

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ALAINA JUNIPER,

Case No: 13CVF-09-10578

Appellant,

JUDGE HOGAN

-vs-

**OHIO STATE UNEMPLOYMENT COMMISSION
REVIEW, ET AL.,**

Appellees.

DECISION AND ENTRY
GRANTING THE MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION AS FILED ON NOVEMBER 13, 2013

HOGAN, JUDGE

The above-styled case is before the Court on an appeal filed by Appellant Juniper. On November 13, 2013 the Ohio Department of Jobs and Family Services (hereinafter referred to as Appellee) filed its Motion requesting that the matter be dismissed for lack of jurisdiction. The Appellant has not filed a response to that motion. For the reasons that follow, this Court **GRANTS** the Appellee's Motion to Dismiss for lack of jurisdiction.

I. STATEMENT OF THE CASE

Appellant filed a Notice of Appeal with this Court. The Notice of Appeal did not name the Director of the Appellee. The Notice was also filed 3 days out of rule. The Appellee has asserted that the failure to timely file the appeal, and the failure to name the Director of the Appellee are both jurisdictional defects requiring this Court to dismiss the appeal.

II. STATEMENT OF THE FACTS

Appellant was employed from May 21, 2012 to January 4, 2013 by Ohiohealth Corporation. Appellant was terminated. The Appellant filed an application for benefits with the Appellee. On May 7, 2013 the Director issued a Redetermination stating that the Appellant had been terminated

without just cause from her former employer Ohiohealth. On May 16, 2013 Ohiohealth filed an appeal and the matter was transferred to the Unemployment Compensation Review Commission.

A hearing was conducted on two different dates. The hearing was concluded on July 13, 2013. The Appellant had a poor work history at Ohiohealth. The Hearing Officer ruled that the evidence supported a finding that the Appellant had in fact been terminated for cause.

The Appellant filed a request for review. The review was denied when the Commission issued its Decision Disallowing Request for Review on August 21, 2013. Appellant then commenced her appeal to this Court.

This matter is ready for a review.

III. STANDARD OF REVIEW

The Appellee's Motion to Dismiss for lack of Jurisdiction does not specifically mention the civil rule that it relies on. However, it is clear that the Appellee is moving to dismiss using Civ.R. 12(B)(1). Please note the following case law relevant to the standard of review:

The standard of review for a Civ.R. 12(B)(1) motion to dismiss is "whether any cause of action cognizable by the forum has been raised in the complaint." State ex rel. Bush v. Spurlock (1989), 42 Ohio St.3d 77, 80. When making this determination, the trial court is not confined to the allegations of the complaint, but may consider material pertinent to that inquiry without converting the motion into one for summary judgment. Southgate Development Corp. v. Columbia Gas Transmission Corp. (1976), 48 Ohio St.2d 211, paragraph one of the syllabus. If the trial court only considers the complaint and undisputed facts when ruling on the motion, then appellate review is limited to a determination of whether the facts are indeed undisputed and whether the trial court correctly applied the law. Wilkerson v. Howell Contrs., Inc., 163 Ohio App.3d 38, 43, 2005-Ohio-4418.

This Court will apply said standard to the pending motion.

R.C. §4141.282 sets forth how a party is to appeal an adverse administrative decision. Time and time again the courts of Ohio have indicated that strict compliance with R.C. §4141.282 is necessary in order for a party to perfect an appeal to this Court. Please note the following relevant

language from *Luton v. State of Ohio Unemployment Revision Commission*, 2012-Ohio-3963(8th District) at ¶¶ 6 – 9:

The Supreme Court of Ohio, in *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus, held:

An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.

The court further held: "[c]ompliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of a Court of Common Pleas. * * *" *Id.* at paragraph two of the syllabus.

