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**Opinion of the Stark County Court of Appeals, Fifth Appellate District
(March 15, 2010).....App A**

**Judgment Entry of the Stark County Court of Appeals, Fifth Appellate
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I. EXPLANATION OF WHY THIS IS A CASE FROM AN APPEAL OF A COURT OF APPEALS DECISION UNDER APPELLATE RULE 26 (B) WHICH RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND IS A MATTER OF PUBLIC AND GREAT GENERAL INTEREST

This case is an appeal from the opinion of the Stark County Court of Appeals, Fifth Appellate District, under Appellate Rule 26 (B) to the Supreme Court of Ohio. The review of this case is one of public and great general interest when considering unemployment compensation claims for the State of Ohio. The more challenging review for this Honorable Court to consider would be that this case raises substantial constitutional questions to the elements of law that regulate federal unemployment compensation funds applied for by the State of Ohio. The effect of the review by this Honorable Court will have public and great general interest in protecting the expanding number of unemployed people in the State of Ohio.

II. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

This case is an appeal from a March 15, 2010 opinion of the Stark County Court of Appeals, Fifth Appellate District, case number 2009 CA 00164, that affirmed the decision of the Stark County Court of Common Pleas, case number 2009 CV 00007, on an administrative appeal brought forth by Sean W. Gallagher (“Appellant”) for consideration upon a claim for unemployment compensation benefits pursuant to R.C. 4141.282. The case before this Honorable Court has developed from an unemployment compensation claim to the ODJFS in which the Appellant has maintained throughout that he did not “quit” or “resign” his employment with the Hilton Garden Inn Akron-Canton Airport, managed by Alliance Hospitality Management LLC (“Employer”). The Employer hired the Appellant to a position which was not authorized at the Akron-Canton property by the corporate office. The position for which the Appellant had specific agreements that was to be honored by the Employer concerning the Appellant’s medical condition, hours, and

advancement. The Employer did not honor these agreements creating employment issues that the Appellant tried to resolve for eight months with the general manager at that property. The general manager gave the Appellant the impression that the Employer's corporate office was going to try to resolve the employment issues. During the eight months, while waiting for a response, the Appellant was harassed, intimidated, and retaliated against by department managers which led to acts of workplace violence towards the Appellant. The Appellant took the employment issues to the general manager who did not respond other than removing the Appellant from his job. The Appellant then took the employment issues to the Employer's corporate office where he learned from the corporate director of human resources that the general manager never made any attempts to address the employment issues. The Appellant followed the procedures of the company handbook and was fully engaged with the Employer's corporate office. The Appellant was seeking help to present this employment situation to the attention of the Employer's CEO when the corporate director of human resources intervened and separated the Appellant from his employment. The Employer's company policy handbook states that only the corporate CEO could resolve the type of employment issues that were presented in the Appellant's employment dispute. The Appellant believes this case to be unprecedented in the way it has been heard and objects to the standard of review that has been demonstrated throughout the hearing process because it is unlawful, unreasonable, and against the manifest weight of the evidence.

On October 16, 2006 the Appellant was hired by the Employer as a manager in training. All documents that were presented by the Appellant at the UCRC hearing on November 4, 2008, indicated that the Appellant was considered by the Employer to be a manager in training. The Appellant continued to be employed by the Employer until October 19, 2007 when the corporate director of human resources sent the Appellant a letter by mail and email setting a separation date that caused the Appellant's unemployment.

On October 23, 2007 the Appellant filed an unemployment compensation claim to the Ohio Department of Job & Family Services (“ODJFS”). Incorrect information was manufactured when the ODJFS online filing system shut down as the Appellant was making application for unemployment compensation benefits. The Appellant then continued the application process by phone at which time an ODJFS intake phone representative incorrectly transferred information into the Appellant’s file from a previous unemployment compensation claim filed by the Appellant in 2001. The Appellant realized the incorrect information after receiving an ODJFS notice of eligibility on October 24, 2007. The unemployment compensation claim was initially denied based on incorrect information that was entered into the Appellant’s file. On October 26, 2007, the Appellant immediately challenged the ODJFS notice of eligibility and responded with correspondence and documentation which clearly showed incorrect employment information was entered on the ODJFS application summary form by the intake phone representative. The ODJFS application summary form listed address, residing county, trade/occupation, and “quit” as the reason for separation based on a previous unemployment compensation claim filed by the Appellant in 2001. That information was supposed to be corrected by the ODJFS. The reason for separation in the 2001 unemployment compensation claim was listed as “quit” at which time the Appellant had to leave his employment due to medical reasons that eventually required several surgeries. On December 17, 2007 those entries were determined by the ODJFS Director’s Redetermination as not applicable to this claim and had absolutely no relevance to the claim before this Honorable Court. Facts show that on November 9, 2007 the Employer filed late a required ODJFS response questionnaire beyond the deadline date and that the answers provided in that response were false and misleading. On December 17, 2007 the ODJFS Director’s Redetermination found that the Appellant was removed from his employment by the Employer, was not the moving party in the employer/employee separation, and that a “quit” did not occur. The ODJFS Director’s

