[Cite as *Boos v. Ohio Bur. of Unemployment Services*, 2004-Ohio-6693.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

DAVID B. BOOS,	:	**O P I N I O N**
Appellant,	:	**CASE NO. 2003-T-0174**
- vs -	:	
ADMINISTRATOR, OHIO BUREAU OF UNEMPLOYMENT SERVICES, et al.,	:	
Appellees.	:	

Administrative Appeal from the Court of Common Pleas, Case No. 03 CV 916.

Judgment: Affirmed.

John A. McNally, III, 500 City Centre One, P.O. Box 507, Youngstown, OH 44507 (For Appellant).

Jim Petro, Attorney General and *Betsey N. Friedman,* Senior Assistant Attorney General, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, OH 44113 (For Appellees).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, David B. Boos, appeals the judgment of the Trumbull County Court of Common Pleas affirming the Unemployment Compensation Review Commission's ("UCRC") determination that he was discharged with just cause and not entitled to unemployment benefits.

{¶2} From April 1, 1999 through October 24, 2002, appellant was employed by Pine Lakes Golf Club, Ltd., ("Pine Lakes") as the head golf professional. Appellant was discharged for engaging in repeated confrontations with patrons and mismanaging certain administrative conflicts. According to Pine Lakes owner J.V. Ferrara ("Ferrara"), appellant's acts or omissions cost the golf course business and revenue. At the unemployment benefits hearing, Ferrara testified to four incidents leading to appellant's discharge:

{¶3} First, near the end of the 2000 golf season, one of Pine Lakes' league teams pulled itself from league play because of a purported shouting match between appellant and one of the teams' members. Appellant recalled the confrontation, but stated his actions did not prompt the team to leave. Ferrara did not witness the confrontation but was ultimately informed of the argument by league members.

{¶4} Next, between 2000 and 2001, members of a different league team became upset because Pine Lakes had insufficient golf carts for their use. Testimony indicated appellant had the discretion to lease more carts; however, appellant testified the demand was unexpected and he had no opportunity to lease the necessary equipment. Nevertheless, appellant claimed he tried to pacify the disconcerted members by giving them each two free golf balls. The dissatisfied members left unappeased and did not return to Pine Lakes in 2001.

{¶5} Additionally, appellant had an ongoing dispute with an owner of another golf course which escalated into a physical confrontation: Pine Lakes promoted a policy allowing owners of other golf courses to golf at Pine Lakes free of charge. Owners who took advantage of the opportunity were asked to sign a guest book. One particular

individual, John Doughton III, frequently played but allegedly refused to sign the guest book. This conduct displeased appellant who reported Doughton to Ferrara. According to appellant, Ferrara did nothing.

{¶6} In June of 2001, appellant was playing golf with a group which included Doughton. While the group played, appellant observed Doughton place his hand in appellant's golf bag. Believing Doughton was trying to pilfer his belongings, appellant grabbed Doughton's hand and struck it with a golf club; the strike bruised Doughton's hand. After Doughton reported the incident to Ferrara and threatened suit, Ferrara met with appellant and instructed him to avoid confrontations with patrons while working.[1]

{¶7} Finally, on September 15, 2002, appellant had a dispute with a member of another league team over golf carts. The individual, Reed Mays, was upset because there were not enough golf carts for his teams' golf outing. Mr. Mays allegedly became loud and obscene over the perceived inequity. Appellant, while attempting to reason with Mays, became gradually more irritated. The episode culminated with appellant calling Mays a "dickhead" and a "prick;" appellant then instructed Mays to take his money back and "get the hell out of here." Mays was refunded his money and left.

{¶8} As a result of this final confrontation, the league of which Mays was a member threatened to leave Pine Lakes. Appellant was subsequently discharged.

{¶9} On October 28, 2002, appellant filed an application for determination of unemployment benefit rights. Appellant's first claim was filed for the week ending November 2, 2002. On November 15, 2002, the Ohio Department of Job and Family

1. In June, 2002, Doughton attempted to play a round of golf at Pine Lakes without paying or signing the guest book. Appellant confronted and advised Doughton he could not play unless he either paid or signed the book. Doughton paid to play that round of golf.

Services ("ODJFS") held appellant was discharged by Pine Lakes for just cause in connection with his work, suspended benefits, and disallowed the claim for the week ending November 2, 2002. On December 2, 2002, appellant filed an appeal of the initial determination which was affirmed. Appellant filed an appeal of the re-determination whereupon ODJFS transferred jurisdiction to UCRC. After a hearing on February 6, 2003, the hearing officer affirmed the decision of ODJFS. Appellant sought a review of the hearing officer's decision which was disallowed on March 11, 2003. Appellant appealed his case to the Trumbull County Court of Common Pleas which, on November 7, 2003, affirmed the UCRC's decision.

