ORIGINAL

IN THE SUPREME COURT OF OHIO

SEAN W. GALLAGHER, Appellant, v. ALLIANCE HOSPITALITY MANAGEMENT, LLC, *et al.* Appellees.	))))))))))	CASE NO. 2010-0724 On Appeal from the Stark County Court of Appeals, Fifth Appellate District Case No. 2009 CA 00164

APPELLEE ALLIANCE HOSPITALITY MANAGEMENT, LLC'S MEMORANDUM IN OPPOSITION TO JURISDICTION

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INTRODUCTION

This case is an appeal, pursuant to R.C. 4141.282, by Appellant-Claimant Sean Gallagher ("Appellant" or "Gallagher"), from a decision of Appellee Ohio Unemployment Compensation Review Commission ("Review Commission"). Appellant was denied unemployment benefits after the Review Commission determined that Appellant quit his employment with Appellee-Employer Alliance Hospitality Management, LLC ("Alliance Hospitality" or "Employer") without just cause.

This case does not warrant the Court's review, as it involves the application of settled law to a particular set of facts, and further, within the context of established authority requiring the courts to defer heavily to the agency on factual issues. Appellant attempts to articulate some jurisdictional basis for his Memorandum in Support of Jurisdiction, which amounts to nothing more than his repeated arguments which have been rejected at every level of this case, *i.e.*, the Unemployment Compensation Review Commission, the Stark County Court of Common Pleas, and the Fifth District Court of Appeals. All three came to the same conclusion – the evidence presented supported the denial of Gallagher's application for unemployment benefits. Furthermore, this case does not even remotely come close to meeting any of the required legal grounds for the assertion of jurisdiction by this Court.

STATEMENT OF THE CASE AND FACTS

A. PROCEDURE

On October 23, 2007 Appellant filed an Application for Determination of Benefit Rights. On November 9, 2007 the Director, Ohio Department of Job and Family Services ("Director") found that Appellant quit his employment without just cause.

Appellant appealed, and by a Redetermination dated December 17, 2007, the Director held that Appellant was separated from his employment due to a lack of work.

Alliance Hospitality appealed the Redetermination, and on January 22, 2008 the Director transferred jurisdiction to the Review Commission. A hearing was held before a hearing officer on February 29, 2008. A further hearing was scheduled for July 21, 2008; however, Appellant chose not to appear for that hearing and accordingly the Employer likewise did not appear for that hearing. Based on the evidence submitted at the initial hearing, the hearing officer found the Appellant quit his employment without just cause.

Appellant appealed the hearing officer's decision, and on October 1, 2008 the Review Commission permitted further review in a de novo hearing. The hearing was held on November 4, 2008, from which the Review Commission ruled, in a decision mailed December 4, 2008, that Appellant quit his employment without just cause.

Appellant filed an appeal with the Stark County Court of Common Pleas 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.

Appellant filed an appeal with the Stark County Court of Appeals, Fifth Appellate District, and by unanimous Opinion dated March 15, 2010, the court affirmed the trial court decision. Appellant moved for reconsideration, which was denied by judgment entry dated April 22, 2010. Appellant has now a Notice of Appeal and Memorandum in Support of Jurisdiction in this Court on April 27, 2010.

B. FACTS

The facts are accurately recounted in the Court of Appeals Opinion, pages six through eight.

LAW AND ARGUMENT

Appellant's contention as to why this case "raises substantial Constitutional questions and is a matter of public and great general interest" is based on the assertions that his case raises questions regarding the "regulation of federal unemployment compensation funds applied for by the State of Ohio" and that a review of his case "will protect the other unemployed people in Ohio." (Appellant's Memorandum in Support of Jurisdiction, p. 1).

In the body of his discussion, however, Appellant simply rehashes his previous arguments that he made to the Stark County Court of Common Pleas and Fifth District Court of Appeals, and which were rejected by those courts. His repeated allegations of "false, incorrect, and manufactured documents" were considered and rejected by the previous courts. Furthermore, his Constitutional claim of federal unemployment funds not being used for their intended purpose is simply the denial of those funds to him because he was found to have "quit without just cause."

His allegations were rejected because they lacked merit based on the entire record or evidence of this case which resulted in consistent findings by everyone who heard Appellant's case that he had not quit for just cause. Ohio law requires that an employee who quits a job due to working conditions must make reasonable efforts to solve the problems before quitting, as otherwise his quitting is not for just cause. *Walburn v. Ohio*

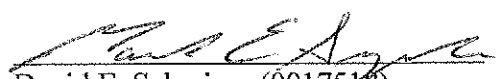
Dept. of Job & Family Servs., Pike App. No. 08CA786, 2009 Ohio 976 at P25. The term "just cause" pursuant to R.C. 4141.29(1)(2)(a) means conduct which, to an ordinarily intelligent person, is a justifiable reason for doing or not doing a protected act. *Irvine v. Unemployment Comp. Bd. of Review* (1985), 19 Ohio St. 3d 15, 17-18, 482 N.E. 2d 587.

In this case, despite Appellant's contention that his emails were improperly interpreted, the fact is Appellant failed to return to work and to attend a meeting which had been scheduled to discuss his emails requesting unemployment compensation and a letter of reference. As the Court of Appeals rightly determined, this "would lead any reader to believe appellant wished to sever his employment." (Court of Appeals Opinion, p. 12).

CONCLUSION

Because Appellant's Memorandum in Support of Jurisdiction contains no grounds on which this Court can or should accept jurisdiction, Appellee Alliance Hospitality respectfully requests that review be denied and the Fifth District Court of Appeals decisions be allowed to stand.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum in Opposition to Jurisdiction has been served by regular U.S. mail upon:

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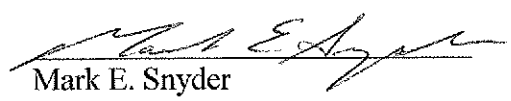
this 17th day of May, 2010.



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