Redetermination found that the Employer violated its own company policy when the Appellant was removed from the work schedule, removed from computer access to do his job, and separated from employment when he tried to advance the complaint process further to the Employer's CEO. On December 17, 2007 the ODJFS Director's Redetermination allowed the Appellant 26 weeks of unemployment compensation benefits after a thorough review of the facts and the errors of this case. The reason for separation in the 2001 unrelated unemployment compensation claim was listed as "quit" at which time the Appellant had to leave his employment due to medical reasons that eventually required several surgeries. This Honorable Court must realize that the Appellant has been burdened with the unlawful use of "quit" throughout the entire unemployment compensation claim process because of the errors made by the ODJFS intake phone representative. The ODJFS application summary form was wrongfully relied upon in hearings and decisions to establish "quit" as the cause of the Appellant's unemployment. On January 2, 2008 the Employer appealed the ODJFS Director's Redetermination to the Unemployment Compensation Review Commission ("UCRC"). On January 30, 2008 the ODJFS transferred jurisdiction to the UCRC at which time false, incorrect, and manufactured information that was determined by the ODJFS to be incorrect reappears when the case is transferred to the UCRC for hearing.

On February 5, 2008, the Appellant requested an in-person hearing and made a request for discovery to review the false and manufactured documents submitted by the ODJFS to the UCRC. On February 19, 2008 the ODJFS sent a notice of hearing to the Appellant for an in-person hearing scheduled for February 29, 2008 in Richmond Heights, Ohio. On February 29, 2008 an incomplete hearing was conducted in which testimony was only given by the Employer before being abruptly ended by the hearing officer. The hearing officer did not take testimony from the Appellant or the Appellant's witnesses. An objection was made by the Appellant to the standard of review and to the use of the false and manufactured documents by the UCRC hearing officer. The Appellant

asked for a senior hearing officer to review those objections. Instead, a new hearing was scheduled for April 10, 2008. That hearing was postponed due to the Appellant's medical condition. A re-scheduled telephone hearing was scheduled for July 21, 2008. The Appellant notified the UCRC, both by telephone and in writing, prior to the July 21, 2008 hearing to explain that this situation was causing excessive stress to the Appellant's medical condition which resulted in doctor visits and procedures during the time of the scheduled July 21, 2008 telephone hearing. The Appellant sent the UCRC documentation supporting this. The UCRC instructed the Appellant to rest on the record for the July 21, 2008 hearing as another postponement was not allowed. The Employer did not appear for the July 21, 2008 hearing and to that date had never entered any evidence disputing the Appellant's statements that were submitted to the ODJFS. The Employer only entered an ODJFS response questionnaire which was filed late and designed to mislead the ODJFS. On August 1, 2008 the UCRC hearing officer reversed the decision of the ODJFS and formed his decision by citing segments of emails that were read out of context with no testimony allowed by the Appellant or the Appellant's witnesses. On August 19, 2008 the Appellant appealed that decision and again objected to the standard of review and requested for a fact finding interview with a senior hearing officer to review the unlawful use of the false, incorrect, and manufactured documents. The Appellant also requested a copy of the transcript and audiotape/compact disc of the February 29, 2008 UCRC hearing. On August 25, 2008, the Appellant submitted an additional supplement to his appeal.

On September 2, 2008 the UCRC informed the Appellant that a transcript or record of the hearing was inaudible, inoperable or misplaced and that no hand written notes were taken by the hearing officer. The Appellant's appeal immediately questioned how the UCRC hearing officer could have reversed the ODJFS Director's Redetermination six months after an incomplete February 29, 2008 hearing in which the record was completely lost and a July 21, 2008 hearing in

which the Employer did not attend and never presented any evidence disputing the Appellant's statements submitted to the ODJFS. On September 10, 2008 the UCRC issued a notice of allowance of request for review. On October 1, 2008 a notice was issued to rehear the case with a hearing date scheduled for November 4, 2008. On October 3, 2008 the Appellant again sent the UCRC a request for discovery and an in-person hearing with a senior hearing officer to review the false and manufactured documents. All previous requests for discovery to the UCRC and to the Employer were not acknowledged and because of this the Appellant was unable to bring documented facts forward. Instead, the UCRC scheduled a de novo hearing on November 4, 2008 in which the Employer brought witnesses to testify who never worked for the Employer at the time of the incident and who offered only a hearsay accounting of the employment situation. On December 4, 2008 the UCRC affirmed the decision of the original hearing officer and ignored the Appellant's objections to the false, incorrect, and manufactured documents the hearing officer considered.

