision further stated that "[a]n individual is not eligible for benefits if the individual was discharged for just cause in connection with work." The Commission determined that Riser Foods discharged Prendergast for just cause in connection with his work because

> [Prendergast] refused to complete a leave early form and swore and yelled at his manager. [Prendergast's] actions constituted insubordination. While it is understandable that [Prendergast] was upset from the text message he received [Prendergast] did not make any attempt to explain his situation to his manager regarding why he was leaving and/or why he was in a hurry, which could have diffused the situation. [Prendergast's] actions constituted fault and his separation was disqualifying. . . .

Accordingly, the Commission reversed the director's redetermination. Prendergast requested a review of the Commission's decision, and the Commission disallowed Prendergast's request.

{¶ 12} On November 25, 2025, Prendergast appealed the Commission's decision to the trial court. On December 18, 2025, the Commission filed a certified transcript of the record of the proceedings, pursuant to R.C. 4141.282(F), that included the director's file and the Commission's file. The director's file included an excerpt from Riser Foods' work rules that states a violation of the following rules will result in immediate termination: Dishonesty in any form; insubordination,

including "[b]elligerent, defiant, abusive or threatening conduct or speech toward any supervisor, other management person or the company; or giving false testimony with respect to accidents or any incident being investigated pertaining to the company rules." The director's file also contained a copy of Prendergast's written acknowledgment of the above-listed work rules signed July 25, 2024. The Commission's file included, but was not limited to, a written transcript of the Commission's telephonic hearing.

{¶ 13} During the pendency of the appeal to the trial court, Prendergast filed an appellant's brief and reply brief pursuant to the court's briefing schedule as well as a motion to vacate the Commission's decision for violation of due process rights, a motion for remand based upon newly discovered evidence, a motion to compel discovery, and a motion for leave to lodge or supplement the record with an audio recording of the transcript from the October 1, 2025 hearing. The ODJFS filed its brief in opposition to Prendergast's appeal and a motion to strike portions of Prendergast's reply brief. Because Riser Foods' interests and positions were aligned with ODJFS on the dispositive issues, Riser Foods adopted and incorporated by reference the briefings of ODJFS.

{¶ 14} The trial court, on April 1, 2026, issued a judgment entry finding the Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence and, thus, affirmed the decision to disallow Prendergast's request for unemployment benefits.

{¶ 15} On April 6, 2026, Prendergast filed a timely appeal, presenting three assignments of error, verbatim, for our review:

> Assignment of Error I: The trial court erred in affirming the unemployment compensation review commission's decision where the underlying administrative proceeding was structurally asymmetrical, denying appellant a meaningful opportunity to be heard in violation of the due process clauses of the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.
>
> Assignment of Error II: The trial court abused its discretion by denying appellant's motion to lodge the audio recording of the administrative hearing without resolving the dispute over materiality, and by affirming the commission's decision on a record that appellant demonstrated was materially inaccurate, thereby depriving appellant of meaningful appellate review.
>
> Assignment of Error III: The trial court erred by affirming the commission's decision where that decision is unlawful and against the manifest weight of the evidence because it rests on uncorroborated hearsay and violations of the hearing officer's statutory duties, rendering the trial court's affirmance an abuse of discretion.

On April 15, 2026, Prendergast filed a Civ.R. 60(B) motion, which the trial court found moot because all matters in the case were stayed upon the filing of the appeal. On April 30, 2026, Prendergast filed with this court a motion to supplement the record with an audio recording of the October 1, 2025 hearing, and this court issued a journal entry denying the request. Pursuant to App.R. 9(E), Prendergast filed a motion for leave with this court asking that the case be remanded to the trial court so that it could make needed corrections to the October 1, 2025 hearing transcript. ODJFS filed a brief in opposition that Riser Foods adopted and incorporated by reference. This court denied Prendergast's motion.

II. Legal Analysis

{¶ 16} Initially, we note that Prendergast acted pro se before the trial court and represents himself pro se on appeal. This court has previously recognized that

> a pro se litigant may face certain difficulties when choosing to represent oneself. Although a pro se litigant may be afforded reasonable latitude, there are limits to a court's leniency. Pro se litigants are presumed to have knowledge of the law and legal procedures, and are held to the same standard as litigants who are represented by counsel.

(Cleaned up.) *Saeed v. Greater Cleveland Regional Transit Auth.*, 2017-Ohio-935, ¶ 7 (8th Dist.). Thus, we presume Prendergast had knowledge of the law, legal procedures, and appellate process regarding his burden of demonstrating error on appeal.

