

FOR COURT USE ONLY
S.C. Line #: 10
Appellant

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
Beth A Myers
HON. BETH A. MYERS
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

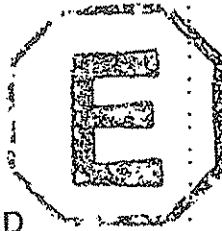
DEBORAH SCHEMER,

Case No. A 1300445

Appellant

Judge Beth A. Meyers

vs.



ENTRY ADOPTING THE
MAGISTRATE'S DECISION



D102837161

SOUTHWEST LOCAL BOARD
OF EDUCATION, et al.,

Appellees.

ENTERED

JUL 12 2013

The Magistrate's Decision affirming the Decision of the Ohio Unemployment Compensation Review Commission was filed on June 17, 2013. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs to the Appellant. This is the final appealable order. There is no just reason for delay.

Beth A Myers
JUDGE BETH A. MEYERS

ENTER

JUL 11 2013

HON BETH A. MYERS

MAGISTRATE

JUL 03 2013

HAS SEEN

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



DEBORAH SCHEMER,	:	Case No. A1300445
	:	
Appellant,	:	Judge Beth A. Meyers
	:	Magistrate Michael L. Bachman
vs.	:	
	:	<u>MAGISTRATE'S DECISION</u>
SOUTHWEST LOCAL BOARD OF	:	
EDUCATION, et al.,	:	
	:	
Appellees.	:	

RENDERED THIS 14th DAY OF JUNE, 2013

This case is an appeal arising as a result of two Unemployment Compensation Review Commission's ("Review Commission") decisions. The first decision ruled that Appellant Deborah Schemer ("Appellant") filed an untimely appeal to the August 14, 2012 Hearing Officer's Redetermination. The second decision found that the Appellant had been overpaid benefits during a period of disqualification.

1. BACKGROUND

In regards to the first decision, the Appellant filed an appeal to the denial of unemployment compensation benefits by the Review Commission. The Hearing Officer's Redetermination denying benefits to the Appellant was sent to all interested parties and to the last known address of the Appellant. The last day to appeal the Redetermination was September 4, 2012. The Appellant filed a Request for Review to appeal the Redetermination on October 15, 2012 – forty-one days later. After a hearing, the Hearing Officer dismissed the appeal filed by the Appellant, finding that the appeal to the Redetermination was not timely filed. The Appellant sought review of the

decision issued by the Review Commission, but the Review Commission disallowed the Appellant's Request for Review.

In regards to the second decision, ODJFS issued a Redetermination that found that the Appellant was overpaid benefits during a period of disqualification. The Appellant appealed the Redetermination and a hearing was conducted. The Hearing Officer found that the Appellant received benefits she was not entitled to and affirmed the Director's Redetermination. The Review Commission later disallowed the Appellant's Request for Review.

2. STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the decision. *Id.* The determination of factual questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511, 518, 76 N.E.2d 79 (1947). Accordingly, parties on appeal are not entitled to a trial de novo in this Court. *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69, 206 N.E.2d 423 (4th Dist.1965).

3. DISCUSSION

a. The Appellant's appeal was untimely

An interested party may file an appeal to a Redetermination within twenty-one calendar days after the Redetermination is sent to the party. R.C. 4141.281 (A) and (B).

Where a statute confers a right of appeal, such appeal may be perfected only by compliance with the mandatory statutory requirements. *Griffith v. J.C. Penney Co., Inc.* 24 Ohio St.3d 112, 493 N.E.2d 959 (1986); *McCruiter v. Bd. of Rev.* 64 Ohio St.2d 277, 280, 415 N.E.2d 259 (1980). An appeal filed just one day late is sufficient to divest the court of subject matter jurisdiction. *See Fowler v. Summa Health Sys.*, 9th Dist. No. 22091, 2004-Ohio-6740, *7.

R.C. 4141.281(D)(9) allows for situations where an extension beyond the twenty-one day appeal can be granted. The extension will be granted if: (1) the last day of the appeal period ends on a Saturday, Sunday, or legal holiday, (2) an interested party provides certified medical evidence that a physical or mental condition prevented the interested party from filing an appeal, or (3) an interested party did not actually receive the determination within the appeal period. R.C. 4141.281(D)(9) is the only provision of the unemployment compensation statute allowing for an extension of the time to file an appeal.

Here, the Appellant did not file her appeal on the merits within the twenty-one day time period, and she did not show that she was entitled to an extension under R.C. 4141.281(D)(9). The Appellant's appeal is untimely because it was filed forty-one days after the issuance of the decision. As a result, this Court lacks subject matter jurisdiction to render a decision on the merits of the case.

b. The Appellant's was overpaid benefits

The Appellant contends that she should not have to repay benefits, but the applicable section pertaining to the overpayment of benefits states otherwise. R.C. 4141.35(B) provides:

If the director finds that an applicant for benefits has been credited with a waiting period or paid benefits to which the applicant was not entitled for reasons other than fraudulent misrepresentation, the director shall:

(1)(a) Within six months after the determination under which the claimant was credited with that waiting period or paid benefits becomes final pursuant to section 4141.28 of the Revised code, or within three years after the end of the benefit year in which such benefits were claimed, whichever is later, by order cancel such waiting period and require that such benefits be repaid to the director or be withheld from any benefits to which such applicant is or may become entitled before any additional benefits are paid[.]

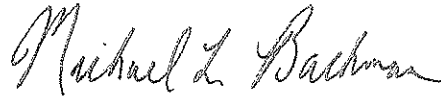
This section also provides two circumstances where the Claimant is not required to repay the overpayment: where the overpayment, in accordance with R.C. 4141.28(G), is the result of (1) the director's correcting a prior decision due to a typographical or clerical error in the director's prior decision, or (2) an error in an employer's report.

In this case, the Appellant does not claim that the overpayment meets any of the above exceptions, and this Court does not find any evidence that an exception applies. Therefore in accordance with R.C. 4141.35(B), the Appellant is required to repay benefits she received during the period of disqualification.

4. DECISION

Under R.C. 4141.281(A) and (B), the Appellant's appeal to the Review Commission was untimely, and under R.C. 4141.35(B) the Appellant is required to repay benefits. Because the decision of the Review Commission was not unlawful, unreasonable or

against the manifest weight of the evidence, the decision of the Unemployment Compensation Review Commission is hereby AFFIRMED.



MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

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Robin A. Jarvis, Esq.
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Cincinnati, OH 45202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: _____

Deputy Clerk: _____