On January 5, 2009 the Appellant appealed this decision and filed a designation form and a notice of appeal to the Lower Court stating that the use of false, incorrect, and manufactured documents was unlawful, unreasonable, and against the manifest weight of the evidence. The Attorney General was advised of these documents throughout the UCRC hearing process and more specifically on February 12 and February 17, 2009. The Attorney General knowingly ignored and suppressed the fact that documents transferred by the ODJFS to the UCRC were false, incorrect, and manufactured. The Attorney General knowingly entered these documents to the Lower Court to establish "quit" as the cause of unemployment and as the foundation of their case. The unlawful use of false, incorrect, and manufactured documents directly effected the decision of the Lower Court, as indicated on page 5 of the judgment entry from the Stark County Court of Common Pleas and in the opinion {¶28} from the Stark County Court of Appeals, Fifth Appellate District. The

Appellant, continuously throughout this process, has made these facts known to the ODJFS, UCRC, Inspector General, Attorney General, and the Lower Court.

On May 26, 2009 a judgment entry was made by the Stark County Court of Common Pleas to affirm the UCRC decision. This decision was made after the Employer and the UCRC misled the Lower Court by introducing false, incorrect, and manufactured documents and relied on segments of emails to try to establish intent. The standard of review that allowed this decision that goes against the manifest weight of the evidence was immediately challenged. On June 24, 2009 the Appellant filed a docketing statement and a notice of appeal to the Stark County Court of Appeals, Fifth Appellate District. Also, On June 24, 2009 the Appellant filed a motion for stay to the Lower Court. On June 30, 2009 the Appellee's filed a reply to the Appellant's motion for stay. On July 6, 2009 a judgment entry was made by the Lower Court to deny the Appellant's motion for stay. On August 31, 2009 the Appellant filed a brief to the Stark County Court of Appeals, Fifth Appellate District. On October 1, 2009 the Appellee, Director ODJFS, filed their brief and on October 8, 2009 the Appellee, Employer Alliance Hospitality Management LLC filed their brief.

The Appellant was advised by letters from the Inspector General and the Attorney General for the State of Ohio that he was "prohibited from contacting any ODJFS or UCRC employee or anyone working at an ODJFS site or property, whether via personal visits, letters, telephones, emails, or any other manner in the future." In addition, the ODJFS prevented the Appellant from filing, by phone or computer, his weekly claims for extended benefits and would not address the false, incorrect, and manufactured documents concerning this claim. On September 11, 2009 a separate issue was raised when a notice from the ODJFS was sent to the Appellant concerning extended unemployment compensation benefits. The only remedy left to the Appellant for a timely response to this notice was to file a reply with the Stark County Court of Appeals, Fifth Appellate District on October 2, 2010. On October 6, 2009 and on October 8, 2009 the Appellee's filed a

motion to strike the Appellant's reply to the ODJFS notice. On October 19, 2009 the Appellant filed a reply brief. On October 22, 2009 the Appellee's motion to strike was granted.

On November 20, 2009 an oral argument was set for January 21, 2010. On March 15, 2010 the Stark County Court of Appeals, Fifth Appellate District, affirmed the decision of the Lower Court. Again, that decision unlawfully considered the false, incorrect, and manufactured documents to form its opinion. On March 25, 2010 the Appellant filed a motion for reconsideration to the Stark County Court of Appeals, Fifth Appellate District. On March 29, 2010 the Appellant filed a motion for evidentiary hearing to review the false, incorrect, and manufactured documents that were submitted by the Appellee's as evidence. On March 29, 2010 the Appellee's filed a joint reply to the Appellant's motion for reconsideration and on March 31, 2010 the Appellee's filed a joint reply to the Appellant's motion for evidentiary hearing. On April 2, 2010 the Appellant filed a supplement to motion for reconsideration. On April, 22, 2010 the Stark County Court of Appeals, Fifth Appellate District, made a judgment entry denying the Appellant's motion for reconsideration and the Appellant's motion for evidentiary hearing.

The unlawful use of false, incorrect, and manufactured documents has denied the Appellant the right to a fair hearing process. The failure of the UCRC to follow a proper standard of review has caused a miscarriage of justice. The Appellant now appeals to this Honorable Court.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

The Appellant states that the decision of the Lower Court must be reversed since it is unlawful, unreasonable and against the manifest weight of the evidence and that plain, prejudicial, manifest, and reversible errors were committed that denied the Appellant's right to a fair hearing. The Appellant's merit brief and reply brief will support the Appellant's propositions of law I, II, and III.

Proposition of Law I

The standard of review used by the UCRC to hear this unemployment compensation case distorted the Appellant's claim by entering false, incorrect, and manufactured documents into the hearing process which is unlawful, unreasonable, and against the manifest weight of the evidence under R.C. 4141.282. The constitutional effect of the review of this case, which would be of public and great general interest, is that the standard of review that was used in this case stops federally funded revenues which were applied for by the State of Ohio from reaching the purpose for which they were intended.

The Appellee's, throughout the unemployment compensation hearing process, have submitted false, incorrect, and manufactured documents to establish "quit" as the cause of the Appellant's unemployment and that is unlawful under R.C. 4141.282. The Appellant has been burdened throughout the claim process and the appeal process with false, incorrect, and manufactured documents and that is unlawful under R.C. 4141.282. For the Lower Court to receive and consider false, incorrect, and manufactured documents is unlawful, unreasonable, and against the manifest weight of the evidence.

