

IN THE COURT OF COMMON PLEAS
HIGHLAND COUNTY, OHIO

VILLAGE OF LEESBURG, OHIO

:

CASE NO: 12 CV 0275

Appellant

:

DECISION AND FINAL JUDGMENT
ENTRY AFFIRMING DETERMINATION

v.

FILED
COMMON PLEAS COURT
HIGHLAND COUNTY, OHIO

DIRECTOR, OHIO DEPARTMENT OF
JOBS AND FAMILY SERVICES, et al.

DEC 18 2012

Appellees


HIGHLAND COUNTY CLERK OF COURTS

This cause came on for hearing the 4th day of December 2012 on the motion of Appellee Director of Ohio Department of Jobs and Family Services to strike exhibits to the brief of the Appellant. Fred J. Beery, Attorney at Law, Hillsboro, Ohio appeared on behalf of the Appellant. Robin Jarvis, Assistant Attorney General for the State of Ohio appeared on behalf of the Director of Ohio Department of Jobs and Family Services.

The Court after oral argument denied the Appellee's motion. The Court advised counsel that the scheduling order issued in this case was issued in error as it was for a civil case, not an administrative appeal and therefore was ordered vacated. Both counsel indicated that they had submitted all information and arguments in support of the appeal and wished to submit the matter on the pleadings and filings in the record. The Court has reviewed the transcript of proceedings and the entire record filed with the Court as well as the written briefs of the parties.

DECISION

The issue before the Court is the determination of the Unemployment Review Commission mailed June 6, 2012 in which it determined that the Appellant's right to appeal the determination of benefits decisions issued on April 28, 2011 and May 26, 2011 regarding the application for unemployment benefits filed by William Carter had expired on June 16, 2011.

The case originated with the filing of an application for unemployment benefits by William Carter who was a part-time police officer for the Appellant. On April 28, 2011 a determination of benefits year was issued and mailed to the fiscal officer of the village. On May 26, 2011, a determination of eligibility for benefits for partial unemployment was issued and mailed to the fiscal officer of the village. Each of the determinations contains a bold faced notice on the first page that it was a "Determination of Unemployment Compensation Benefits". On page two of each notice there is a notice of the right to appeal the determination. The date for the appeal to be filed with regard to the April 28th notice was May 19, 2011. The date for the appeal of the May 26th determination was June 16, 2011. This was typed in bold faced as well.

The Appellant did not file an appeal of either determination. The Appellant filed an appeal on February 18, 2012. This was denied by director's determination on March 7, 2012. Appellant filed an appeal of that action which was transferred to the Unemployment Compensation Review Commission pursuant to statute. A telephone hearing was held on April 25, 2012 before hearing Officer Joe Blake.

The fiscal officer of Appellant, Tracy Evans testified in the hearing that she had received both of the notices issued on April 28, 2011 and May 26, 2011 (Tr. Pages 6 and 8). She further testified that she assumed that it was a request for information from the employer and did not realize that it was an award of benefits (Tr. page 7-11). Because of this misunderstanding, no appeal of the award was filed. The Unemployment Review Commission then issued the decision that is now being appealed, that the Appellant's statutory time period to appeal the initial determinations had expired.

Appellant argues that it was denied due process and that it had evidence that the employee was not entitled to benefits because he was working part-time. However, it is clear that

the Appellant did receive the determinations and failed to file an appeal them. Pursuant to R.C. 4141.282(H), the only issue that this Court can determine is whether that determination was unlawful, unreasonable, or against the manifest weight of the evidence. If it is not, then the Court is required by law to affirm the determination of the review commission.

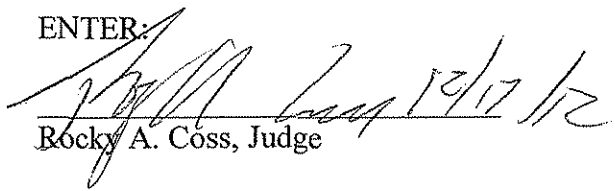
The Court finds that the determination was not unlawful, unreasonable or against the manifest weight of the evidence. The Appellant did receive the notices and failed to file its appeal within the twenty-one day statutory appeal period. Therefore, the Court must affirm the decision.

FINAL JUDGMENT ENTRY

Therefore, it is ordered and adjudged that the determination of the Unemployment Review Commission in this cause be and is hereby affirmed, and the appeal is dismissed. The Appellant shall pay the court costs of this action within thirty (30) days. Failure to do so could result in the issuance of a contempt citation. The amount of court costs can be found on the court's website at www.hccpc.org. The Clerk of Courts is ordered to deliver a copy of this decision to each of the parties and counsel in this case.

IT IS SO ORDERED.

ENTER:


Rocky A. Coss, Judge