{¶10} Appellant now appeals and assigns the following error:

{¶11} "The [t]rial [c]ourt erred in upholding the decision of the [a]dministrative agency (O.B.E.S.) denying unemployment benefits to the [p]laintiff-[a]ppellant (which had held the [c]laimant was discharged for just cause under O.R.C. 4141.29) because the decision of the agency was based solely upon hearsay evidence and a finding of fact based solely upon hearsay evidence should be reversed."

{¶12} "An appellate court will not reverse the UCRC's just cause determination unless it is unlawful, unreasonable, or against the manifest weight of the evidence." *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 1995-Ohio-206, at paragraph one of the syllabus.

{¶13} Appellant argues that the UCRC's hearing officer improperly relied upon the hearsay testimony and, in doing so, disregarded appellant's direct, sworn testimony. Fundamentally, appellant argues a hearing officer may not base his or her decision solely on hearsay evidence from an employer at the expense of the testimony of a

claimant. In support, appellant cites *Haley v. State Dental Board* (1982), 7 Ohio App.3d 1, 6, for the proposition:

{¶14} "*** apart from specific statutes, administrative agencies are not bound by the strict rules of evidence applied in court. *** However, an administrative agency should not act upon evidence which is not admissible, competent, or probative of facts which it is to determine. *** The hearsay rule is relaxed in administrative proceedings but the discretion to consider hearsay evidence cannot be exercised in an arbitrary manner." (Internal cites omitted).

{¶15} Appellant additionally cites non-binding authority from Pennsylvania and New York holding a hearing officer may not base his or her decision solely on hearsay evidence unsupported by any competent evidence of record. See, *Walker v. Unemployment Compensation Board of Review* (1976), 367 A.2d 366, 370; *Carroll v. Knickerbocker Ice Co.* (1916), 218 N.Y. 435.

{¶16} In Ohio, "[h]earing officers are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure." R.C. 4141.281(C)(2), See, also *Stull v. Director Ohio Dept. of Job and Family Services*, 11th Dist. No. 2003-T-0029, 2004 Ohio 1516, at ¶22. This statute is designed to avoid rigid formalities imposed by evidentiary rules while "constructing an efficient method for ascertaining a claimant's entitlement to unemployment compensation benefits." *Simon v. Lake Geauga Printing Co.* (1982), 69 Ohio St.2d 41, 43.

{¶17} If otherwise inadmissible evidence is admissible in the context of an administrative hearing it must assuredly be weighed and considered when making a decision. Put differently:

{¶18} "[i]f evidence which is inadmissible in a court of law is to be disregarded when and if reviewed, there is no reason to admit such evidence at the administrative level." Id.

{¶19} Thus, as the fact finder, a hearing officer may consider generally inadmissible hearsay evidence, along with the credibility of individuals giving testimony in reaching his or her decision.

{¶20} Although much of Ferrara's testimony regarding appellant's confrontations was technically hearsay obtained from individuals who did not testify at the hearing, the evidence was nevertheless appropriately received. See, *Mastromatteo v. Brown & Williamson Tobacco Corp*; 2d Dist. No. 19701, 2003-Ohio-5328, at ¶13. Moreover, it is clear that certain factual allegations made by Ferrara were admitted by appellant. Hence, irrespective of Ferarra's hearsay account of the facts, appellant's testimony confirmed certain events leading to his termination.

{¶21} Appellant testified that he in fact physically struck a patron of Pine Lakes with a golf club. Moreover, appellant testified that he and a patron argued over whether the patron could obtain extra golf carts for his round. During this bellicose exchange, the patron was verbally abusive. However, appellant testified that he used the "F" word several times and referred to the patron as a "dickhead" before inviting him to "get the hell out" of Pine Lakes. This exchange occurred subsequent to Ferraro's purported warning that appellant should not participate in public confrontations with patrons.

{¶22} We are required to give great deference to the hearing officer's findings of fact. *Todd v. Administrator, Ohio Dept. of Job and Family Services*, 4th Dist. No. 03CA2894, 2004-Ohio-2185, at ¶26. Consequently, it would be inappropriate to

disregard his findings merely because they are partially based upon hearsay testimony. Hearsay aside, appellant admitted to striking a patron and engaging another in a hostile, truculent argument after being warned to avoid such confrontations. The review commissions findings are not unlawful, unreasonable, or against the manifest weight of the evidence. Appellant's sole assignment of error is overruled.

{¶23} We therefore affirm the Trumbull County Court of Common Pleas judgment affirming the hearing officer's decision.

DONALD R. FORD, P.J.,

ROBERT A. NADER, J., Ret., Eleventh Appellate District, sitting by assignment,

concur.