The Appellant filed his unemployment claim on October 23, 2007 with the ODJFS as a result of his job loss with the Employer. The employment was plagued with problems from the beginning when the general manager and the regional manager hired the Appellant to a manager in training position that was not authorized or recognized by the Employer's corporate office for the Akron-Canton Airport property. Agreements that were made upon the Appellant's hire regarding his position, advancement, hours, medical insurance, and accommodations regarding his medical condition were not honored which caused problems from which the Appellant sought resolution through the general manager. While waiting for a response from the Employer's corporate management for eight months, the general manager and other department managers created an intolerable work environment that led to an unprovoked incident in which the director of sales made a physical threat against the Appellant. The Appellant was removed from the work schedule by the general manager in retaliation and later was separated from his employment by the corporate

director of human resources when the Appellant pursued the matter to the Employer's CEO. The Employer's company policy handbook states that only the corporate CEO could resolve the type of employment issues that were presented in the Appellant's employment dispute.

Proposition of Law II

The UCRC, Attorney General, and the Inspector General were made aware of the ODJFS application summary form throughout the hearing process yet the UCRC hearing officer knowingly ignored or suppressed the fact that the documents transferred by the ODJFS to the UCRC were false, incorrect and manufactured and failed to implement measures to protect and provide for a fair hearing process which is unlawful, unreasonable, and against the manifest weight of the evidence under R.C. 4141.282 which mandates a fair hearing process. The constitutional effect of the review of this case, which would be of public and great general interest, would be to understand if the Appellee's actions to ignore or suppress the incorrect ODJFS application summary form were done intentionally or by design for a purpose other than the fair hearing of this case.

The opinion of the Stark County Court of Appeals, Fifth Appellate District, considered the October 23, 2007 ODJFS application summary form as evidence. The ODJFS application summary form that was considered was a false, incorrect, and manufactured document and is unlawful under R.C. 4141.282. The Lower Court and the UCRC made the same error. The ODJFS application summary form was rendered when the ODJFS online filing system shut down as the Appellant was making application for unemployment compensation benefits. An ODJFS intake phone representative incorrectly transferred information into the Appellant's file from a previous unemployment compensation claim filed by the Appellant in 2001. The Appellant realized the incorrect information after receiving an ODJFS notice of eligibility on October 24, 2007. The Appellant immediately challenged and responded to the ODJFS with correspondence and documentation on October 26, 2007. The ODJFS Director's Redetermination made on December 17, 2007 allowed 26 weeks of unemployment compensation benefits after a thorough review of the facts and the errors of this case. In the ODJFS investigation, the application summary form was determined by the ODJFS Director's Redetermination to be false, incorrect, and manufactured information by the failed computer system. The ODJFS Director's Redetermination found that the

Appellant was not the moving party in the employer/employee separation, that a “quit” did not occur, and the Appellant was removed from his employment by the Employer. The ODJFS Director’s Redetermination noted that the Employer violated its own company policy when the corporate director of human resources intervened on the Appellant’s attempt to meet with the Employer’s CEO over the employment issues and separated the Appellant from his employment. The ODJFS Director’s Redetermination established the cause of the Appellant’s unemployment as “lack of work” citing the Employer did not honor the agreements made prior to his hire concerning the Appellant’s health condition and in fact did not have the manager in training program, for which the Appellant was hired, implemented at the Akron-Canton Airport property. Additionally, the ODJFS Director’s Redetermination viewed the incident in which the Appellant was physically threatened by the director of sales as a situation that could not be solved by the general manager who was biased towards the Appellant and engaged in similar activity against the Appellant. The ODJFS Director’s Redetermination agreed the Appellant followed proper procedure from the Employer’s company policy handbook in taking the complaint to the Employer’s corporate office for the attention of the Employer’s CEO. The ODJFS Director’s Redetermination also concluded that the Employer’s ODJFS response questionnaire was filed late with false and misleading information and that the cause of the Appellant’s unemployment was much greater than what was indicated on that questionnaire. The Appellant believes that the decision of the ODJFS Director’s Redetermination which allowed 26 weeks of unemployment compensation benefits after their review of the facts and the errors of this case was correct.

The August 1, 2008 decision of the UCRC to reverse the ODJFS Director’s Redetermination was unlawful, unreasonable, and against the manifest weight of the evidence when that decision was made upon false, incorrect, and manufactured documents.

Proposition of Law III

To systematically minimize the unemployment compensation claim of the Appellant with false, incorrect, and manufactured documents, unusual procedural events, and interpreting only segments of emails is an improper standard of review under R.C. 4141.282 and this injustice has denied the Appellant's right to unemployment compensation benefits needed for his welfare which has also compromised extended benefits. The constitutional effect of the review of this case, which would be of public and great general interest, would be to determine why so many errors occurred in this one particular claim or if a method has developed inside the ODJFS and UCRC review system that does not have public interest in mind.

