

DANIEL M. HOBBIAN
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 SUMMIT COUNTY
 CLERK OF COURTS
 IN THE COURT OF COMMON PLEAS
 SUMMIT COUNTY, OHIO

JOYCE K. SMITH,)	CASE NO.: CV 2012 02 0902
)	
Plaintiff-Appellant,)	JUDGE CALLAHAN
)	
v.)	
)	<u>JUDGMENT ENTRY</u>
STATE OF OHIO UNEMPLOYEMENT)	Final, Appealable Order
COMPENSATION REVIEW)	
COMMISSION, et al.,)	
)	
Defendants-Appellees.)	

On May 8, 2012, this administrative appeal came before the Court upon the mandatory hearing pursuant to R.C. 4141.282(I) regarding the timely filing of the appeal. Attorney Sheffield appeared on behalf of Intervenor Director, Ohio Department of Job and Family Services and Plaintiff-Appellant Joyce Smith appeared pro se.

Director, Ohio Department of Job and Family Services' Motion to Dismiss for Lack of Jurisdiction

Intervenor Director, Ohio Department of Job and Family Services filed a Motion to Dismiss for Lack of Jurisdiction prior to the start of the hearing. This Motion and Attorney Sheffield are improperly before the Court in the instant case. Director, Ohio Department of Job and Family Services is not a named party to this action. Nor has Director, Ohio Department of Job and Family Services moved pursuant to Civ.R. 24(C) to intervene as a matter of right. Instead, Attorney Sheffield filed a Notice of Appearance as counsel for Intervenor Director,

Ohio Department of Job and Family Services. Accordingly, Director, Ohio Department of Job and Family Services is not a party to this action and has no standing to file the Motion to Dismiss or to appear at the hearing.

Director, Ohio Department of Job and Family Services' Motion to Dismiss for Lack of Jurisdiction is stricken from the record and all arguments presented by Attorney Sheffield at the hearing are stricken from the record and disregarded.

Subject Matter Jurisdiction

Upon review of the docket, the Court sua sponte raises a question as to the subject matter jurisdiction in this matter. *State ex rel. Bond v. Velotta*, 91 Ohio St.3d 418, 419, 746 N.E.2d 1071 (2001) (lack of subject matter jurisdiction may be raised sua sponte by the court at any stage of the proceedings).

An administrative appeal must be perfected in order to vest jurisdiction in the court of common pleas to hear the appeal. *Anderson v. Interface Elec., Inc.*, 10th Dist. No. 03AP-354, 2003-Ohio-7031, 2003 Ohio App. LEXIS 6359, ¶17, citing *Zier v. Bur. of Unemployment Comp.*, 151 Ohio St. 123, 125, 84 N.E.2d 746 (1949). In an administrative appeal of the Unemployment Compensation Review Commission's final decision, "[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court." R.C. 4141.282(C); *Zier*, 151 Ohio St. at 25. An appeal by an employee is perfected by filing a written notice of appeal in the court of common pleas where the employee is a resident or was last employed, within thirty days of the mailing of the final decision of the unemployment compensation review commission to the parties. R.C. 4141.282(A) and (B); see *Nicoll v. Ohio Dept. of Job and Family Servs.*, 2d Dist. No. 24509, 2011-Ohio-5207, 2011 Ohio

App. LEXIS 4298, ¶18. If the appeal is not properly perfected, then the common pleas court lacks jurisdiction and the appeal must be dismissed. *Anderson*, 2003-Ohio-7031, at ¶17.

The time limitations to file a notice of appeal is a jurisdictional requirement and is established by statute. *Tru-Way Design & Engineering, Inc. v. Wilson*, 6th Dist. No. L-07-1240, 2008-Ohio-475, 2008 Ohio App. LEXIS 416, ¶¶13-15. Accordingly, the common pleas court can only extend the deadline for filing an appeal if the appellant meets one of the four statutorily created bases for an extension. *Id.* at ¶¶14-17. The common pleas court cannot extend the appeal filing deadline for any other reason. *See id.* at ¶¶16-17.

R.C. 4141.281(D)(9) sets forth the four instances when the common pleas court shall extend the thirty-day appeal filing deadline:

- a) “When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday.” *Id.*
- b) “When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period.” *Id.*
- c) “When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision.” *Id.*

- d) "When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive a decision within the thirty-day appeal period provided in section 4141.282 of the Ohio Revised Code, and a court of common pleas finds that the interested party did not actually receive the decision within that thirty-day appeal period, then the appeal period is extended to thirty days after the interested party actually receives the decision." *Id.*

Pursuant to R.C. 4141.282(I), Plaintiff-Appellant Joyce Smith was entitled to a hearing to determine whether the appeal was timely filed in accordance with R.C. 4141.281(D)(9) and to produce evidence and arguments regarding the timeliness of the filing of the appeal. Such hearing was held on May 8, 2012 and additional testimony, evidence and oral argument regarding the timeliness of the filing of the appeal were permitted at that time.

