

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT
2013 JAN -9 PM 3:58

Bruce Hyer

CASE NO. 12CIV0978

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

Plaintiff /Appellant

vs.

JUDGE JAMES L. KIMBLER

**Director, Ohio Department
of Job and Family Services**

**Judgment Entry with Instructions
to the Clerk**

Defendant/Appellee

I. Introduction

A. Issue Presented

Did Mr. Hyer file a timely notice of appeal of the denial of his application for unemployment compensation ?

B. Statement of Facts

Mr. Bruce Hyer is a former employee of the Battered Women's Shelter, Inc. His employment was terminated and he filed an application for unemployment benefits. The application was denied by the Ohio Department of Job and Family Services on the basis that the Battered Women's Shelter had terminated his employment for just cause.

Mr. Hyer was sent the notice on February 3, 2012. On February 3, 2012, he was not represented by an attorney, but retained one on February 9, 2012. The February 3 notice required him to file an appeal on or before February 24, 2012. An appeal was not filed until February 27, 2012. Mr. Hyer's attorney was not sent a copy of the February 3, 2012 denial of benefits although he had entered an appearance with the Ohio Department of Job and Family Services by sending a notice of representation on February 9, 2012.

The Director of the Ohio Department of Job and Family Services issued a Redetermination order which dismissed the appeal as being untimely filed. Mr. Hyer appealed that order and the case was then transferred to the Unemployment Compensation Review Commission. There was a hearing before a hearing officer on April 24, 2012 and on April 25, 2012, the hearing officer issued a decision affirming the Redetermination order.

Mr. Hyer then filed a Request for Review with the Commission, which denied the request

on June 6, 2012. Mr. Hyer then filed an administrative appeal with this Court.

C. Court's Conclusion

Mr. Hyer did not file a timely notice of appeal from the February 3, 2012 decision denying his application for unemployment benefits. The Department was under no obligation to send out a notice of the denial of benefits to the attorney who entered an appearance on February 9, 2012, because he was not an "interested party" as of February 3, 2012.

II Legal Analysis

A. Issue Presented

While the main issue in this case is whether Mr. Hyer timely filed his notice of appeal, resolution of that issue depends on determining whether or not the Department of Job and Family Services had an obligation to send a copy of the denial of benefits to Mr. Hyer's attorney.

B. Standard of Review

A reviewing court may reverse the board's determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence. *Geretz v. Ohio Dept. of Job & Family Servs.*, 114 Ohio St. 3d 89, 868 N.E.2d 669, 2007 Ohio 2941, P10, citing *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 697, 1995 Ohio 206, 653 N.E.2d 1207. "[W]hile appellate courts are not permitted to make factual findings or to determine the credibility of witnesses, they do have the duty to determine whether the board's decision is supported by the evidence in the record." This duty is shared by all reviewing courts, from the first level of review in the common pleas court, through the final appeal in this court." *Id.*¹

Based on the above, this Court must affirm the Commission's decision affirming the denial of benefits unless it can determine that the decision was unlawful, unreasonable, or against the manifest weight of the evidence.

C. Sources of Legal Principles

R.C. § 4141.28 (A) requires that all application for unemployment compensation benefits be filed with the Director of the Department of Job and Family Services.

R.C. § 4141.281 (A) allows "[A]ny party" who is notified of a determination of benefits to file an appeal within 21 calendar days after the written determination is sent to such party.

R.C. § 4141.281 (D) requires that if an appeal is mailed, the postmark must be within the 21 day period, unless the 21st. falls on a Saturday, Sunday, or Legal Holiday, in which case the

party would have until the next business day to postmark the appeal, as allowed by R.C. § 4141.281 (D) (9).

When a statute requires that an administrative appeal be filed within a specified time period, then such filing is jurisdictional. *Geauga Welding & Pipeline Co. v. Germano*, (11th Dist.), 2006 Ohio 1004.

R.C. § 4141.281 (A) uses the term "[A]ny party" while R.C. § 4141.282 (A) uses the term "[A]ny interested party".

R.C. § 4141.281 (A) deals with appeals from "any determination of benefit rights" while R.C. § 4141.281 (A) deals with appeals to a court of common pleas following a decision of the Unemployment Compensation Review Commission.