Errors that were made during the processing of this unemployment compensation claim and the errors that took place throughout the February 29, 2008, July 21, 2008, and November 4, 2008 UCRC hearings went against the law provided by the State of Ohio under R.C. 4141.282 that guarantees a fair hearing process. To systematically minimize the unemployment compensation claim of the Appellant with false, incorrect, and manufactured documents, unusual procedural events, and interpreting only segments of emails is unlawful. The unlawful use of false, incorrect, and manufactured documents directly effected the decision of the Lower Court, as indicated on page 5 of the judgment entry from the Stark County Court of Common Pleas and in the opinion {¶28} from the Stark County Court of Appeals, Fifth Appellate District. The UCRC hearing officer knowingly ignored or suppressed the fact that documents transferred by the ODJFS to the UCRC were false, incorrect, and manufactured. The UCRC, Attorney General, and the Inspector General for the State of Ohio were made aware of these false, incorrect and manufactured documents and ignored requests to correct or remove the documents from the hearing process. The false, incorrect and manufactured documents were determined on December 17, 2007 by the ODJFS Director's Redetermination as to have absolutely no relevance to this case. The UCRC failed to implement measures to protect or provide for a fair hearing process that is mandated by the State of Ohio law under R.C. 4141.282. This miscarriage of justice has denied the Appellant's right to unemployment

compensation benefits needed for his welfare and has compromised his federally funded extension of unemployment compensation benefits.

IV. CONCLUSION

This case raises substantial constitutional questions and is a matter of public and great general interest. For the reasons set forth above, the Appellant requests this Honorable Court to exercise jurisdiction over this appeal and review the judgment of the Stark County Court of Appeals, Fifth Appellate District.

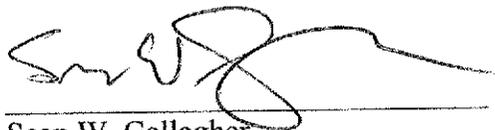
Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of this Memorandum in Support of Jurisdiction of Appellant, Sean W. Gallagher was served to Laurel Blum Mazorow, Assistant Attorney General, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, Ohio 44113-1899 and Mark E. Snyder, Attorney at Law, 9150 South Hills Boulevard, Suite 300, Cleveland, Ohio 44147-3599 by regular U.S. mail on the 26th day of April, 2010.



Sean W. Gallagher
Appellant *Pro Se*

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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SEAN GALLAGHER :
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 Plaintiff-Appellant :
 :
 -vs- :
 :
 ALLIANCE HOSPITALITY :
 MANAGEMENT, ET AL. :
 :
 Defendants-Appellees :

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2009CA00164

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2009CV00007

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellant

For Appellees

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Farmer, J.

{¶1} Appellant, Sean Gallagher, began working for appellee, Alliance Hospitality Management, in October of 2006. Appellant worked as an accounting and sales administrator for a Hilton Garden Inn. On October 19, 2007, appellant's employment with appellee ceased.

{¶2} On October 23, 2007, appellant filed an application for unemployment compensation. On November 9, 2007, appellee, the Director of the Ohio Department of Job and Family Services, determined appellant had quit his employment without just cause. Appellant filed an appeal. Upon redetermination, on December 17, 2007, appellee Director determined appellant had become separated from his employment due to a lack of work.

{¶3} Appellee Alliance Hospitality filed an appeal. The case was transferred to the Review Commission. A hearing was held on February 29, 2008. An additional hearing was scheduled for July 21, 2008. On August 1, 2008, the hearing officer determined appellant quit his employment without just cause.

{¶4} Appellant filed an appeal. A de novo hearing was held on November 4, 2008. On December 4, 2008, the Review Commission determined appellant quit his employment without just cause.

{¶5} Appellant filed an appeal with the Court of Common Pleas of Stark County, Ohio, pursuant to R.C. 4141.282. By judgment entry filed February 18, 2009, the trial court affirmed the Review Commission's determination, finding it was not unlawful, unreasonable or against the manifest weight of the evidence.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE LOWER COURT ERRED WHEN IT ALLOWED THE EMPLOYER, THE ODJFS, AND THE UCRC TO SUBMIT FALSE AND MISLEADING INFORMATION THAT CLEARLY INFLUENCED THE DECISION OF THE LOWER COURT AND IGNORED THE APPELLANT'S EVIDENCE THAT SUPPORTED THE ODJFS DIRECTOR'S REDETERMINATION OF UNEMPLOYMENT DUE TO 'LACK OF WORK' AS THIS IS A SITUATION OF A 'DISCHARGE' WITHOUT JUST CAUSE AND NOT A SITUATION OF A 'QUIT' WITHOUT JUST CAUSE AND THE DECISION OF THE LOWER COURT MUST BE REVERSED BECAUSE IT IS UNLAWFUL, UNREASONABLE, AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II

{¶8} "THE LOWER COURT ERRED BY FAILING TO APPLY THE PROPER STANDARD OF REVIEW IN RENDERING ITS DECISION AND COMMITTED PLAIN, PREJUDICIAL, MANIFEST, AND REVERSIBLE ERRORS THAT DENIED THE APPELLANT'S RIGHT TO A FAIR HEARING."

