

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

EMILY R. LEWIS MOORMAN,

CASE NO. 2012 CV 00690

Plaintiff/Appellant,

JUDGE MARY KATHERINE HUFFMAN

-vs-

OHIO DEPT OF JOB AND  
FAMILY SERVICES,

Defendant/Appellee.

DECISION, ORDER AND ENTRY  
OVERRULING APPELLANT'S APPEAL  
OF THE DECISION OF THE  
UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION,  
AFFIRMING THE UNEMPLOYMENT  
COMPENSATION REVIEW  
COMMISSION'S DECISION, AND  
ENTRY OF DISMISSAL

---

This matter is before the court on the appeal of Appellant, Emily R. Lewis-Moorman, to challenge the Unemployment Compensation Review Commission's decision denying her Request for Review. Appellant filed her Notice of Appeal on January 26, 2012. Appellant failed to file a Brief. On May 31, 2012, Appellee, Ohio Department of Job and Family Services, filed its Brief. This matter is now ripe for decision.

**I. PROCEDURAL HISTORY AND FACTS**

This action arises as an unemployment compensation appeal under R.C. 4141.282. Appellant, Emily R. Lewis-Moorman, initially filed an application for determination of unemployment benefits with the Director of the Ohio Department of Job and Family Services on March 23, 2011. On May 2, 2011, the Director found that Appellant was discharged without just

cause from her employment with the Montgomery County Auditor and allowed Appellant's application for benefits.

On May 23, 2011, the Auditor appealed the Director's Determination. On June 14, 2011, the Director issued a Redetermination, affirming the previous Determination. The Auditor then appealed the Director's Redetermination to the Unemployment Compensation Review Commission on June 21, 2011, and requested a hearing. The matter was scheduled for hearing on October 26, 2011, and a Notice of Hearing was mailed to Appellant on October 12, 2011.

On October 26, 2011, the matter proceeded to hearing, but Appellant failed to appear. In its decision, mailed on October 28, 2011, the Review Commission made the following findings of fact:

The claimant worked for Montgomery County Coroner's Office from April 7, 2010, through March 21, 2011. From April 7, 2010, through September 1, 2010, the claimant worked as a seasonal employee. Beginning on September 1, 2010, claimant worked as a full pathology and autopsy technician. Claimant's immediate supervisor was the Morgue Supervisor, Jeff Delorme.

During the course of her employment claimant had been verbally warned concerning her performance and tardiness. Claimant was given an evaluation outlining areas of her performance that she needed to improve. On several occasions the Director of Operations, Dr. Kent Harshbarger, covered areas of concern with the claimant.

The claimant reported that she was often late to work because of problems with her children. Claimant was counseled for being out of her work area without notifying coworkers or supervisors on several occasions. Claimant was counseled when it came to the employer's attention that claimant had outside legal issues which may affect her effectiveness in testifying at trials. The claimant was also counseled for failing to follow directions of supervisors in completing job duties. Shortly before claimant's separation she was involved in an argument with the Training Officer, Pete Lane, concerning mistakes that claimant made. After reviewing the verbal counselings given to claimant and her failure to improve her job performance, a decision was made to discharge claimant. Claimant was informed of her discharged on March 21, 2011.

The Review Commission ultimately concluded that Appellant was discharged with just cause in connection with work, reasoning:

The claimant was discharged by the Montgomery County Coroner's Office when she failed to improve her job performance and tardiness problem after several verbal warnings. The claimant's actions were not those an employer could reasonably expect from an employee

and represent fault. The claimant was discharged by Montgomery County Coroner's Office for just cause in connection with work.

Based upon this finding, claimant received benefits to which (s)he was not entitled and is required to repay those benefits to the Ohio Department of Job and Family Services.

In so concluding, the Review Commission reversed the Director's Redetermination with respect to Appellant's separation from her employment with the Montgomery County Auditor. As stated in the Review Commission's Decision, Appellant was required to file a Request for Review within twenty-one calendar days, or by November 18, 2011. The Request for Review was required to be in writing, signed by the appealing party, and mailed to Review Commission or faxed to (614) 387-3694. Appellant apparently attempted to fax her Request for Review to "161438733694" on November 18, 2011, at 11:57 p.m., but was unsuccessful with a "No answer" result, presumably because the fax number entered contained an additional digit. The Review Commission did not receive Appellant's Request for Review until November 22, 2011.