A. Standard of Review

{¶ 17} R.C. 4141.282(H) governs the standard of review for decisions issued by the Commission. Under R.C. 4141.282(H), "[i]f the court [of common pleas] finds that the decision of the [C]ommission 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 [C]ommission. Otherwise, the court [of common pleas] shall affirm the decision of the [C]ommission." Appellate courts are to apply the same standard of review as the trial court. *Tzangas, Plakas & Mannos v. Admr., Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697 (1995). Appellate courts focus their review on the Commission's decision rather than the decision of the common pleas court. *Barilla v. Ohio Dept. of Job & Family Servs.*, 2002-Ohio-5425, ¶ 6 (9th Dist.), citing *Tenny v. Oberlin College*, 2000 Ohio App. LEXIS 6169, at *3 (9th Dist.

Dec. 27, 2000). Further, courts of appeals may not make factual findings or reach credibility determinations but must limit their determination to whether the Commission's decision is supported by evidence in the record. *Clark v. Dir., Ohio Dept. of Job & Fam. Serv.*, 2025-Ohio-2222 (8th Dist.), citing *Tzangas* at 696. "If such evidence is found, the court may not substitute its judgment for that of the [Commission]." *Warner v. Ohio Dept. of Job & Family Servs.*, 2023-Ohio-3157, ¶ 11 (8th Dist.), citing *Wilson v. Unemp. Comp. Bd. of Rev.*, 14 Ohio App.3d 309, 310 (8th Dist. 1984).

B. Analysis

1. Due Process Rights

{¶ 18} Prendergast contends in his first assignment of error that the trial court erred when it affirmed the Commission's decision because his due process rights were violated at the underlying hearing. Specifically, Prendergast contends that Adm.Code 4146-7-02(J) provides an opportunity to cure the appealing party's failure to appear at the hearing but no comparable right exists for the nonappealing party. Prendergast asserts that he attended his father's military burial on September 26, 2025, which prevented his participation in the Commission's scheduled hearing on October 1, 2025, and he had no ability to cure his absence. Prendergast further contends that in his absence, the hearing officer permitted the introduction of hearsay evidence and the hearing officer "deferred to the employer's unchecked narrative." Appellant's brief, p. 16.

{¶ 19} The principles of due process apply in administrative hearings. R.C. 4141.281(C)(2) ("The principles of due process in administrative hearings shall be applied to all hearings conducted under the authority of the commission."). "'In order to successfully appeal a judgment on procedural due process grounds, [appellant] must show that he was prejudiced by the allegedly inadequate process, unless the procedure employed involves such a probability that prejudice will result that it is deemed inherently lacking in due process.'" *Martin v. Dir., Ohio Dept. of Job & Family Servs.*, 2021-Ohio-3656, ¶ 14 (11th Dist.), quoting *Reid v. MetroHealth Sys., Inc.*, 2017-Ohio-1154, ¶ 27 (8th Dist.), citing *Bulatko v. Dir., Ohio Dept. of Job & Family Servs.*, 2008-Ohio-1061, ¶ 9 (7th Dist.), citing *Estes v. Texas*, 381 U.S. 532, 541-543 (1965).

{¶ 20} Prendergast correctly states that Adm. Code 4146-7-02(J) provides only the appealing party a right to "cure" the party's failure to appear at a scheduled Commission hearing. Prendergast incorrectly interprets the administrative code, however, because its terms are not limited to employers but to the appealing party.

{¶ 21} R.C. 4141.281(D)(6) provides a two-step process for nonappealing parties, such as Prendergast, to appeal a dismissal premised on the party's failure to attend the hearing:

> (6) NO APPEARANCE — APPELLEE
>
> For hearings at either the hearing officer or review level, if the [nonappealing party] fails to appear at the hearing, the hearing officer shall proceed with the hearing and shall issue a decision based on the evidence of record. The commission shall vacate the decision upon a showing that written notice of the hearing was not sent to the

> [nonappealing party's] last known address, or good cause for the [nonappealing party's] failure to appear is shown to the [C]ommission within fourteen days after the hearing date.

Prendergast did not attempt to avail himself of this two-step process nor did he deny his receipt of the requisite written notice of the hearing. Prendergast's arguments first raised in his reply brief suggesting that the notice was inadequate because it was confusing are unpersuasive.

{¶ 22} Prendergast was not denied due process by his own failure to attend the hearing and his own failure to pursue the two-step process offered under R.C. 4141.281(D)(6) to vacate the Commission's decision. *Higgins v. Patterson Pools, Inc.*, 2000 Ohio App. LEXIS 4402, *9 (12th Dist. Sept. 26, 2000) (No due process violation where discharged employee failed to appear for his Commission hearing despite receiving notice that the hearing would go forward in his absence and a decision rendered on the relevant evidence presented.). For the foregoing reasons, Prendergast's first assignment of error is overruled.