I, II

{¶9} Appellant's two assignments of error challenge the trial court's decision to uphold the Review Commission's determination that his termination was with just cause because he quit. Specifically, appellant claims the trial court received false and misleading information, and the evidence submitted to the Review Commission was not credible. We disagree with appellant's two claims.

{¶10} R.C. 4141.282 governs unemployment compensation appeals to the court of common pleas. Subsection (H) states the following:

{¶11} "The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission 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 commission. Otherwise, the court shall affirm the decision of the commission."

{¶12} Our role in reviewing the trial court's decision is to determine whether the trial court appropriately applied the standard of unlawful, unreasonable or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bureau of Employment Services*, 73 Ohio St.3d 694, 1995-Ohio-206. While we are not permitted to make factual findings or determine the credibility of witnesses, we have the duty to determine whether the commission's decision is supported by the evidence in the record. *Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11; *Kilgore v. Board of Review* (1965), 2 Ohio App.2d 69. This same standard of review is shared by all reviewing courts, from common pleas courts to the Supreme Court of Ohio. We are to review the commission's decision sub judice and determine whether it is unlawful, unreasonable, or against the manifest weight of the evidence. We note a judgment supported by some competent, credible evidence will not be reversed as against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279.

{¶13} Unemployment compensation can be denied if the claimant quit his/her job without just cause or was discharged for just cause. R.C. 4141.29(D)(2)(a). "Just

cause" is defined as "that which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a particular act." *Irvine v. Unemployment Compensation Board* (1985), 19 Ohio St.3d 15, 17, quoting *Peyton v. Sun T.V.* (1975), 44 Ohio App.2d 10, 12. The *Irvine* court at 17 further stated "each case must be considered upon its particular merits." In reviewing such a determination, we are not permitted to reinterpret the facts or put our "spin" to the facts.

{¶14} Appellant argues the evidence presented at the November 4, 2008¹ de novo hearing does not substantiate the finding that he "quit"; therefore, he argues he was discharged without just cause. He bases this argument on the employee handbook, section "Open Door/Problem-Solving Procedure." His premise consists of a claim that he was merely requesting time off via his vacation/personal time in order to facilitate the complaint resolution process.

{¶15} Appellee argues a clear reading of the various e-mails authored by appellant establishes that he resigned. The hearing officer concluded the e-mails established appellant resigned from his employment without just cause.

{¶16} From our review, we find the basic facts are not in dispute. The question is, what logical conclusion can be drawn from the facts?

{¶17} A summary of the facts is included in the Review Commission's December 4, 2008 decision. We find these fact to have been established in the record, with our notations as to transcript references:

¹The transcript of the first hearing relative to appellee's appeal of the decision to award benefits was held on February 29, 2008, but the record was inadvertently lost. The result of the last hearing was a denial of benefits.

{¶18} "Claimant worked for Alliance Hospitality Management, dba Hilton Garden Inn, from October 16, 2006, through October 19, 2007.

{¶19} "Claimant was originally hired as a Manager-in-training. After 3 months, he was told that his classification would be changed to Accounting and Sales Administrator. Claimant remained in that position until his date of separation.

{¶20} "On October 9, 2007, a guest called at approximately 5:15 p.m. to cancel 2 room reservations. Claimant took the call. The hotel has a 4:00 p.m. cancellation deadline. The guest was advised that it was hotel policy to charge for the rooms. The guest was upset and asked to speak to a manager. Claimant agreed to notify his Sales Manager that the customer wished to discuss the matter. Shortly after the conversation, claimant sent an e-mail to his Sales Manager notifying her of the customer issue.

{¶21} "On October 10, 2007, the Sales Manager, Robyn Ewing, responded to claimant's e-mail and said that she would 'handle it if he calls'. On October 11, 2007, the customer called the hotel and asked to speak with the Sales Manager. Apparently the customer was very upset that they had not received a return call. After Ms. Ewing spoke with the guest, she reprimanded claimant for the way that he handled the guest complaint.

{¶22} "Claimant sent an e-mail to the hotel General Manager because he was upset over the reprimand from Ms. Ewing. He defended his approach to the customer issue and believed that Ms. Ewing was at fault. Claimant sent along an excerpt from the employer's handbook on the proper way to handle guest complaints. [T. at 14.]

{¶23} "The hotel's General Manager, Jim Angelo, responded to claimant in an e-mail sent at approximately 1:00 p.m. on Friday, October 12, 2007. He noted that

claimant was obviously upset and scheduled a meeting with claimant on Monday morning at 9:00 a.m. Claimant was taken off the schedule for the week pending the discussion with Mr. Angelo on Monday.

