[Cite as *Univ. of Akron v. Ohio Dept. of Job & Family Servs.*, 2009-Ohio-3172.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

UNIVERSITY OF AKRON Appellant v. DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, et al. Appellee	C.A. No. 24566 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV-2008-02-1228

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

MOORE, Presiding Judge.

{¶1} Appellant, the University of Akron, appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This case arises out of Appellee-Claimant, Theresa Stotler's, application for unemployment benefits. Stotler was employed as a part-time faculty member for Appellant, the University of Akron, during the spring semester of 2007. The spring semester ended on May 11, 2007. The University had a summer term but Stotler did not teach during the summer term as the course she teaches was not offered during the summer term.

{¶3} On May 23, 2007, Stotler filed an application for unemployment benefits with the Ohio Department of Job and Family Services ("ODJFS") for the weeks of June 2, 2007 through July 14, 2007. Stotler received $2070 in benefits for those weeks.

{¶4} When an individual files an application for unemployment benefits, ODJFS contacts the individual's employer to ascertain information relative to the individual's employment status. On May 24, 2007 and June 11, 2007, ODJFS sent the University a "Request for Information" regarding her application for unemployment benefits. By fax dated June 1, 2007, the University responded to ODJFS's information requests indicating that Stotler was a part-time faculty member who was seeking unemployment compensation benefits between the spring and fall semesters. The University also stated in writing via letters to ODJFS dated July 3, 2007 and July 13, 2007, that Stotler had reasonable assurance of employment in the fall term.

{¶5} On June 22, 2007, ODJFS issued a Determination of Benefits which held that Stotler was ineligible for benefits because she had reasonable assurance of employment with the University for the next academic term. Stotler appealed the decision. On July 19, 2007, the Director of ODJFS issued a decision determining that Stotler was ineligible for benefits for the weeks of May 20, 2007 through September 1, 2007 because she had a contract or reasonable assurance of employment with an educational institution for the next academic year or term. ODJFS ordered Stotler to repay it $2070 for benefits she received from June 2, 2007 to July 14, 2007. Stotler appealed the Redetermination of Benefits decision. During the first week of August 2007, Stotler received an email confirming her employment for the fall semester.

{¶6} On October 19, 2007, the Director of ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission. The Review Commission held a telephone hearing on November 29, 2007 at which Stotler and Assistant Dean Dr. Kathleen Ross-Alaolmolki testified. Following the hearing, the hearing officer reversed the Director's Redetermination decision. The hearing officer determined that Stotler had reasonable assurance of employment from August 5, 2007 to September 1, 2007 but did not have reasonable assurance

of employment before that time. The hearing officer relied on evidence that Stotler did not receive *written* notice that she would be teaching in the fall until the first week of August. Consequently, the officer canceled the overpayment order.

{¶7} The University requested further review of the Review Commission's decision. In its final decision mailed on January 8, 2008, the Review Commission denied the University's request for further review. The University appealed the Review Commission's decision pursuant to R.C. 4141.282(H) to the Summit County Court of Common Pleas. Upon review, the court affirmed the decision of the Review Commission. The University timely appealed the trial court's order and has raised one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ERRED BY AFFIRMING THE DECISION OF THE ODJFS AND [THE REVIEW COMMISSION] WHICH DETERMINED THAT CLAIMANT WAS NOT GIVEN REASONABLE ASSURANCE OF EMPLOYMENT UNTIL AUGUST 5, 2007, WHICH DECISION WAS UNLAWFUL, UNREASONABLE AND/OR AGAINST THE MANIFEST WEIGHT OF EVIDENCE."

{¶8} In the University's sole assignment of error it argues that the trial court erred by affirming the decisions of ODJFS and the Review Commission which determined that Stotler was not given reasonable assurance of employment until August 5, 2007 because the decision was unlawful, unreasonable and/or against the manifest weight of the evidence. We disagree.

{¶9} R.C. 4141.282(H) sets forth the scope of review in unemployment compensation cases. Pursuant to this section, we may only reverse the Review Commission's decision if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Markovich v. Employers Unity, Inc.*, 9th Dist. No. 21826, 2004-Ohio-4193, at ¶10, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.* (1995), 73 Ohio St.3d 694, 696. When we review the trial court's

decision, we apply the same standard. Id. In such cases, this Court is "required to focus on the decision of Review Commission, rather than that of the common pleas court[.]" *Markovich* at ¶10, citing *Barilla v. Ohio Dept. of Job & Family Servs.*, 9th Dist. No. 02CA008012, 2002-Ohio-5425, at ¶6.