On November 25, 2011, the Review Commission issued a notice that a Request for Review was received. On November 29, 2011, Appellant submitted her Explanation for Missing Appeal Deadline and her Appeal. The matter proceeded to hearing on December 22, 2011, only as to whether Appellant timely filed her Request for Review. During the hearing, Appellant testified that she had difficulty faxing her Request for Review on November 18, 2011, and that she attempted to call the Review Commission for assistance without success. The Review Commission issued its decision on December 23, 2011, with the following findings of fact:

On October 28, 2011, the Hearing Officer's decision was sent to the last known address of the appellant. The file contains a certification that the Hearing Officer's decision was sent on this date. The appellant received a copy of such decision through the U.S. Postal Service prior to November 18, 2011, the last day of the appeal period.

On November 22, 2011, the appellant filed an appeal by use of a facsimile machine.

The Review Commission concluded that Appellant's Request for Review was not timely filed, reasoning:

The statutory appeal period ended on November 18, 2011.

The appellant's Request for Review was filed beyond the statutory appeal period. (*See Holmes v. Press*, 64 Ohio St. 2d 187, and *McCruter v. Board of Review*, 64 Ohio St. 2d 277).

Accordingly, Appellant's Request for Review was dismissed. Appellant filed her Notice of Appeal on the Review Commission's Decision to this court on January 26, 2012.

## **II. LAW AND ANALYSIS**

The right to appeal from an administrative decision is not an inherent right, but instead is one conferred by statute. *See Harrison v. Ohio State Medical Board* (1995), 103 Ohio App.3d 317, 321. "Where a statute confers a right of appeal, such appeal may be perfected only by compliance with the mandatory statutory requirements." *Geauga Welding & Pipeline Co. v. Germano* (2006), 2006 Ohio 1004, quoting *State ex rel. Kent State Univ. v. State Personnel Bd. of Review* (1990), 1990 Ohio App. LEXIS 2561, citing *Zier v. Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123, paragraph one of the syllabus. In general, "when a statute requires that an administrative appeal be filed within a specified period, compliance with that requirement is a necessary predicate to invoking the administrative agency's appellate jurisdiction." *Id.*, citing *McCruter v. Bd. of Review* (1980), 64 Ohio St.2d 277, 279. Where a statute confers a right to appeal, strict adherence to the statutory conditions is essential. *Holmes v. Union Gospel Press* (1980), 64 Ohio St.2d 187, 188.

Pursuant to R.C. 4141.281(A), a party may appeal a determination of unemployment benefit rights or a claim for benefits determination. In the administrative appeal phase, any party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-

one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section. *R.C. 4141.281(A)*. “Within twenty-one days after receipt of the appeal, the director of job and family services shall issue a redetermination or transfer the appeal to the unemployment compensation review commission. A redetermination under this section is appealable in the same manner as an initial determination by the director.” *R.C.*

*4141.281(B)*.

The Review Commission’s jurisdiction is delineated under R.C. 4141.281(C)(1), which provides:

The commission shall provide an opportunity for a fair hearing to the interested parties of appeals over which the commission has jurisdiction. The commission has jurisdiction over an appeal on transfer or on direct appeal to the commission. If the commission concludes that a pending appeal does not warrant a hearing, the commission may remand the appeal to the director for redetermination. *The commission retains jurisdiction until the appeal is remanded to the director or a final decision is issued and appealed to court, or the time to request a review or to appeal a decision of a hearing officer or the commission is expired.*

(Emphasis added).

R.C. 4141.281(C)(3) states:

When an appeal is transferred to the commission by the director, the commission shall notify all interested parties of the time and place of the hearing and assign the appeal for a hearing by a hearing officer. The hearings shall be de novo, except that the director’s file pertaining to a case shall be included in the record to be considered.

*Following a hearing, the hearing officer shall affirm, modify, or reverse the determination of the director in the manner that appears just and proper. The hearing officer’s written decision shall be sent to all interested parties. The decision shall state the right of an interested party to request a review by the commission.*

*A request for review shall be filed within twenty-one days after the decision was sent to the party, or within an extended period as provided under division (D)(9) of this section. The hearing officer’s decision shall become final unless a request for review is filed and allowed or the commission removes the appeal to itself within twenty-one days after the hearing officer’s decision is sent.*

(Emphasis added).

“At the review level, the commission may affirm, modify, or reverse previous

determinations by the director or at the hearing officer level. At the review level, the commission may affirm, modify, or reverse a hearing officer's decision or remand the decision to the hearing officer level for further hearing. *The commission shall consider an appeal at the review level under the following circumstances:* when an appeal is required to be heard initially at the review level under this chapter; when the commission on its own motion removes an appeal to itself within twenty-one days after the hearing officer's decision is sent; when the assigned hearing officer refers an appeal to the commission before the hearing officer's decision is sent; *or when an interested party files a request for review with the commission within twenty-one days after the hearing officer's decision is sent.*" (Emphasis added). *R.C. 4141.281(C)(4)*. "The commission shall consider a request for review by an interested party, including the reasons for the request. The commission may adopt rules prescribing the methods for requesting a review. *The commission may allow or disallow the request for review. The disallowance of a request for review constitutes a final decision by the commission.*" (Emphasis added) *R.C. 4141.281(C)(5)*.

