

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

SHAWNTA FELICIA WALLACE,

CASE NO.: 2011 CV 07994

Plaintiff(s),

JUDGE DENNIS J. ADKINS

-vs-

UNEMPLOYMENT COMPENSATION REVIEW
COMMISSION,

**DECISION, ORDER, AND ENTRY
SUSTAINING MOTION TO DISMISS**

Defendant(s).

This matter is before the Court on the Ohio Department of Job and Family Services' ("ODJFS"), *Motion to Dismiss for Lack of Subject Matter Jurisdiction* ("Motion to Dismiss"), filed on March 5, 2012. Shawntay Felicia Wallace ("Appellant") did not file a response. This Court now renders the following Decision.

I. Facts and Procedural History

The facts are those for purposes of this Motion to Dismiss. From January 31, 2011 through the beginning of May 2011, Appellant was employed through Kelly Services, Inc. at Express Scripts. See *Notice of Appeal* at p. 2. On or around May 3, 2011, Appellant's employment was terminated by Express Scripts for "violating a company rule." See *Notice of Appeal* at p. 2.

Soon after being discharged, Appellant began the filing process online seeking unemployment benefits. *Id.* On May 15, 2011, Appellant filed the initial application for unemployment benefits in accordance with the provisions of sections 4141.28(D), and 4141.28(E) of the Ohio Revised Code. See *Determination of Unemployment Benefits*.

On June 2, 2011, ODJFS issued a “Determination of Unemployment Compensation Benefits” regarding Appellant’s initial application. *Id.* The initial determination of ODJFS denied the Appellant unemployment compensation benefits. *Id.* Specifically, ODJFS concluded in the written Determination that Kelly Services, Inc. discharged Appellant for violating a company rule of which evidence supports that violating the rule did materially and substantially affect the employer’s interest. ODJFS goes on to acknowledge that Appellant was discharged for just cause under Section 4141.29(D)(2)(a) of the Ohio Revised Code. *Id.* Therefore, ODJFS concluded that Appellant would not receive benefits until she “obtains employment subject to an unemployment compensation law, works six weeks, earns wages of \$1290, and is otherwise eligible.” *Id.*

On June 3, 2011, after receiving notice of the denial, Appellant filed a request for appeal of the initial determination. See *Notice That A Request For Appeal Has Been Filed*. Less than a month later, on July 1, 2011, ODJFS issued a “Director’s Redetermination.” See *Director’s Determination*. ODJFS affirmed the initial decision concluding that a review of the original facts along with the facts included in the appeal did not support a change in the initial determination. *Id.*

Upon receipt of the Director’s Redetermination, Appellant filed a request for an appeal hearing regarding her unemployment on July 1, 2011.

A telephone appeal hearing was scheduled to take place on August 3, 2011. See *Notice of Hearing*. On August 4, 2011, the Hearing Officer issued a Dismissal of the appeal on the grounds that the appellant failed to appear at the scheduled hearing. See *Dismissal Notice*. On August 3, 2011, following the scheduled hearing, Appellant responded stating a reason for missing the hearing. However, the cause furnished by the appellant was not deemed to constitute good cause. See *Notice Denying Vacate of Dismissal of Appeal*.

On August 15, 2011, An Order Denying Vacate of Dismissal was issued. *Id.* On August 22, 2011, Appellant filed a request for a hearing on the question of whether good cause for failure to appear had been shown. On September 12, 2011 a telephone hearing was held. Following the hearing, a decision determined that the Dismissal of Appeal became final.

On November 4, 2011, Appellant filed a *Notice of Administrative Appeal* (“*Notice of Appeal*”), appealing a decision from the Ohio Unemployment Compensation Review Commission (“*Commission*”)

finding that she was discharged from Kelly Services, Inc. with just cause. Appellant's Notice of Appeal names Appellant as the Plaintiff and only names the Commission, the sole Appellee. See *Notice of Appeal* at p. 1; See also *Case Information Sheet* at p.1. The Notice of Appeal does not name ODJFS or the director of ODJFS as defendants. The *Motion to Dismiss*, was filed by and through counsel.

II. Law and Analysis

1. Standard for Civ. R. 12(B)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction

Civ. R. 12(B) provides, in pertinent part, that “[e]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the leader be made by motion: (1) lack of jurisdiction over the subject matter[.]” Civ. R. 12(B)(1). In the event a court lacks subject matter jurisdiction, “the court shall dismiss the action.” Civ. R. 12(H)(3).