{¶10} "'Every reasonable presumption must be made in favor of the [decision] and the findings of facts [of the Review Commission].'" *Ro-Mai Industries, Inc. v. Weinberg*, 9th Dist. No. 23792, 2008-Ohio-301, at ¶7, quoting *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. "[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the trial court's verdict and judgment." *Karches*, 38 Ohio St.3d at 19.

{¶11} The resolution of factual questions is chiefly within the Review Commission's scope of review. *Tzangas*, 73 Ohio St.3d at 696; *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17. The court's role is to determine whether the decision of the Review Commission is supported by evidence in the certified record. *Durgan v. Ohio Bur. of Emp. Servs.* (1996), 110 Ohio App.3d 545, 551, citing *Tzangas*, 73 Ohio St.3d at 696; *Irvine*, 19 Ohio St.3d at 18. If the reviewing court finds that such support is found, then the court cannot substitute its judgment for that of the Review Commission. *Durgan*, 110 Ohio App.3d at 551, citing *Wilson v. Unemp. Comp. Bd. of Rev.* (1984), 14 Ohio App.3d 309, 310. "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the [Review Commission's] decision." *Irvine*, 19 Ohio St.3d at 18.

{¶12} R.C. 4141.29 sets forth unemployment compensation eligibility and qualification for benefits. R.C. 4141.29 contains special provisions for university employees, which preclude a university employee from obtaining benefits between terms if he or she has received a teaching

contract or "reasonable assurance" of employment in the next term. R.C. 4141.29(I)(1)(a) provides:

> "Benefits based on service in employment as provided in divisions (B)(2)(a) and (b) of section 4141.01 of the Revised Code shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that after December 31, 1977:
>
> "Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education, as defined in division (Y) of section 4141.01 of the Revised Code; or for an educational institution as defined in division (CC) of section 4141.01 of the Revised Code, *shall not be paid to any individual* for any week of unemployment that begins during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms or during a period of paid sabbatical leave provided for in the individual's contract, *if the individual performs such services in the first of those academic years or terms and has a contract or a reasonable assurance that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms*." (Emphasis added.)

{¶13} R.C. 4141.29(I)(2) also addresses benefits for university employees and states:

> "No disqualification will be imposed, between academic years or terms or during a vacation period or holiday recess under this division, unless the director or the director's deputy has received a statement in writing from the educational institution or institution of higher education that the claimant has a contract for, or a reasonable assurance of, reemployment for the ensuing academic year or term."

{¶14} At the outset, we note that the Revised Code does not provide a definition of the term "reasonable assurance." See *Allen v. Administrators, OBES*, (May 14, 1997), 1st Dist. No. C-960705, at *2 (explaining that the legislature amended the statute, completely deleting any reference to the definition of "reasonable assurance"). The University urges us to apply the definition of "reasonable assurance" set forth in *Allen* wherein the First District relied on the school board's definition of "reasonable assurance" as "'a mere likelihood that employment could occur.'" Id.

{¶15} Webster's Dictionary provides a different definition of "assurance" than the one set forth in *Allen*. Webster's defines "assurance" as a "pledge" or "guarantee." Merriam-

Webster's Eleventh Collegiate Dictionary (2005) 75. "Reasonable" is defined by Webster's as "moderate" or "fair." Id. at 1037. Read together, reasonable assurance is defined as a moderate guarantee. This definition evokes far more certainty than a "mere likelihood." See *Allen*, supra, at *2. However, assuming the definition set forth in *Allen* was plausible, we are not bound by the decisions of our sister courts. *State v. Coleman*, 9th Dist. No. 06CA008877, 2006-Ohio-6329, at ¶9.

