

APR 04 2013

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PORTAGE COUNTY, OHIO

**IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO**

MELISSA MARIE MALONE)	CASE NO. 2011 CV 748
)	
Appellant,)	JUDGE LAURIE J. PITTMAN
)	
v.)	
)	
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, ET AL.)	<u>ORDER AND JOURNAL ENTRY</u>
)	
Appellees.)	

Appellant Melissa Marie Malone has appealed Appellees' Ohio Department of Job and Family Services, et al. ("Appellee") decision denying her the unemployment compensation benefits detailed below.

STATEMENT OF THE CASE

On November 1, 2007, Appellee issued an initial determination that Appellant was unemployed under R.C. 4141.29(D)(2)(a) and granted her application for benefits. On September 22, 2008, Appellee issued a determination that Appellant was eligible for Extended Unemployment Compensation benefits once she had exhausted all her regular unemployment compensation benefits, and established the benefits amount.

On December 29, 2008, Appellee issued a determination correcting the September 22, 2008, determination, based upon receipt of correct remuneration information, and modified the total benefits payable accordingly. On May 29, 2009, Appellee issued a determination holding that Appellant was eligible for Tier II Extended Unemployment

Compensation benefits once she exhausted all entitlement to Tier I Extended Unemployment Compensations benefits, and set the benefits amount. On December 7, 2009, Appellee issued a determination correcting the May 29, 2009, determination, again based upon receipt of correct remuneration information, and modified the total benefits payable accordingly. On April 16, 2010, Appellee issued a determination holding that Appellant was eligible for Tier III Extended Unemployment Compensation benefits once Appellant exhausted all entitlement to Tier II Extended Unemployment Compensation benefits, and set the benefit amount.

On July 15, 2010, Appellee issued a determination holding that Appellant had unreported earnings from University Hospitals of Cleveland, Inc., for the time period between February 17, 2008, through March 8, 2008, on the basis of fraudulent misrepresentation and therefore Appellant had been overpaid benefits in the amount of \$1,065.00, which were to be repaid. Appellant appealed the July 15, 2010, determination.

On December 2, 2010, Appellee issued a redetermination, holding that Appellant's appeal was not timely filed within the statutory time period, thus rendering the determination final. (Appellee's Exh. C.) Appellant appealed the redetermination. On December 10, 2010, Appellee issued a notice that the appeal was being transferred to the Unemployment Compensation Review Commission (hereinafter "Review Commission") pursuant to R.C. 4141.281.

On April 14, 2011, Review Commission Hearing Officer Shannon O'Brien conducted an evidentiary hearing. By Decision mailed April 18, 2011, the Review

Commission affirmed the redetermination decision holding that the appeal had been filed beyond the statutory appeal period.

On May 2, 2011, Appellant requested further review by the Review Commission. By Decision mailed June 2, 2011, the Review Commission disallowed Appellant's Request for Review.

Appellant thereafter filed the instant appeal pursuant to R.C. 4141.282.

STANDARD OF REVIEW

This case is a statutory appeal taken pursuant to R.C. 4141.282(H) and can only be reviewed upon the record certified by the Unemployment Compensation Review Commission (Review Commission). Specifically, R.C. 4141.282(H) states:

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 remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

DISCUSSION AND LAW

The only issue before this Court is whether Appellant timely filed her appeal of the July 15, 2010, determination or not. Said determination states a claimant's appeal rights as follows:

APPEAL RIGHTS.: If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS office provided. You may also file an appeal online at <https://unemployment.ohio.gov>. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 08/05/2010** (21 calendar days after the 'Date Issued').

(Appellee's Brief at p. 8, attached thereto as Exh. A at p. 2, emph. in orig.)

Appellee states that “it is undisputed that Claimant failed to appeal the Director’s decision until . . . October 15, 2010.” (Brief at 7, para. 3, citing Appellee’s Exh. B) The record before this Court corroborates the accuracy of Appellee’s statement.

CONCLUSION

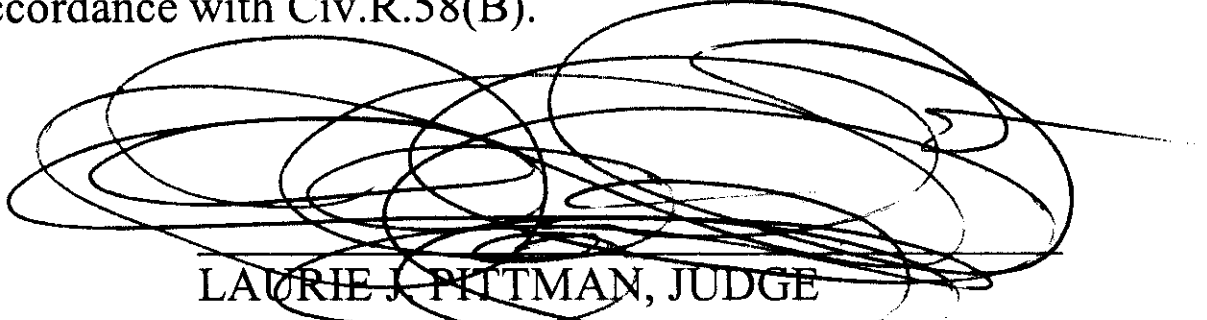
Upon review of the record before this Court and considering the arguments presented by the opposing parties, this Court concludes that the Review Commission’s decision was lawful pursuant to R.C. 4141.282(H).

IT IS THEREFORE ORDERED that the appeal of Appellant Melissa Marie Malone be and hereby is denied and that the decision of Appellee Ohio Department of Job and Family Services, et al. is affirmed.

Costs of this action to be taxed to Appellant.

The Clerk is instructed to serve upon all parties notice of this judgment and its date of entry upon the journal in accordance with Civ.R.58(B).

SO ORDERED.



LAURIE J. PITTMAN, JUDGE
COURT OF COMMON PLEAS

Cc: Melissa Marie Malone, Pro Se
Cc: Susan M. Sheffield, Esq.

**NOTICE: AN ORDER HAS BEEN FILED
IN THE CASE IDENTIFIED BELOW:**

Notice is being mailed by regular mail or by facsimile on or before the 3rd day after the filing date of the entry to each attorney of record or each party with no attorney of record. Notice will not be sent to parties in default for failure to appear.

Mail to:

File Copy

Case Number: 2011 CV 00748

MELISSA MARIE MALONE VS. OHIO DEPT OF JOB & FAMILY SERVICES

Date entry was filed: 04/04/13

Court of Common Pleas, Portage County, Ravenna, Ohio

Certificate of Service Completed and filed by the Clerk

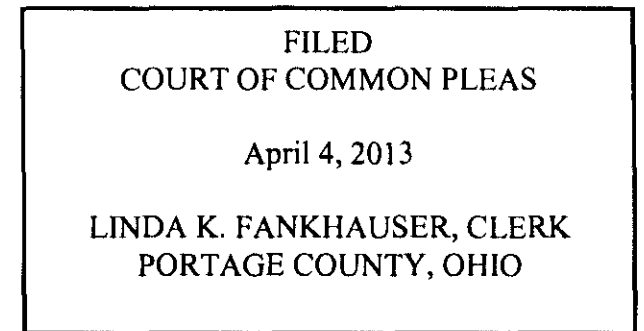
The document described above was mailed by ordinary mail or by facsimile to attys/parties by the clerk on 04/04/13.

Linda K Fankhauser, Clerk of Courts



Deputy Clerk

**cc:
MELISSA MARIE MALONE
SUSAN M SHEFFIELD**



SCANNED