5/31/12 To: Dave Lefton

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DEPARTMENT OF
JOB & FAMILY SERVICES
DIRECTORS OFFICE

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION – SCIOTO COUNTY
PORTSMOUTH, OHIO

SCIOTO COUNTY
OHIO
FILED
2012 MAY 29 PM 12 02
CLERK OF COURTS

RONALD DINGESS

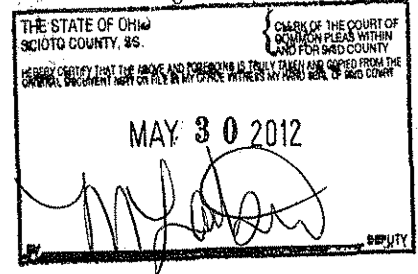
Appellant

Case No. 10-CIF-003

vs.

Judge Howard H. Harcha, III

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES
30 East Broad Street, 32nd Floor
Columbus, Ohio 43215



and

PROVIDER SERVICES HOLDINGS, LLC
25000 Country Club Blvd., Suite 255
North Olmstead, Ohio 44070

Appellees

DECISION AND JUDGMENT ENTRY

Ronald Dingess filed an application for unemployment compensation in December 2009 after his termination as Director of Environmental Services. Dingess worked at a residential treatment facility owned by Provider Services Holdings, LLC (Employer). The Ohio Department of Job and Family Services allowed his initial claim and after appeal by the Employer determined that he was still eligible for benefits. The Employer appealed the redetermination of the Ohio Department of Job and Family Services and the matter was transferred to the Ohio Unemployment Compensation Review Commission. The Review Commission scheduled a hearing on the merits for July 27, 2010, at 10:15 A.M., which was conducted by phone. A notice of the hearing was sent to Dingess on July 15, 2010. Dingess failed to call as required by the hearing notice. Later he received notice that his claim had been dismissed. After denial of his appeal for a second hearing Dingess filed an appeal with this Court.

When reviewing a decision of the Unemployment Compensation Review Commission, we must affirm unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694, 697, 1995-Ohio-206, 653

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N.E.2d 1207. All reviewing courts must apply this standard. Id. At 696-697. Further, we note that the Review Commission remains the finder of fact. The fact that reasonable minds may have reached a different decision than the Review Commission is not a basis for reversal. *Tzangas* at 697.

R.C. 4141.281(D)(5) states, in pertinent part:

"For hearings at either the hearing officer or review level, if the appealing party fails to appear at the hearing, the hearing officer shall dismiss the appeal. The commission shall vacate the dismissal upon a showing that written notice of the hearing was not sent to that party's last known address, or good cause for the appellant's failure to appear is shown to the commission within fourteen days after the hearing date."

Accordingly, the question before us is whether the Review Commission's determination that Dingess lacked good cause in failing to appear was unlawful, unreasonable, or against the manifest weight of the evidence.

Dingess testified that he spoke with a representative of the Review Commission and was told that the hearing would be postponed. The Review Commission's own telephone instructions state that "Postponements can only be requested by calling the Commission at 1-866-833-8272. Any requests to postpone, filed by letter, fax, or e-mail will not be considered." So, after Dingess was told the hearing would be postponed by a representative at this number he took that as confirmation that the hearing would be postponed. Even though the instructions also say that "A scheduled hearing will be postponed only under extreme circumstances...," Dingess' failure to receive important documents from the employer for his case could amount to an extreme circumstance.

The Review Commission's law does not define the term, 'good cause.' However, in this context, the Review Commission considers good cause to mean a substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create a reasonable excuse for an act or a failure to act. In this case the facts show that the Appellant did have a substantial reason for failure

to appear and good cause. Failure to receive requested materials until after the July 27, 2010 hearing and inquiring about postponement at the number given in the telephone instructions amount to good cause.

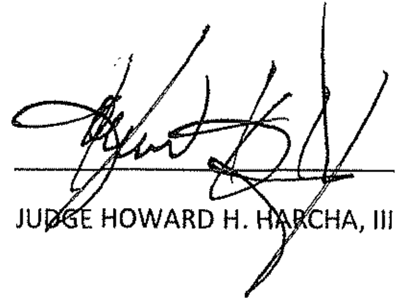
When the non-appearing party has some culpability, prior decisions have determined that good cause for failure to appear is not established. See, e.g., *Arn v. Leibold* (June 17, 1993), 10th Dist. No. 93AP-394; *Altizer v. Board of Review* (March 12, 1996), 10th Dist. No. 95APE10-1310, *Payton v. Board of Review* (June 5, 1997), 10th Dist. No. 96APE09-1266. Dingess' diligence in calling the Review Commission, inquiring about his missing employment file, and the fact that he was on vacation for 10 days in July eliminates any culpability that he might have. Dingess followed all instructions written on the telephone instructions provided by the Review Commission and oral instructions received from an employee of the Review Commission. Also, in the telephone instructions it states, "If you do not receive a response to a written fax or email request, assume your request (for postponement) has been denied and that the hearing will proceed as scheduled." This confusing language and the other telephone instruction language would prompt any reasonable, rational individual to call the Review Commission and follow any instructions given. This case can be distinguished from *Dodridge v. Administrator, Ohio Department of Jobs and Family Services, et al.* (February 12, 2010) 4th District Court of Appeal No. 09CA3292. In *Dodridge* the Appellant was told by an employee of the Review Commission around January 28, 2008 before her hearing that she would be contacted about the hearing date. After this conversation Dodridge received the Notice of Hearing sent to her February 15, 2008 and admitted to not reading the notice. Dingess not only read the Notice of Hearing but took appropriate action as provided by the Review Commission in the telephone instructions. The level of culpability between Dodridge and Dingess is distinguishable. Dingess was not culpable while the culpability of Dodridge is clear.

In light of the allegations that a representative of the Review Commission told the Appellant that the hearing would be rescheduled, this court finds the Appellant should be granted a hearing to

determine whether she is eligible for unemployment compensation benefits. This decision does not determine the merits of the Appellants claim as to whether she should receive benefits. It is **ORDERED** this matter shall be reset for a hearing to determine the validity of the Appellant's claim.

This is a final appealable order there is no just cause for delay.

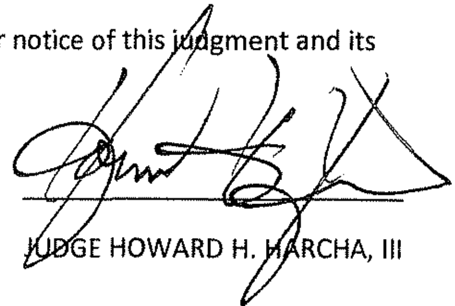
IT IS SO ORDERED



JUDGE HOWARD H. HARCHA, III

TO THE CLERK:

Please serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal pursuant to Ohio Civil Rule 58 (B).



JUDGE HOWARD H. HARCHA, III

cc:

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