

In the Court of Common Pleas
Cuyahoga County, Ohio



DARNELL G. SEALS, SR.,)
Appellant,)
v.)
DIRECTOR, OHIO DEPARTMENT)
OF JOB AND FAMILY SERVICES,)
and)
NORTH SHORE AUTO SALES, INC.,)
Appellees,)

CASE NO. 11 752590
JUDGE PAMELA A. BARKER

**Opinion and Order Granting
Motion To Dismiss of Appellee,
Director, Ohio Department Of
Job and Family Services**

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BY Sheraldie Furst CLERK DEP.



This case involves an appeal filed by Appellant Darnell G. Seals, Sr., ("Seals") on April 5, 2011 under R.C. 4141.282. Appellee, Director, Ohio Department of Job and Family Services, filed a Motion to Dismiss for lack of subject matter jurisdiction asserting that Seals had failed to exhaust his administrative remedies before the Unemployment Compensation Review Commission (UCRC). Specifically, Seals appeals from a Decision of the UCRC dated December 8, 2010 that denied his request to vacate an adverse decision of the UCRC dated December 2, 2010 and held that Seals had failed to show good cause under R.C. 4141.281(D)(5) for his failure to appear at a telephone hearing scheduled and held by the UCRC on December 1, 2010.

A copy of the Director's File submitted to the Court demonstrates the following. On May 23, 2008 Seals filed a claim for unemployment benefits with

Appellee, Ohio Department of Job and Family Services ("ODJFS"). On June 13, 2008, ODJFS issued an initial "Determination of Benefits" that denied the claim on the basis that Seals was discharged by Appellee, North Shore Auto Sales, Inc. ("NSA") for just cause under R.C. 4141.29(D)(2)(a). The "Determination of Benefits" was mailed to Seals and provided or advised him that any appeal had to be postmarked no later than 7/7/08 and further provided that if the appeal was not filed within 21 days, Seals was to provide a statement indicating the date he had received the "Determination of Benefits" and the stated reason(s) for the late filing.

It was not until July 22, 2010 or more than two years after the issuance of the "Determination of Benefits" and more than two years after the 7/7/08 deadline for filing the appeal that Seals filed a "Notice of Appeal" relative to the June 13, 2008 "Determination of Benefits". On August 6, 2010, ODJFS issued a "Redetermination of Benefits" that affirmed the June 13, 2008 "Determination of Benefits" on the basis that Seals had filed his appeal untimely, in violation of R.C. 4141.281. Specifically, the ODJFS, in its August 6, 2010 "Redetermination of Benefits" held that the reason(s) submitted by Seals for not filing the appeal timely or beyond the 21-day specified time period did not constitute "just cause".

The "Redetermination of Benefits" advised Seals that an appeal of that decision had to be postmarked by 8/27/2010. Seals did timely file an appeal of the "Redetermination of Benefits" and subsequently, ODJFS transferred jurisdiction of the claim on appeal to the UCRC under R.C. 4141.281.

On November 17, 2010, the UCRC issued a "Notice of Hearing" to Seals and NSA advising the parties that a telephone hearing was scheduled to be held

on December 1, 2010 with respect to the jurisdictional issue of whether or not Seals had filed an untimely appeal on July 22, 2010 of the "Determination of Benefits" dated June 13, 2008. That "Notice of Hearing" contained an advisement concerning the legal consequences of failure to appear at the evidentiary hearing set for December 1, 2010 pursuant to R.C. 4141.281(D)(5). Seals failed to appear at the evidentiary hearing set for December 1, 2010 and accordingly, on December 2, 2010, the UCRC issued a Decision that dismissed Seals' appeal of the "Redetermination of Benefits" dated August 6, 2010. That December 2, 2010 Decision of the UCRC in effect affirmed the "Redetermination of Benefits" dated August 6, 2010 that had affirmed the "Determination of Benefits" dated June 13, 2008 on the basis that Seals had filed an untimely appeal of the "Determination of Benefits" dated June 13, 2008 in violation of R.C. 4141.281(A).

On December 2, 2010 Seals filed an appeal of the UCRC December 2, 2010 Decision, alleging that he had good cause for his failure to appear at the December 1, 2010 hearing. On December 8, 2010 a Decision was issued by the UCRC denying Seals' request to vacate the December 2, 2010 Decision, finding that Seals had failed to show good cause under R.C. 4141.281 (D)(5) for his failure to appear at the December 1, 2010 hearing. The December 8, 2010 Decision of the UCRC contained an advisement that the Decision would become final unless Seals filed a request for hearing within ten (10) days or by December 18, 2010. Seals failed to file such a request for a hearing within the 10-day requirement. Instead, he filed a Notice of Appeal with this Court on April 5, 2011.

The Court agrees that Seals has failed to exhaust his administrative remedies before the Ohio Unemployment Compensation Review Commission in violation of the mandatory jurisdictional requirements of R.C. 4141.281 and R.C. 4141.282. Based upon the provisions of R.C. 4141.281(A), R.C. 4141.281(C)(4), R.C. 4141.281(D)(5) and R.C. 4141.282(A), and the cases interpreting and applying those provisions, specifically to include the cases cited and attached as Exhibits 3, 4, 5, 6 and 7 to Appellee's Motion to Dismiss, Appellee's Motion to Dismiss is **GRANTED**. *Sigler v. ODJFS*, 6TH Dist. No. L-05-1016, 2005-Ohio-4874; *Claren v. OBES* (Mar. 20, 1998), 11th Dist. No. 97-A-0038, unreported; *Campbell v. OBES* (June 18, 1991), 3rd Dist. No. 3-90-36, unreported; *Anderson v. ODJFS*, 10th Dist. No. 03AP254, 2003-Ohio-7031; and *Griffith v. J.C. Penney* (1986), 24 Ohio St.3d 112.

The case is dismissed at costs to appellant.

SO ORDERED:

Pamela A. Barker
Judge Pamela A. Barker

Date: 12-1-11

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BY Gerald E. Fugate CLERK DEP.