D. Discussion

Mr. Hyer argues that even though he was not represented by an attorney on February 3, 2012, when the notice of the determination of his application for benefits was mailed at, he was represented by February 9, 2012. He argues that his attorney's appearance makes the attorney an "interested party" and therefore the Director should have sent the attorney a copy of the notice of the denial of his application for benefits. In support of that position he cites to a decision of the Stark County Court of Common Pleas.

The facts of the Stark County decision, however, are different than the facts in this particular case. In the Stark County case the attorney for the claimant made his appearance prior to the Redetermination order being sent to the claimant. In this case, however, the decision denying benefits was sent out before the attorney had appeared on Mr. Hyer's behalf.

Apparently Mr. Hyer believes that once his attorney entered an appearance in the file, the Department was then obligated to send him a copy of the notice denying him benefits. What is interesting about that argument is that it would have the practical effect of extending the time in which an appeal could be filed.

It would have that effect because an attorney could argue that since he or she is an "interested party", he or she should have 21 days in which to file the appeal. This would mean that represented claimants could end up with a different time limits for an appeal than non-represented parties.

Since compliance with the time requirements to file an appeal is jurisdictional, having two potential deadlines for filing an administrative appeal would give rise to confusion regarding

when the administrative appeal had to be filed.

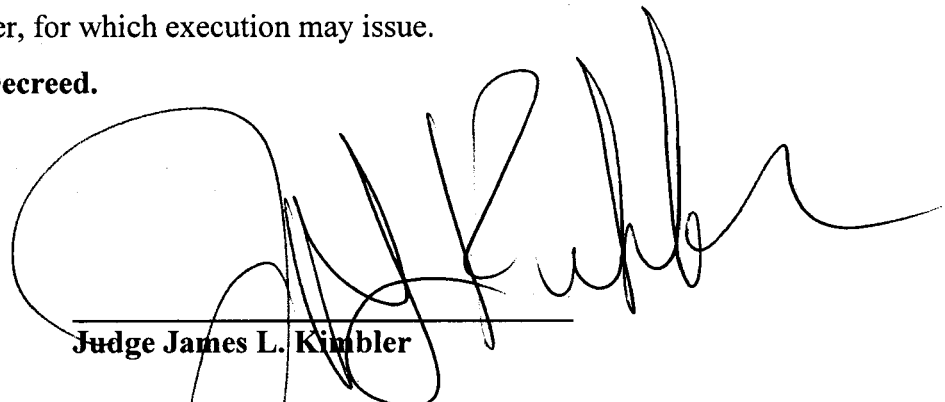
Further, as mentioned above, there is a difference in the statutory language between R.C. § 4141.281 (A) and R.C. § 4141.282 (A). The term "interested party" is used in R.C. § 4141.282 (A) while the term "any party" is used in R.C. § 4141.281 (A). An analysis of R.C. § 4141.282 shows that there is a reason for the difference in the statutory language.

Under R.C. § 4141.282 (D) "interested parties" are required to be named by the appellant when the appeal is filed to the Unemployment Compensation Review Commission and the Commission is then required to provide the names and addresses of all such parties. This statutory provision ensures that all such parties are notified and also provides a way of determining who all such parties are and where they are located. This means that all of the "interested parties" will receive the notice at the same time and therefore be subject to the same time requirements.

Therefore this Court holds that under R.C. § 4141.281 (A), the Director of the Department of Job and Family Services doesn't have to send a written notice to a claimant's attorney of the Director's decision denying benefits if the attorney enters an appearance after the notice of the decision has been mailed to the claimant.

Consequently the decision of the Unemployment Compensation Board of Review is affirmed and costs are taxed to Mr. Hyer, for which execution may issue.

So Ordered, Adjudged, and Decreed.



Judge James L. Kimbler

INSTRUCTIONS TO THE CLERK

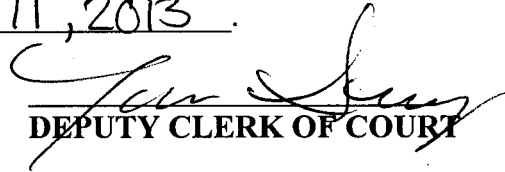
Pursuant to Civil Rule 58, the clerk is hereby directed to serve upon the following parties, notice of this judgment and its date of entry on the docket:

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Notice was mailed by the clerk of court on Jan. 11, 2013.


DEPUTY CLERK OF COURT