The standard to apply for a dismissal pursuant to Civ. R. 12(B)(1), lack of jurisdiction over the subject matter, is whether the plaintiff has alleged any cause of action that the court has authority to decide. *McHenry v. Indus. Comm.* (1990), 68 Ohio App.3d 56, 62 (citing *Avco Financial Serv. Loan, Inc. v. Hale* (1987), 36 Ohio App.3d 65). However, in determining whether plaintiff has alleged a cause of action sufficient to withstand a Civ. R. 12(B)(1) motion to dismiss, “[a] trial court has authority to consider any pertinent evidentiary materials when determining its own jurisdiction.” *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St. 3d 109, 111 n.3 (citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the syllabus); *McHenry*, 68 Ohio App.3d at 62. “[A] court may dismiss a complaint for lack of jurisdiction over subject matter on the basis of ‘(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced on the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.’” *Jenkins v. Eberhart* (1991), 71 Ohio App.3d 351, 355 (quoting *Williamson v. Tucker* (5th Cir. 1981), 645 F.2d 404, 413).

“[I]n the absence of a patent and unambiguous lack of jurisdiction, a court having general subject matter jurisdiction can determine its own jurisdiction and a party challenging that jurisdiction has an adequate remedy by appeal.” *State v. Lewis*, 99 Ohio St. 3d 97, 2003 Ohio 2476, ¶ 19 (quoting *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002 Ohio 4907, ¶ 18). However, “[i]n the absence of subject-matter jurisdiction, a court lacks the authority to do anything but announce its lack of jurisdiction and dismiss.”

Kelley v. Wilson, 2004 Ohio 4883, ¶ 6 (quoting *Pratts v. Hurley*, 2004 Ohio 1980, ¶ 21); see also *Forest Hills Local Sch. Dist. Bd. of Educ. v. Huegel*, 2003 Ohio 3444, ¶ 8; Civ. R. 12(H)(3).

2. Unemployment Compensation

R.C. 4141.282 is the governing statute that grants a court of common pleas jurisdiction to hear an appeal from the Commission regarding unemployment compensation. R.C. 4141.282(A); see *Hansford v. Steinbacher*, 33 Ohio St.3d 72 (1987). “Where a right of appeal is conferred by statute, the appeal can only be perfected in the mode prescribed by that statute.” *Hansford* at 72. “The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.” *Zier v. Bur. Of Unemployment Comp.*, 151 Ohio St. 123, 84 N.E.2d 746 (1949). R.C. 4141.282 sets out the necessary procedures by which a party whose claim for unemployment compensation benefits is denied may appeal to the court of common pleas[,]” and states, in pertinent part:

(D) INTERESTED PARTIES

The commission shall provide on its final decisions the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

R.C. 4141.282(D).

Regarding the services of a notice of appeal filed pursuant to R.C. 4141.282, Division (E) directs the clerk of court to serve a copy of the same upon all “appellees,” and the director of the ODJFS If the director is included within the group of appellees:

(E) SERVICE OF THE NOTICE OF APPEAL

Upon filing the notice of appeal with the clerk of court, the clerk shall serve a copy of the notice of appeal upon all appellees, including the director.

R.C. 4141.282(E). Failure to name and serve the administrator, as required by statute, prevents the court of common pleas from exercising jurisdiction over the subject matter of the appeal. *In re Claim of King*, 62 Ohio St.2d 87, 403 N.E.2d 200. Specifically, “where a statute confers a right of appeal...strict adherence to the statutory conditions is essential for the enjoyment of that right. *Id.* at 88.

Here, when the Appellant filled the Notice of Appeal, she did not comply with the mandatory requirements of R.C. 4141.282(D) because she did not name all of the interested parties as appellees in the

Notice of Appeal. Specifically, in addition to naming the Commission as an appellee, Appellant should have named both ODJFS and the director of ODJFS as appellees because they are interested parties. The statute clearly states that all interested parties must be listed in the appeal and that the director of ODJFS is always an interested party.

Further, because ODJFS and the director of ODJFS were not named as interested parties, they were never served. The statute specifically states that a notice of appeal should be served upon all appellees including the director. While they were not listed as appellees, they are interested parties and should have been listed as interested parties, thus the statute requires that they be served.

As a result of Appellant's failure to follow the mandatory statutory requirements of R.C. 4141.282(D) and (E), this Court lacks subject matter jurisdiction and must sustain ODJFS's Motion to Dismiss.

III. Conclusion

Based on the foregoing, this Court **SUSTAINS** Appellee's *Motion to Dismiss* in its entirety.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NOT JUST CAUSE FOR DELAY FOR PURPOSES OF CIV. R. 54. PURSUANT TO APP. R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

SO ORDERED:

JUDGE DENNIS J. ADKINS

To the Clerk of Courts:

Please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

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General Division
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41 N. Perry Street, Dayton, Ohio 45422

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COMPENSATION REVIEW COMMISSION
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Type: Decision

So Ordered

A handwritten signature in black ink, appearing to read "Dennis J. Adkins".

Dennis J. Adkins