The Supreme Court of Ohio, when deciding *In re Claim of King*, 62 Ohio St.2d 87, 88, 403 N.E.2d 200 (1980), relied upon *Zier* in determining that a party appealing a decision of the Unemployment Compensation Board of Review to the court of common pleas is required to follow the statutory requirements. The appellee in *King* failed to adhere to the statutory mandate of former R.C. 4141.28(O), requiring "that the party appealing serve all other interested parties with notice." The appellee did not file a copy of the notice of appeal with the administrator of the Ohio Bureau of Employment Services nor did he name the administrator as a party to his appeal. *Id.* The appellee also failed to name his employer as a party to the appeal. *Id.* The court found that the appellee failed to follow the directives of the statute, thus the court of common pleas lacked subject matter jurisdiction. *Id.* The court reiterated that "where a statute confers a right of appeal, as in the instant cause, strict adherence to the statutory conditions is essential for the enjoyment of the right." *Id.* See also *Sydenstricker*.

In the present case, the pertinent portion of R.C. 4141.282, the statute governing the appeal process involved herein, states as follows:

A) THIRTY-DAY DEADLINE FOR APPEAL

Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties, may appeal the decision of the commission to the court of common pleas.

* * * * *

(D) The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

The *Luton* case confirmed the long line of cases indicating that strict compliance is necessary to perfect an administrative appeal to this Court.

The issue for this Court deals with its jurisdiction to hear the appeal. Please note the following:

We begin our discussion by addressing the applicable standard of review in the case sub judice. Subject matter jurisdiction connotes the power to hear and decide a case upon its merits. *State ex rel. Rothal v. Smith* (2002), 151 Ohio App.3d 289, 313, 2002-Ohio-7328 at ¶ 110. Subject matter jurisdiction focuses on the court as a forum and on the case as one of a class of cases, not on the particular facts of a case or the particular tribunal that hears the case. *Id.*, citing *State v. Swiger* (1998), 125 Ohio App.3d 456, 462, 708 N.E.2d 1033. Further, jurisdiction does not relate to the rights of the parties, but to the power of the court." *Rothal*, 151 Ohio App.3d at ¶110, citing *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75, 701 N.E.2d 1002. Appellate review of a trial court's dismissal of an action for lack of subject-matter jurisdiction is a question of law that is reviewed independently of a trial court's analysis and decision. *BP Exploration & Oil, Inc. v. Ohio Dept. of Commerce* (2005), Franklin App. No. 04AP-619, 04AP-620, 2005-Ohio-1533 at ¶ 7, citing *Gary Phillips & Assoc. v. Ameritech Corp.* (2001), 144 Ohio App.3d 149, 154, 759 N.E.2d 833. *Althof v. State Bd. of Psychology*, 2006-Ohio-502, at ¶9.

From within this framework, this Court will render its decision.

IV. ANALYSIS:

The Court has reviewed the Notice filed by the Appellant. It is clear that Appellant failed to name the Director of the Appellee as mandated by the language of R.C. §4141.282(D). In fact no party is actually 'named' in the document filed by the Appellant. Appellant simply failed to comply with the rule after the Appellant was clearly given notice of the rule. Dismissing this appeal is a harsh result, but having no jurisdiction, this Court has no authority and therefore, no discretion in the matter.

Furthermore, from the certified record filed with this Court, it is clear that the decision appealed from was mailed on August 21, 2013. The attempted appeal was filed with this Court on September 23, 2013. The appeal is untimely.

The facts are not in dispute. Appellant's Notice did not comply with the strict rule of the statute and the appeal was also untimely, therefore, this Court does not have jurisdiction. The

appeal must be dismissed.

V. DECISION:

The Motion filed on August 27, 2013 is **GRANTED**. Appellant's appeal is **DISMISSED** for lack of jurisdiction.

THIS IS A FINAL APPEALABLE ORDER

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Franklin County Court of Common Pleas

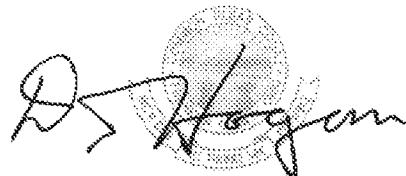
Date: 12-11-2013

Case Title: ALAINA JUNIPER -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV ET AL

Case Number: 13CV010578

Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Daniel T. Hogan". The signature is fluid and cursive, with a large, stylized "D" at the beginning.

/s/ Judge Daniel T. Hogan

Court Disposition

Case Number: 13CV010578

Case Style: ALAINA JUNIPER -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0105782013-11-1399980000

Document Title: 11-13-2013-MOTION TO DISMISS

Disposition: MOTION GRANTED