



FILED  
2-22-13

LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

RON NABAKOWSKI, Clerk  
JOURNAL ENTRY  
John R. Miraldi, Judge

Date 02/22/13

Case No. 12CV178664

WILLIAM BIRO

Plaintiff

GERALD W PHILLIPS

Plaintiff's Attorney

(440)933-9142

VS

UNEMPLOYMENT COMPENSATION  
REVIEW COMMISSION

Defendant

Defendant's Attorney

Appellant William Biro has filed an appeal with this Court from a decision of the Unemployment Compensation Review Commission (UCRC) denying Appellant's claim for unemployment benefits on the basis that he was discharged from his employment with Appellee City of Avon for just cause under R.C. §4141.29(D)(2)(e).

Appellee City of Avon file a Motion to Dismiss Appellant's appeal asserting that this Court lacks jurisdiction to hear the appeal because Appellant Biro failed to comply with the "request for review" requirement in R.C. §4141.281(C)(3). Appellant Biro filed a brief in opposition to said motion.

R.C. §4141.281(C)(3) provides in pertinent part:

(3) HEARING OFFICER LEVEL

\* \* \*

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.)

Appellant Biro does not dispute that he was served with a copy of the UCRC hearing officer's decision dated November 2, 2012. Appellant also does not dispute that he did not seek a request for review of the Decision by the entire Commission within the





required 21 days of the decision, instead, Appellant argues that the hearing officer's decision became final and was, therefore, appealable.

Appellant's argument ignores several important factors. While R.C. §4141.282 allows a claimant to appeal a written notice of a final decision to the common pleas court, the court only gains jurisdiction *after* there has been an exhaustion of administrative remedies. See, *Campbell v. Ohio Bureau of Employment Services*, 74 Ohio App.3d 603, 605, 600 N.E.2d 246 (1991).

Appellant's argument that the decision was final, and therefore appealable, lacks merit. Although the benefits determination became final and binding upon Appellant by operation of law, it was not a "final decision" as prescribed by R.C. §4141.281 for which an appeal is permitted to the common pleas court under R.C. §4141.282. The right to file an appeal as set forth in R.C. §4141.282 is conferred by statute. As such, an appeal to the common pleas court can *only* be perfected in the manner provided by statute, and absent compliance with the statute, the reviewing body lacks jurisdiction to review the hearing officer's decision. See, *Anderson v. Interface Electric, Inc.*, 2003 Ohio 7031, Franklin App. No. 03AP-354 (10<sup>th</sup> Dist., 2003).

R.C. 4141.281 sets forth the procedure for appealing determinations of benefit rights or claims for benefit determinations. It establishes two levels of hearing before the commission: the hearing officer level and the review level. *Watkins v. Director, Ohio Dept. of Job & Family Services*, 2006 Ohio 6651, 2006 WL 3703376 (C.A., 10<sup>th</sup> Dist.). Contrary to Appellant Biro's argument, R.C. §4141.281(C)(5) addresses when the "request for review" becomes a final, appealable order:

#### (5) COMMISSION EXAMINATION

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.

If the request is made and disallowed by the commission, then the disallowance constitutes a final decision which may be appealed to the common pleas court pursuant to R.C. §4141.282. If the request is allowed, then the eventual decision by the commission becomes the final order from which an appeal to the common pleas court may be taken. By taking no action, the decision of the hearing officer became final, but not appealable.






In order to appeal the adverse decision of the UCRC, Appellant Biro was required by law to file a "request for review" with the UCRC within the statutory appeal period of twenty-one (21) days as mandated by R.C. §4141.281(C)(3). The Court finds that Appellant failed to file a request for review by the statutory deadline and therefore failed to exhaust his administrative remedies under R.C. §4141.281(C)(4) or (5). Although the UCRC hearing officer's decision became final, it was not rendered *appealable* under R.C. §4141.282, and this Court never properly acquired jurisdiction. Subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case and can never be waived. *Rosen v. Celebrezze*, 2008 Ohio 853, 117 Ohio St.3d 241, 883 N.E.2d 420.

Based upon the foregoing, this Court lacks subject matter jurisdiction to hear this appeal. Appellee City of Avon's Motion to Dismiss is well taken and is GRANTED. Case dismissed, costs to Appellant.

IT IS SO ORDERED.

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John R. Miraldi, Judge

cc: All Parties