Administrative appeals in this context are timely under the following circumstances:

The date of the mailing provided by the director or the commission is sufficient evidence upon which to conclude that a determination, redetermination, or decision was sent to the party on that date. Appeals may be filed with the director, commission, with an employee of another state or federal agency charged with the duty of accepting claims, or with the unemployment insurance commission of Canada. Any timely written notice by an interested party indicating a desire to appeal shall be accepted.

The director, commission, or authorized agent must receive the appeal within the specified appeal period in order for the appeal to be deemed timely filed, except that: if the United States postal service is used as the means of delivery, the enclosing envelope must have a postmark date or postal meter postmark that is on or before the last day of the specified appeal period; and where the postmark is illegible or missing, the appeal is timely filed if received not later than the end of the fifth calendar day following the last day of the specified appeal period.

The director and the commission may adopt rules pertaining to alternate methods of filing appeals under this section.

*R.C. 4141.281(D)(1)*.

The time limitation for the appeal period may be extended as follows:

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences. 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. 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. 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. 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 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.

*R.C. 4141.281(D)(9).*

Once the final decision of the review commission has been sent to all interested parties, any party may appeal the decision to the court of common pleas within thirty days. *R.C. 4141.282(A).*

*R.C. 4141.282(H)* delineates the standard of review for the court of common pleas during such appeal, stating:

“The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.”

The reviewing court is limited to the record as certified by the review commission. *Abrams-Rodkey v. Summit County Children Servs.* (2005), 163 Ohio App. 3d 1. The court must give due deference to the agency's resolution of evidentiary conflicts, and the court may not substitute its

judgment for that of the agency. *Budd Co. v. Mercer* (1984), 14 Ohio App. 3d 269. Moreover, “[a] reviewing court may not make factual findings or determine the credibility of witnesses, and may not overturn a decision of the commission simply because it might reach a different result.” *Gregg v. SBC Ameritech* (2004), 2004 Ohio 1061, citing *Tzangas, Plakas & Mannos v. Administrator, Ohio Bureau of Employment Servs.* (1995), 73 Ohio St. 3d 694, 696-697.

After a thorough review of the record, and in consideration of the foregoing standards, it is clear that the weight of the evidence shows that Appellant’s Request for Review to the Review Commission was not timely filed, as the Review Commission did not receive the Request for Review until November 22, 2011. Under R.C. 4141.281(A), and as stated in the Review Commission’s Decision, Appellant had twenty-one calendar days, or until November 18, 2011, to file her Request for Review. There is no evidence that any of the exceptions to this time limitation set forth in R.C. 4141.281(D)(9) applied in the instant case. Therefore, the Review Commission properly found that Appellant’s Request for Review was filed beyond the statutory appeal period, resulting in the dismissal of Appellant’s Request for Review. Having reviewed the entire record, the court cannot say that the Review Commission’s Decision was unlawful, unreasonable, or against the manifest weight of the evidence, and, thus, Appellant’s Appeal is hereby **OVERRULED**.

### **III. CONCLUSION**

The court finds that the decision of Unemployment Compensation Review Commission was appropriate in this matter and supported by the evidence. This court hereby **DISMISSES** Appellant’s Appeal, **AFFIRMS** the decision of the Review Commission, and **OVERRULES** Appellant’s Appeal.

SO ORDERED:

---

JUDGE MARY KATHERINE HUFFMAN



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:

YVONNE TERTEL  
(614) 466-8600  
Attorney for Defendant, Ohio Dept Of Job And Family Services

Copies of this document were sent to all parties listed below by ordinary mail:

EMILY R LEWIS MOORMAN  
2035 TURNBULL RD  
BEAVERCREEK, OH 45431  
Plaintiff

Ryan Colvin, Bailiff (937) 496-7955 [Colvinr@montcourt.org](mailto:Colvinr@montcourt.org)



General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Title:** EMILY R LEWIS MOORMAN vs OHIO DEPT OF JOB  
AND FAMILY SERVICES  
**Case Number:** 2012 CV 00690  
**Type:** Decision

So Ordered

A handwritten signature in black ink that reads "Mary K. Huffman".

Mary K. Huffman