{¶24} "Claimant responded to the message from the GM with another e-mail. He told Mr. Angelo that he had previously scheduled time off on Monday, but would be available on Tuesday. Mr. Angelo sent an e-mail on Monday afternoon advising claimant that he was out of the office and could not meet until Friday, October 19. [T. at 14-15.]

{¶25} "Claimant contacted the Director of Human Resources, Dick Burkett, on Tuesday, October 16, and voiced his concerns about being taken off the schedule. Later in the day, claimant received a voice mail message from Mr. Angelo who apologized for the 'miscommunication' regarding claimant's scheduling. He told claimant to work his normal schedule until they met on Friday, October 19. Mr. Angelo did not receive a return call from claimant so he sent a follow-up e-mail advising claimant that he should work his normal schedule beginning Wednesday, October 17. [T. at 17.]

{¶26} "Claimant did not return to work despite the message from the GM putting him back on the schedule. Instead he sent a lengthy e-mail to Mr. Burkett in Human Resources shortly after noon on October 17. In the e-mail he disputed Mr. Angelo's claim that there was a miscommunication regarding claimant's work schedule. He went on to list other grievances he had with the Hilton Garden Inn such as his lack of advancement. He then told Mr. Burkett that he was going to 'seek other opportunities'. He requested a letter of reference, severance pay, and unemployment compensation.

{¶27} "Mr. Burkett responded to claimant's e-mail. He assured claimant that he still had a job with the Hilton Garden Inn and encouraged claimant to meet with his GM on Friday to resolve the issues. Mr. Angelo left a voice mail message and sent an e-mail to claimant encouraging him to meet on Friday morning to resolve the issues. Claimant responded in an e-mail, 'You have lost my respect as a manager and have created a work environment that is intolerable'. He repeated his request for personal days, vacation pay, and unemployment compensation. [T. at 20.]

{¶28} "Claimant did not appear for the meeting with his General Manager on Friday morning, October 19, 2007. He filed for unemployment benefits on October 23, 2007, stating as the reason for separation: Quit."

{¶29} The gravamen of this appeal is, what is the meaning of appellant's October 17, 2007 e-mail to Mr. Burkett? The email stated the following:

{¶30} "I spoke with Jim today and expressed to him that I am still very upset about this situation. This incident that I have asked you to review was not a miscommunication. Unfortunately, similar situations have happened in the past. I was hired as Manager In Training with Alliance Hospitality at the Hilton Garden Inn Akron-Canton Airport and had great expectations of the program that was explained to me. Opportunities of advancement have not happened and under the current conditions I don't believe will. The relationship between my Team Members who have in the past come to me for advice and support has been jeopardized by this embarrassment. I have not done anything wrong to cause this but I feel I have been put in a situation where I have to seek other opportunities and I am asking that you help facilitate.

{¶31} "I am owed my personal days, vacation time, and this week that has been interrupted. I need your letter of reference and unemployment compensation until I can find other employment. Also, with my health conditions I will need severance pay equivalent to cover uninterrupted medical coverage until I am covered at my next employment.

{¶32} "This incident should have never happened and to blame it on miscommunication will only allow it to continue. My employment record with Alliance Hospitality shows that I have been a dedicated employee. I believe I have explained my situation adequately and hope we can come to an agreement regarding my requests without this going any further. Please let me know if you require additional information in considering my requests. Again, I thank you for your help with this situation."

{¶33} Mr. Burkett's response was as follows:

{¶34} "In receipt of your note I want to clarify that in no way has Jim Angelo severed your employment or given you any indication that your employment was in jeopardy. However, he did indicate that perhaps there was miscommunication, and therefore attempted to reach out to you by phone on Tuesday to discuss this matter. He also indicated that he wanted you to visit with him this Friday so you could discuss the issues. Jim also mentioned that the last few days that you have been off the schedule was at your request, and not a suspension.

{¶35} "Sean, the way your note is written, it appears to be a 'Letter of Resignation' the way you have positioned your requests for unemployment and other pay outs? Sean, I would encourage you to read the Employee Handbook and know that Employment is 'At Will'. Please also know that the company does not pay out unused

Personal/Sick Days, and Severance. As for Vacation Time, the company will pay out unused/earned Vacation Time as long as an employee has given and worked through a (2) week notice of resignation (or) those who are discharged for misconduct will not receive payment of unused vacation time.

{¶36} "Sean, I would encourage you to contact Jim and arrange for a one on one meeting with him to discuss and resolve this matter at your earliest convenience."