{¶16} The record contains credible evidence that Stotler did not have "reasonable assurance" of employment, as contemplated in R.C. 4141.29(I)(1)(a), with the University until August 2007. Stotler testified that in the spring of 2007, Ross-Alaolmolki asked her if she would be available in the fall to teach. They did not discuss pay. Stotler further explained that administrators often ask part-time faculty about their availability but that those conversations do not guarantee a position, as unforeseen circumstances may prompt the University to cancel certain classes. At the hearing, the University's attorney specifically asked Assistant Dean Ross-Alaolmolki when Stotler knew that she would be teaching in the fall. The two engaged in the following colloquy:

> University: "And was Ms. Stotler told that [she would be scheduled for a fall semester rotation?]
>
> Ross-Alaolmolki: "At that time probably it was later. We are always asking faculty if they would be on board with us in the fall or the spring."

{¶17} The University's response to the Director of ODJFS's May 24, 2007 Request for Information provides further evidence that it did not give Stotler reasonable assurance. When asked how and when the University gave Stotler reasonable assurance, the University responded: "Claimant's department has scheduled her for two rotations as it has in every semester

previously." The University clearly did not answer the question as to when and how Stotler was notified.

{¶18} While the record reflects that the University provided written notice to ODJFS prior to August of 2007 that Stotler had a reasonable assurance of employment, this notice did not satisfy R.C. 4141.29(I)(1)(a). R.C. 4141.29(I)(1)(a) states that

> "[b]enefits based on service in an instructional *** capacity in an institution of higher education *** *shall not be paid to any individual* for any week of unemployment that begins during the period between two successive academic years or terms *** *if the individual* performs such services in the first of those academic years or terms and *has a contract or a reasonable assurance* that the individual will perform services in any such capacity for any such institution in the second of those academic years or terms." (Emphasis added.)

{¶19} Conversely, benefits should be paid to an individual for any week of unemployment that begins during the period between two successive academic years or terms who does not have a contract or reasonable assurance of employment. This section contemplates the *instructor's* receipt of a teaching contract or a "reasonable assurance" of employment before benefits can be denied. Mere notice to ODJFS is inadequate.

{¶20} In its decision that Stotler did not have reasonable assurance of employment with the University until August 5, the Commission relied on the fact that Stotler did not receive written notice that she would be teaching in the fall until the first week of August. Upon review, we need not consider whether the University was required to provide Stotler with *written* notice. The Commission correctly determined that the University failed to provide Stotler a reasonable assurance of employment – written or otherwise.

{¶21} The fact that reasonable minds might reach different conclusions as to whether Stotler had "reasonable assurance" of employment is not a basis for the reversal of the Review Commission's decision. *Irvine,* 19 Ohio St.3d at 18. We conclude that the Review

Commission's decision that Stotler did not have reasonable assurance of employment until the first week of August 2007 is supported by the evidence in the record. Accordingly, the University's sole assignment of error is overruled.

III.

{¶22} The University's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

BELFANCE, J.
CONCURS

CARR, J.
DISSENTS, SAYING:

{¶23} I respectfully dissent.

{¶24} R.C. 4141.29(I)(2) provides that a claimant will be disqualified from receiving benefits if "the director [of ODJFS] or the director's deputy has received a statement in writing from the educational institution or institution of higher education that the claimant has a contract for, or a reasonable assurance of, reemployment for the ensuing academic year or term." In this case, the University of Akron responded in writing on June 1, 2007, to ODJFS's request for information, asserting that Ms. Stotler had a reasonable assurance of employment for the fall term. The University explained that the Ms. Stotler's department had "scheduled her for two rotations as it has in every semester previously." I disagree with the majority's conclusion that this statement was not responsive to the department's inquiry.

{¶25} ODJFS does not respond to the University's argument that Ms. Stotler was not entitled to benefits pursuant to R.C. 4141.29(I)(2). Rather, the department confines its response to the provisions of R.C. 4141.29(I)(1)(a), which addresses the claimant's notice of reasonable assurances of future employment. Because the University provided a statement in writing on June 1, 2007, to the department, asserting that Ms. Stotler had a reasonable assurance of employment for the coming semester, I would conclude that the hearing officer's cancellation of the overpayment order was unlawful, unreasonable and against the manifest weight of the evidence. Accordingly, I would reverse and remand the matter for further proceedings.

APPEARANCES:

FRANK CONSOLO, Attorney at Law, for Appellant.

RICHARD CORDRAY, Attorney General, and LORI WEISMAN, Assistant Attorney General, for Appellee.