

COMMON PLEAS COURT
WARREN COUNTY, OHIO
FILED

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JAMES L. SPAE III
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
WARREN COUNTY, OHIO

BENEDICT PIOTROWSKI
Plaintiff,

CASE NO. 12CV82349

vs.

DPT
FAU

OPW ENGINEERED SYSTEM
Defendant,

**DECISION AND DISMISSAL
ENTRY**

Pending before the Court is the motion of Appellee, Unemployment Compensation Review Commission ("Appellee"), to dismiss this administrative appeal for lack of subject matter jurisdiction under R.C. 4141.282.

This appeal filed pursuant to R.C. 4141.282. This is an appeal of the Review Commission's decision denying the Appellant unemployment benefits. Appellee's argument is that the Appellant's failure to name the director of the Department of Job and Family Services ("ODJFS") as a mandatory statutory party-appellee in his Notice of Appeal, creates a lack subject matter jurisdiction by this court.

R.C. 4141.282 (D) states that:

(D) INTERESTED PARTIES

The commission shall provide on its final decision 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.

The Legislature's use of the word "shall" makes the naming of the director of job and family services, as an interested party, mandatory rather than permissive.

The Supreme Court of Ohio has held that when filing an appeal, which is conferred by statute, the appealing party must strictly comply with the statutory requirements.

Citing the Ohio Supreme Court, the Eleventh District Court of Appeals stated "The Supreme Court of Ohio, in *Zier v. Bur. of Unemployment Comp.* (1949), 151 Ohio St. 123, 84 N.E.2d 746, paragraph one of the syllabus, has held:

'An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditional upon compliance with the accompanying mandatory requirements.'

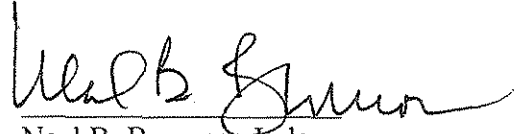
The court further held: '[c]ompliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of the Court of Common Pleas.'

The Supreme Court of Ohio, when deciding *In re Claim of King* (1980), 62 Ohio St.2d 87, 88, 403 N.E.2d 200, relied upon *Zier*, supra, in determining that a party appealing a decision of the Unemployment Compensation Board of Review to the court of common pleas is required to follow the statutory requirements. The appellee in *King* failed to adhere to the statutory mandate of former R.C. 4141.28(O), requiring 'that the party appealing serve all other interested parties with notice.' The appellee did not file a copy of the notice of appeal with the administrator of the Ohio Bureau of Employment Services nor did he name the Administrator as a party in his appeal. The appellee also failed to name his employer as a party to the appeal. The court found that the appellee failed to follow the directives of the statute, thus the court of common pleas lacked subject matter jurisdiction. The court reiterated that 'where a statute confers a right of appeal, as in

the instant cause, strict adherence to the statutory conditions is essential for the enjoyment of that right.' ”¹

The Appellant failed to properly name the administrator for ODJFS as a real party in interest as required by R.C. 4141.282, therefore the Court must dismiss the cause of action. Case dismissed at Appellant’s cost.

IT IS SO ORDERED.



Neal B. Bronson, Judge
Common Pleas Court

Benedict Piotrowski
Colleen P. Lewis
Trevor Gillette
Robin Jarvis

¹ *Sydenstricker v. Donato's Pizzeria, L.L.C.*, 11th Dist. No. 2009-L-149, 2010 WL2557705 (June 25, 2010)