2. Incomplete and Inaccurate Transcript

{¶ 23} Prendergast argues in his second assignment of error that the certified written transcript filed by the Commission with the trial court is unreliable and incomplete and, therefore, a reviewing court's decision based upon that transcript is unreasonable under R.C. 4141.282(H). Prendergast attempted to remedy this concern by filing a motion to supplement the record with an audio recording of the Commission hearing but the trial court denied the motion.

{¶ 24} Specifically, Prendergast alleges discrepancies between the written transcript and the audio recording including (1) the transcript's reference to inaudible words versus the audio recording that reflects the hearing officer's statement of "Alright then, I'll begin"; (2) the transcript's inclusion of the word "again" whereas the audio recording allegedly indicates the word was not spoken; (3) multiple pauses in the dialogue that were not noted in the written transcript; (4) the transcript's neutral wording whereas the audio supposedly provides a "dramatic shift from hesitant speech to articulate reading of a prepared statement"; and (5) the transcript's use of neutral words while the audio reflects tones of evasion and reluctance. In lieu of the written certified transcript, Prendergast argues that the trial court and this court must review the audio recording of the Commission hearing, which allegedly represents an accurate and complete recitation of the testimony. Absent the audio recording — that the trial court refused to accept as a supplement to the record — Prendergast argues that the trial court and this court must rely on a written transcript that does not accurately reflect the testimony.

{¶ 25} Prendergast also argues that because the trial court and appellate court refused to accept the audio recording, he has no forum to address the inaccuracies of the transcript. In addition to his concerns about the written transcript, Prendergast asserts that the record is not reliable because (1) the trial court denied his motion to vacate that argued the hearing officer violated his statutory duties, (2) the trial court denied his motion to compel discovery, and

(3) the trial court granted ODJFS' motion to strike a portion of Prendergast's reply brief.

{¶ 26} Initially, we note that

> [a] reviewing court is not permitted to make factual findings or reach credibility determinations, but instead must determine whether the decision is supported by evidence in the record. If such evidence is found, the court may not substitute its judgment for that of the [Commission].

(Cleaned up.) *Clark*, 2025-Ohio-2222, at ¶ 19 (8th Dist.). At least some of Prendergast's alleged discrepancies between the written transcript and audio recording appear to suggest credibility determinations based on the transcribed testimony. Any suggestion that the trial court or this court should assess credibility based upon the audio recording is not well received.

{¶ 27} In compliance with R.C. 4141.282(F)(1), the Commission filed with the trial court a certified transcript of the record that included a written transcript of the October 1, 2025 hearing and, therefore, there was no need for an audio recording of the same hearing. There was no requirement that the trial court supplement the record with Prendergast's proposed audio recording. *Cleveland v. Moore*, 2013-Ohio-2899, ¶ 21 (8th Dist.) ("In this case, the municipal court clerk filed a transcript of the lower court's videotape proceedings. Hence, there was no requirement that the clerk or the city also transmit the actual videotape."). The trial court did not abuse its discretion when it denied Prendergast's motion to supplement the record, and accordingly, any additional arguments Prendergast presents in relation to the audio recording lack merit.

{¶ 28} We also note that Prendergast did not raise his concerns about the audio recording to the Commission. Typically, a party's failure to address an issue at the administrative level prohibits the party from raising the issue to a reviewing court. *Price v. Cellco Partnership*, 2024-Ohio-5697, ¶ 28 (10th Dist.), citing *State ex rel. Hoffman v. Ryan*, 2010-Ohio-2974, ¶ 8 (10th Dist.).

{¶ 29} Prendergast presents undeveloped arguments about the hearing officer's duties and alleged violations at the Commission hearing. Additionally, Prendergast does not specifically cite case law in support of this argument although he generally references R.C. 4141.281(C)(2) and Adm. Code 4146-7-02(A). Prendergast also generally references "fundamental due process" and other documents that are purportedly part of the appellate record. No legal analysis is provided.

{¶ 30} "This court has held that when an appellant fails to cite to any legal authority for their claims, that failure allows this court to disregard their arguments." *Lewicki v. Grange Ins. Co.*, 2023-Ohio-4544, ¶ 41 (8th Dist.), citing *Pinkney v. Salett*, 2011-Ohio-4121, ¶ 3 (8th Dist.); App.R. 12(A)(2); App.R. 16(A)(7); *Strauss v. Strauss*, 2011-Ohio-3831, ¶ 72 (8th Dist.), citing *State v. Martin*, 1999 Ohio App. LEXIS 3266 (12th Dist. July 12, 1999) ("An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2) if an appellant fails to cite to any legal authority in support of an argument as required by App.R. 16(A)(7)."); *Siemientkowski v. State Farm Ins.*, 2005-Ohio-4295 (8th Dist.). "The appellant, rather than the appellate court, bears the burden to construct the necessary legal

arguments that support the designated assignments of error." *Lewicki* at ¶ 41, citing *Doe v. Cuyahoga Cty. Community College*, 2022-Ohio-527, ¶ 26 (8th Dist.). "'If an argument exists that can support [the] assigned error, it is not this court's duty to root it out.'" *Strauss*, quoting *Cardone v. Cardone*, 1998 Ohio App. LEXIS 2028 (9th Dist. May 6, 1998). In accordance with App.R. 12(A)(2) and 16(A)(7), we disregard Prendergast's arguments about the hearing officer's duties.

