IN THE COURT OF COMMON PLEAS, DELAWARE COUNTY, OHIO

DAVID MOORE DOLEZAL,	:	
Appellant,	:	Case No. 11 CV C 09 1091
VS.	:	
ADMINISTRATOR OF THE UNEMPLOYMENT REVIEW COMMISSION, et al.,	:	EVERETT H. KRUEGER, JUDGE
Appellees.	:	

JUDGMENT ENTRY GRANTING APPELLEE'S MOTION TO DISMISS

This matter is before the Court upon Appellee Director, Ohio Department of Job and Family Services' Motion to Dismiss for Lack of Subject-Matter Jurisdiction, filed on December 15, 2011. The Appellant, David Moore Dolezal, filed a reply and memorandum contra on December 22, 2011. For the reasons that follow, the Court hereby grants the Appellee's Motion to Dismiss.

I. Standard of Review

Subject matter jurisdiction is the power conferred upon a court, either by constitutional provisions or by statute, to decide a particular matter or issue on its merits. *State ex rel Jones v. Suster* (1998), 84 Ohio St.3d 70, 75, 701 N.E.2d 1002. A motion to dismiss for lack of subject matter jurisdiction is made pursuant to Civ.R. 12(B)(1). "The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80, 537 N.E.2d 641.

II. Procedural History

On November 3, 2010, the Unemployment Compensation Review Commission issued a decision which denied the Appellant benefits. The Appellant appealed the decision to this Court on December 3, 2010. The Court issued a briefing schedule on March 1,

2011, which required the Appellant to file his merit brief by March 31, 2011. The Appellant failed to file a merit brief. On April 13, 2011, Appellee Director, Ohio Department of Job and Family Services filed a Motion to Dismiss for Failure to Prosecute. On April 20, 2011, Appellee JT/SG Enterprises filed a Motion to Dismiss Appellant David Moore Dolezal's Appeal. On May 13, 2011, the Appellant filed a Reply and Memorandum Contra to Motion to Dismiss for Failure to Prosecute and a Motion for Extension of Time to File Brief. On the same day, the Court granted the Appellees' Motions to Dismiss finding that the Appellant failed to file a merit brief or timely request an extension of time.

On August 31, 2011, the Appellant filed this second appeal from the same November 3, 2010 decision of the Unemployment Compensation Review Commission. The Court issued a briefing schedule on November 2, 2011. The Appellant filed his merit brief on December 9, 2011. In response, Appellee Director, Ohio Department of Job and Family Services filed the instant Motion to Dismiss for Lack of Subject-Matter Jurisdiction.

III. Analysis

Appellee Director, Ohio Department of Job and Family Services argues that the Court's decision in the Appellant's first appeal is a final, prior judgment that is conclusive as to the merits of the Appellant's unemployment compensation case. Therefore, the Appellee argues that the Appellant's appeal should be dismissed because the Court lacks subject-matter jurisdiction to decide the matter.

The Appellant argues that in the time between the Court's dismissal of his first appeal on May 13, 2011 and his re-filing of the appeal on August 31, 2011, he exercised diligence in his attempts to ascertain whether the dismissal of the first appeal was with prejudice. The Appellant submits that he was advised by the Court that the dismissal was without prejudice. Based upon this information, the Appellant concluded that there was no basis for an appeal of the Court's decision. The Appellant incorrectly submits that an

appeal of this Court's decision would have been remanded to this Court for a determination of the action on the merits. Further, the Appellant submits that the Court's decision was not a determination on the merits. Therefore, the Appellant submits that he is not barred from filing the second appeal.

The Court dismissed the Appellant's first appeal under Civ.R. 41(B)(1) for failure to prosecute. Civ.R. 41(B)(1) provides that "[w]here the plaintiff fails to prosecute, or comply with these rules of any court order, the court upon motion of a defendant or on its motion may, after notice to the plaintiff's counsel, dismiss an action or claim." The Appellant's apparent confusion regarding the impact of this dismissal on his ability to re-file the matter is irrelevant to the pending Motion to Dismiss in this matter. First, the Appellant has chosen to represent himself in this matter, and in doing so, is held to the same standard as members of the bar. While the Appellant has the right to represent himself, he cannot claim ignorance of the law as an excuse for failing to properly follow the Ohio Revised Code, the Ohio Rules of Civil Procedure, and the Court's orders.

Second, the Appellant's appeal is governed by R.C. 4141.282, which provides that "[a]ny interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties, may appeal the decision of the commission to the court of common pleas." (Emphasis added.) The Appellant acknowledges that he was timely sent the decision of the Unemployment Compensation Review Commission. In fact, the Appellant timely filed his first appeal. This second appeal filed by the Appellant is clearly untimely under the statute. The Appellant's failure to prosecute his appeal in the first case bar operates as a final determination of the Appellant's unemployment compensation case as the Appellant is now barred under R.C. 4141.282 from filing another appeal.

IV. Conclusion

As the Court is without jurisdiction under R.C. 4141.282 to consider the Appellant's appeal, the Court hereby GRANTS Appellee Director, Ohio Department of Job and Family Services' Motion to Dismiss for Lack of Subject-Matter Jurisdiction.

Dated: January 6, 2012

EVERETT H. KRUEGER, JUDGE

The Clerk of this Court is hereby Ordered to serve a copy of this Judgment Entry upon the following by ☑ Regular Mail, ☐ Mailbox at the Delaware County Courthouse, ☐ Facsimile transmission

cc: DAVID MOORE DOLEZAL, 8661 CRAIGSTON COURT, DUBLIN, OH 43017
PATRIA V. HOSKINS, 30 EAST BROAD STREET, 26TH FLOOR, COLUMBUS, OH 43215-3400