IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

Tracy Stephens   :   Case No. 2012-CV-0189
            Plaintiff
                                   :
vs   :   Judge Roger E. Binette

State of Ohio Unemployment Compensation Review Commission: **JUDGMENT ENTRY**
            Defendant   ::::

This matter is before the Court on *Motion to Dismiss for Lack of Jurisdiction* ("*Motion to Dismiss*") (filed on or about April 13, 2012). This Court has carefully reviewed and considered the *Motion to Dismiss* and accompanying *Memorandum;* the *Motion for Leave to Re-file Notice of Appeal* (filed on or about May 2, 2012); the *Reply Memorandum* (filed on or about May 4, 2012); the record and applicable law.

This Court **FINDS** and **HOLDS**:

1.   This is an Unemployment Compensation Administrative Appeal filed by Tracy Stephens ("Plaintiff") pro se;

2.   R.C. §4141.282 (D) requires in relevant part with respect to appeals to Common Pleas Courts of Final Administrative Unemployment Compensation determinations that "the Appellant shall name all interested parties in the Notice of Appeal. The Director of the Ohio Department of Job and Family Services (ODJFS) is always an interested party and shall be named as an Appellee in the Notice of Appeal;"

3.   In addition to the Director of ODJFS, the employer is an " interested party;"

4.   When Plaintiff filed her timely Notice of Appeal, she named only the State of Ohio Unemployment Compensation Review Commission as a party. She failed to name her former employer, Omnicare ESC, LLC or the Director of ODJFS. While Plaintiff served her former employer and the Director of ODJFS, she did not name them as parties;

5.   The final determination specifically made Plaintiff aware of this requirement. Under "Appeal Rights", Plaintiff was advised in part "The appellant must name all interested parties as appellees in the Notice of Appeal, including the Director of Job and Family Services;"

6.   In order to invoke jurisdiction of the Common Pleas Court of an Administrative Appeal conferred by statute, the statute must be complied with. *Zier v. Bur. Of Unemp. Comp* (1949), 151 Ohio St. 123;

7.   Thus, the failure to name all interested parties in the Notice of Appeal is fatal to an appeal from the Unemployment Commission. See e.g. *Syden Stricker v. Donato's Pizzeria, LLC* 2012-Ohio-2953; *In re Claim of King* (1980) 62 Ohio St. 2d 87, 88;

8.   Plaintiff has not cited any adverse authority, nor responded to ODJFS's legal arguments. Instead, Plaintiff requests leave to re-file a Notice of Appeal to correct the jurisdictional deficiencies. While a Notice of Appeal may be amended, the amended Notice must be filed within the time for filing a Notice of Appeal. See e.g. *CHS- Windsor, Inc. v. ODJFS* 2006-Ohio-2446; *Deerhake v. Limbach* (1989), 47 Ohio St. 3d 44. Since the time for filing a Notice of Appeal passed, the attempt to re-file a corrected Notice of Appeal by leave on May 2, 2012 was too late;

9.   The *Motion to Dismiss* is well taken and must be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED based on the above that, the *Motion To Dismiss For Lack Of Jurisdiction* (filed on or about April 13, 2012) is **GRANTED.**

IT IS FURTHER ORDERED that this case is **DISMISSED with Prejudice.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the *Motion For Leave To Re-File Notice Of Appeal* (filed on or about May 2, 2012) is **DENIED.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that based upon the Court's Order of April 26, 2012 regarding Plaintiff's Affidavit of Indigence and the proximity in time of that Order to this Judgment Entry dismissing this case that this Court finds Plaintiff's Affidavit of Indigence well taken. Plaintiff is therefore not to be assessed the costs of this matter.

IT IS SO ORDERED.

_____ 6/13/12
JUDGE

"The Erie County Clerk Of Courts is ORDERED to enter this Judgment Entry on its journals, and shall serve upon all parties not in default for failure to appear Notice of this Judgment Entry and its date of entry upon the journal. Within 3 days of journalizing this Judgment Entry, the Clerk shall serve the parties. Civ. R. 58(B) & 5(B)"

Tracy Stephens, Pro Se
Eric Baum