{¶ 31} Prendergast also contends that the trial court erred when it denied his motion to compel discovery and granted Riser Foods' motion to strike. Prendergast argues that the court denied his motion to compel discovery without explanation and he should have been permitted to provide additional evidence, pursuant to R.C. 2506.03(A)(2), because he was not permitted to appear at the hearing. R.C. 2506.03(A)(2) relates to appeals of final orders, adjudications, or decisions of political subdivisions and is not relevant to the current matter. Prendergast cites no other legal authority in support of the arguments related to his motion to compel discovery. Similarly, Prendergast relies on no legal authority and provides no legal analysis as to how the trial court's order granting Riser Foods' motion to strike was erroneous. We decline to assess these arguments pursuant to App.R. 12(A)(2) and (16)(A)(7).

{¶ 32} For the foregoing reasons, we overrule Prendergast's second assignment of error.

3. Errors of the Hearing Officer

{¶ 33} In his third assignment of error, Prendergast argues that the Commission's decision is unlawful and against the manifest weight of the evidence because the decision relies on the uncorroborated hearsay of Eshman and the hearing officer violated his statutory duties.

{¶ 34} The objective of the hearing officer is to ascertain facts that demonstrate whether the claimant is entitled to unemployment benefits. *Heller v. Ohio Dept. of Jobs & Family Servs.*, 2010-Ohio-517, ¶ 15 (8th Dist.), citing *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 43 (1982). The officer is "not bound by common law or statutory rules of evidence or by technical or formal rules of procedure" and will consider evidence outside the rules, such as hearsay, with discretion. R.C. 4141.281(C)(2); *Cully v. Admr.*, 1994 Ohio App. LEXIS 4625, *4 (8th Dist. Oct. 13, 1994), quoting *Haley v. Ohio State Dental Bd.*, 7 Ohio App.3d 1, 6 (2d Dist. 1982) ("'The hearsay rule is relaxed in administrative hearings; however, the discretion to consider hearsay evidence cannot be exercised in an arbitrary manner.'").

{¶ 35} Here, the hearing officer questioned Eshman, who provided Riser Foods' account of the incident. Eshman testified to her understanding of Prendergast's actions and statements on that date as they were relayed to her by Talley. The hearing officer further elicited from Eshman a statement from a team member who supposedly overheard the verbal interaction between Talley and Prendergast. The statements made by Eshman constituted hearsay — "a statement,

other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). However, hearsay statements are permissible in an unemployment compensation hearing and the hearing officer's consideration of that evidence was neither unlawful nor against the manifest weight of the evidence.

{¶ 36} As to the hearing officer's alleged violations of his statutory duties, Prendergast challenges that the officer's failure to question the witnesses on certain issues undermined the reliability of the record and the fairness of the proceeding. While his argument is not clearly delineated, we presume Prendergast is challenging the officer's compliance with R.C. 4141.281(C)(2) that states, in pertinent part: "Hearing officers have an affirmative duty to question parties and witnesses in order to ascertain the relevant facts and to fully and fairly develop the record."

{¶ 37} The officer asked relevant questions of Eshman and ascertained the events that occurred on June 5, 2025. While Prendergast could have provided his version of the incident had he attended the hearing, his failure to appear prevented the officer from asking questions of him. Additionally, the hearing officer does not act as an advocate for either party "and has no responsibility to 'develop' either party's position to the detriment of the other. The [hearing officer's] duty is to act impartially and ascertain the facts." *Fasolo v. Admr., Ohio Bur. of Emp. Servs.*, 1988 Ohio App. LEXIS 153, *6 (8th Dist. Jan. 21, 1988). A review of the transcript indicates the officer acted properly in discharging his duties.

{¶ 38} Additionally, there was evidence in the record that Prendergast used profane language with his manager, he refused to complete a leave early form, and his actions constituted insubordination for which he was terminated, for cause, from his employment with Riser Foods. Accordingly, the Commission's decision finding Prendergast was terminated for cause was not against the manifest weight of the evidence.

{¶ 39} Prendergast's third assignment of error is overruled.

{¶ 40} Judgment affirmed.

It is ordered that appellees recover from appellant the 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 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.

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TIMOTHY W. CLARY, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR