

[Cite as *Duquesne v. Ohio State Unemp. Review Comm.*, 2011-Ohio-5486.]
IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Marva Duquesne, | : | |
| | : | |
| Appellant-Appellant, | : | |
| | : | No. 11AP-241 |
| v. | : | (C.P.C. No. 10CVF-10-15201) |
| | : | |
| Ohio State Unemployment Review | : | (ACCELERATED CALENDAR) |
| Commission et al., | : | |
| | : | |
| Appellees-Appellees. | : | |
| | : | |

D E C I S I O N

Rendered on October 27, 2011

Marva Duquesne, pro se.

Michael DeWine, Attorney General, and *Patria V. Hoskins*,
for appellees.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Appellant-appellant, Marva Duquesne ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which affirmed the decision by appellee-appellee Ohio State Unemployment Review Commission ("commission") to disallow review of its decision affirming denial of unemployment compensation by

appellee-appellee Ohio Department of Job and Family Services ("ODJFS"). For the following reasons, we affirm.

{¶2} This appeal arises from appellant's application for unemployment compensation. ODJFS denied her request for compensation for certain time periods because appellant did not file her claims within applicable time limits or did not meet the registration requirements. Upon appeal by appellant, ODJFS affirmed the denial of those benefits.

{¶3} Following additional correspondence from appellant, ODJFS transferred the matter to the commission. A hearing officer of the commission held a telephone hearing, in which appellant participated and testified. In a written decision, the hearing officer affirmed the denial of benefits. In a letter dated September 3, 2010, appellant requested a review of the hearing officer's decision. The commission disallowed her request.

{¶4} On October 15, 2010, appellant filed a notice of appeal in the trial court, alleging that the commission erred by disallowing her request for review of the hearing officer's decision. On December 23, 2010, appellant filed a copy of the September 3, 2010 letter she had written to the commission to request review of the hearing officer's decision, as well as the information she submitted to ODJFS in support of her prior appeals ("the December 23 filing").

{¶5} On January 7, 2011, ODJFS moved to dismiss appellant's appeal for failure to prosecute. On January 11, 2011, ODJFS moved to withdraw its dismissal motion, noting the December 23 filing. The court allowed ODJFS to withdraw its prior

motion and granted ODJFS time to file its brief, which ODJFS then filed on January 21, 2011.

{¶6} On February 9, 2011, the trial court issued a decision and entry that affirmed the commission's decision. In its decision, the trial court explained the procedural history of appellant's appeal, including ODJFS's filing, and then withdrawal, of its motion to dismiss. The court viewed the December 23 filing as appellant's brief and expressly considered its contents. In a detailed decision, the court then considered the entire record, analyzed the applicable law, and concluded that the commission's decision was lawful, reasonable, and not against the manifest weight of the evidence.

{¶7} Appellant filed a timely appeal, and she raises the following assignment of error:

1. The Common Pleas Court committed reversible error in sua sponte vacating the previously-approved entry extending parties' even schedule briefing time and thereupon grating [sic] the motion to dismiss for failure to prosecute without affording the appellant the opportunity to respond to the motion to dismiss, as required by local rule of court.

(Emphasis sic.)

{¶8} In an administrative appeal, pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with the law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111.

{¶9} The Ohio Supreme Court has defined reliable, probative, and substantial evidence as follows:

* * * (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value.

Our Place, Inc. v. Ohio Liquor Control Comm. (1992), 63 Ohio St.3d 570, 571.

(Footnotes omitted.)

{¶10} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.* (1992), 63 Ohio St.3d 705, 707. In reviewing the court of common pleas' determination that the commission's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the court of common pleas abused its discretion. *Roy v. Ohio State Med. Bd.* (1992), 80 Ohio App.3d 675, 680. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. However, on the question whether the commission's order was in accordance with the law, this court's review is plenary. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343.

{¶11} In her assignment of error, appellant contends that the trial court granted ODJFS's motion to dismiss without giving her an opportunity to respond. The record demonstrates, however, that ODJFS withdrew its motion to dismiss, and the court did

not consider it. Rather, the trial court expressly considered the information and arguments contained within the December 23 filing, reviewed the entire record, and issued a ruling on the merits of appellant's appeal. Therefore, contrary to appellant's contention, the trial court did not dismiss her appeal for failure to prosecute.

{¶12} In its decision, the trial court identified the evidence supporting the commission's denial of benefits, including the commission's findings that appellant did not meet the filing and registration requirements. Appellant argued that she had received inconsistent instructions about the process, and the requirements were confusing to her. Although she had attempted to make on-line submissions, appellant agreed that she had not registered for three of the time periods and had submitted claims untimely. Because reliable, probative, and substantial evidence supports the trial court's decision, we conclude that the trial court did not abuse its discretion by affirming the commission's decision.

{¶13} In conclusion, we overrule appellant's assignment of error. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
