No. 25814 - Alice R. Patton, et al. v. Cathy S. Gatson, Clerk of the Circuit Court of Kanawha County, the Board of Review of the West Virginia Bureau of Employment Programs, and Sexton Can Company, Inc.

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Davis, Justice, concurring:

The majority decision in this case is well-reasoned and reaches the legally correct result. I write separately for the purpose of underscoring the necessity for deference to the factual determinations made by an Administrative Law Judge (hereinafter "ALJ").

In this case, the record is undisputably clear. The appellants *did not* timely file their claims for benefits. Rather, they sought benefits more than nine months after they returned to work. The regulations governing unemployment benefits require, as a general matter, that claims be filed following the first day of unemployment. However, the filing date may be extended for good cause shown.

The appellants argued that "good cause" was shown for their late filing. They contended that they timely sought unemployment benefits, but that someone in the Bureau of Employment Programs (hereinafter "Bureau") erroneously advised them they were ineligible for benefits. Also, the appellants argue that after learning that similarly situated employees received unemployment benefits, they decided to again file for benefits.

Having correctly examined the record in this case, the Court properly concluded that the

ALJ's rejection of the claims was not clearly erroneous. The ALJ heard the testimony of witnesses on the issue of the appellants being misled by an official with the Bureau. Thus, the ALJ was in the best position to evaluate the demeanor and credibility of each witness which testified on the issue. When the evidence was complete, the ALJ found that no basis existed to find that an official with the Bureau discouraged the appellants from filing claims.

The standard of review used by this Court on a question of fact resolved by an ALJ is necessarily one of deference. We have consistently held that "[a] reviewing court cannot assess witness credibility through a record. The trier of fact is uniquely situated to make such determinations and this Court is not in a position to, and will not, second guess such determinations." *Michael D.C. v. Wanda L.C.*, 201 W. Va. 381, 388, 497 S.E.2d 531, 538 (1997). *Accord, Gum v. Dudley*, 202 W. Va. 477, ___, 505 S.E.2d 391, 398 (1997). "Further, the ALJ's credibility determinations are binding unless patently without basis in the record." *Martin v. Randolph County Bd. of Educ.*, 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). *See also State v. Miller*, 197 W. Va. 588, 606, 476 S.E.2d 535, 553 (1996) ("The trial court is in the best position to judge the sincerity of a [witness]; therefore, its assessment is entitled to great weight."); *State v. Phillips*, 194 W. Va. 569, 590, 461 S.E.2d 75, 96 (1995) ("Giving deference to the trial court's determination, because it was able to observe the [witnesses'] demeanor and assess their credibility").

Nevertheless, the dissenters in this case seek to make an exception to our standard of review. When litigants come before this Court, I will consistently apply the law regardless of personal

desires. I am now, and will forever be, opposed to rendering decisions based upon an intended result, instead of rendering decisions based upon the legal issues actually presented to this Court.