{¶37} Appellant responded as follows:

{¶38} "I have asked through my representative that you address my complaints of the violations of the Handbook you refer to. You have not responded in any matter that makes sense. Continuous intimidation, harassment, and threats against me have not been addressed. The only remedy you have suggested is to talk to the managers that have violated these policies. Your handbook addresses abusive treatment and threats to employees as serious violations but when those conditions come from the management staff then I must move this to a higher level. I thought I was doing this by contacting you but you seem to have a problem with speaking with my representative. You have not given me any legitimate answer as to why my work hours for the week in question were removed from an approved and posted schedule. The note you refer to in your email response on October 17 was not a 'Letter of Resignation' but an attempt to resolve this at your level. Clearly, the 'Open Door / Problem Solving Procedure' that is in your Handbook allows for this. The problems as I see it is that you are not taking steps to resolve the most pressing issues with my complaint but you are content in believing that this was just merely a lack of communication. The email I sent you on October 16 clearly shows the manager's intent to remove me from the schedule in

retaliation for the email I sent asking for instruction on a certain issue. Your immediate resolve to this problem was to try to place me back into a workplace that violates the company's code of conduct. After these violations have occurred and have been left unchecked your suggestion of a two week notice is ludicrous and should not apply in this situation. If you are not able to control your managers misconduct then please refer me to someone who can solve this problem. If this matter can not be resolved I will seek unemployment compensation. I am owed my personal days and vacation time as you agreed when you spoke with my representative. In regards to my health benefits I am contacting the EEOC regarding possible violations. Other actions may follow. I will ask my representative to speak with you again in an attempt to resolve this issue."

{¶39} On Thursday, October 18, 2007, the general manager, Jim Angelo, emailed appellant the following in pertinent part:

{¶40} "As I mentioned in my voicemail I would like to confirm our meeting time of 11 am tomorrow with yourself, Lindsey and I. At this time I hope that we can resolve the ongoing issue that you raised last week and move forward.

{¶41} "Also as we discussed previously we will honor your request to me for Paid Time Off for Wednesday the 17th and Thursday the 18th. I will also be happy to discuss the time you feel that you lost on Tuesday the 16th due to the misunderstanding with you (sic) schedule when our meeting changed from Monday the 15th to tomorrow as you had requested Monday off as a paid day off any (sic) my travel out of town.

{¶42} "Per our conversation and your consent you are scheduled to work tomorrow after our meeting until 7 pm and scheduled to work Saturday and Sunday at

11 am also. I am not sure of your scheduled days beyond that at this time except that I know you are scheduled to work a full week."

{¶43} On Friday morning, appellant sent Mr. Angelo the following email:

{¶44} "You have lost my respect as a manager and have created a work environment that is intolerable. I am working at the corporate level to get this resolved as you are part of the problem and not the solution. This latest incident is an example of how conflicts have been created by you and other managers who take retaliation against me without knowing the full situation. Based on what has been accomplished from meetings in the past, that have involved similar situations, the meeting today at 11A would be pointless. In all fairness, what needs to be resolved is that you contact Dick Burkett and make arrangements that I receive my owed personal days, vacation pay, and approve my unemployment compensation. I would be satisfied with this and suggest that you handle this matter without it going any further, as I have records and documents to support my position. I will contact the corporate office to make arrangements for my medical coverage."

{¶45} From the cited e-mail correspondence and appellant's failure to attend the scheduled meeting on Friday, we find the Review Commission's decision to be supported by the evidence. The very language of appellant's e-mails requesting unemployment compensation and a letter of reference would lead any reader to believe appellant wished to sever his employment.

{¶46} Upon review, we find the trial court's decision was based upon facts and exhibits in evidence, and was not against the manifest weight of the evidence. We further find the decision was not unlawful or unreasonable.

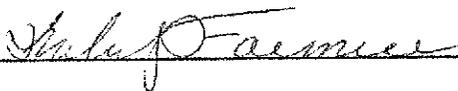
{¶47} Assignments of Error I and II are denied.

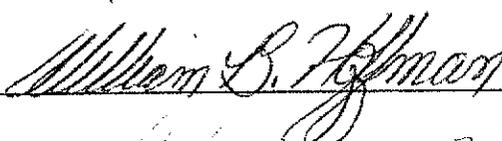
{¶48} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

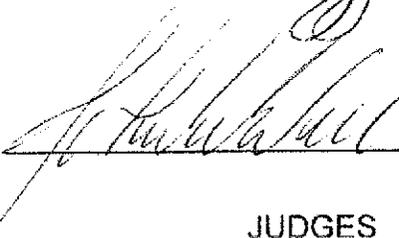
By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.







JUDGES

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

10 MAR 15 PM 2:42
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

SEAN GALLAGHER

Plaintiff-Appellant

-vs-

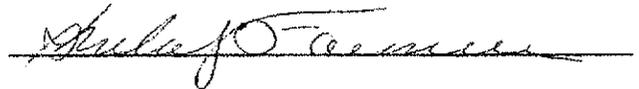
ALLIANCE HOSPITALITY
MANAGEMENT, ET AL.

Defendants-Appellees

JUDGMENT ENTRY

CASE NO. 2009CA00164

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio is affirmed. Costs to appellant.

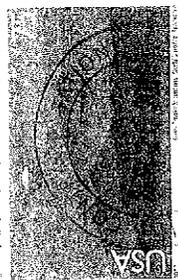






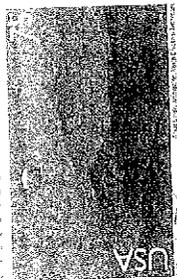
JUDGES

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