The evidence before the Court is that on February 16, 2012, Plaintiff-Appellant Joyce Smith filed an administrative appeal in the Summit County Common Pleas Court regarding the Unemployment Compensation Review Commission's Decision dated January 4, 2012. Pursuant to R.C. 4141.282(A), Plaintiff-Appellant Joyce Smith's administrative appeal was to have been filed in the common pleas court within thirty days of the January 4, 2012 Decision. Thus, the filing deadline was February 3, 2012. However, Plaintiff-Appellant Joyce Smith filed the administrative appeal on February 16, 2012, thirteen days beyond the deadline.

First, it is concluded that the deadline for Plaintiff-Appellant Joyce Smith to file her Notice of Appeal was Friday, February 3, 2012. This deadline did not fall on a holiday or a weekend. Accordingly, Plaintiff-Appellant Joyce Smith did not meet the first statutory exception to the 30-day filing deadline.

Second, the Court finds that Plaintiff-Appellant Joyce Smith did not put forth any evidence or testimony justifying an extension of the 30-day filing deadline under the second,

third or fourth statutory exceptions. Plaintiff-Appellant Joyce Smith received the January 4, 2012 Review Commission Decision prior to the expiration of the 30-day time limit to file an appeal in the court of common pleas and had knowledge of the 30-day time limit in which to file her appeal as evidenced by her attempt to mail the appeal on January 30, 2012. It is concluded that Plaintiff-Appellant Joyce Smith has not put forth any evidence, testimony or legal arguments qualifying her for an extension of time to file the Notice of Appeal pursuant to R.C. 4141.281(D)(9).

Plaintiff-Appellant Joyce Smith instead placed the blame for her untimely filing of the Notice of Appeal on the either the United States Postal Service or the Summit County Clerk of Court's office's for losing her January 30, 2012 mailing of the Notice of Appeal. Plaintiff-Appellant Joyce Smith testified that she mailed the Notice of Appeal from the Hudson post office on January 30, 2012 during her lunch hour. She testified that she was unable to file the Notice of Appeal in person because of the hours of her employment. Plaintiff-Appellant Joyce Smith mailed, via certified mail, the Notice of Appeal for filing a second time on February 14, 2012. The Notice of Appeal was filed by the Summit County Clerk of Court on February 16, 2012.

While the Court finds Plaintiff-Appellant Joyce Smith's account of her efforts to file the Notice of Appeal to be credible, the Court is bound to follow the law. It has been held that the jurisdiction of the court in an unemployment compensation appeal may not be extended due to the mailbox rule or postal delays. *Tru-Way Design*, 2008-Ohio-475, at ¶¶16-17. Plaintiff-Appellant Joyce Smith's "efforts to comply" with R.C. 4141.282 are insufficient grounds to extend the filing deadline. *See id.* at ¶17.

Plaintiff-Appellant Joyce Smith was acting pro se at the time that she filed her Notice of Appeal. While Plaintiff-Appellant Joyce Smith was entitled to represent herself in this matter, she is bound by the same rules and procedures as those litigants who retain counsel. *First Resolution Invest. Corp. v. Salem*, 9th Dist. No. 24049, 2008-Ohio-2527, 2008 Ohio App. LEXIS 2131, ¶7. Plaintiff-Appellant Joyce Smith is held to the same standards as an attorney and must comply with the law, statutes and Ohio Rules of Civil Procedure. *Sherlock v Meyers*, 9th Dist. No. 22071, 2004-Ohio-5178, 2004 Ohio App LEXIS 4686, ¶3, citing *Martin v Wayne Cty. Natl. Bank*, 9th Dist. No. 03CA0079, 2004-Ohio-4194, 2004 Ohio App. LEXIS 3827, ¶14; *Kilroy v B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). The pro se plaintiff must accept the results of her own mistakes and/or errors. *Martin*, 2004-Ohio-4194, at ¶14.

Plaintiff-Appellant Joyce Smith's Notice of Appeal was filed thirteen days late. Based on the testimony of Plaintiff-Appellant Joyce Smith, it is concluded that none of the provisions of R.C. 4141.281(D)(9) are applicable in the instant case. As a matter of law, Plaintiff-Appellant Joyce Smith does not qualify for a statutorily mandated extension of time to file her Notice of Appeal of the January 4, 2012 Unemployment Compensation Review Commission's Decision.

Based on the foregoing, this Court finds it does not have subject matter jurisdiction over the instant administrative appeal and cannot consider the merits of Plaintiff-Appellant Joyce Smith's administrative appeal. The administrative appeal filed on February 16, 2012 is **dismissed with prejudice**. Costs to Plaintiff-Appellant Joyce Smith.

Conclusion

Director, Ohio Department of Job and Family Services' Motion to Dismiss for Lack of Jurisdiction is **stricken** from the record and all arguments presented by Attorney Sheffield at the hearing are **stricken** from the record and disregarded.

The administrative appeal filed on February 16, 2012 is **dismissed with prejudice** for lack of subject matter jurisdiction. Costs to Plaintiff-Appellant Joyce Smith.

This is a final, appealable order.

IT IS SO ORDERED.

JUDGE LYNNE S. CALLAHAN

cc: Attorney Susan M. Sheffield
Plaintiff-Appellant Joyce K. Smith, pro se
Defendant-Appellee Summa Health System Hospital
Defendant-Appellee Unemployment Compensation Review Commission