

Montgomery County Common Pleas Court  
General Division

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

JOE JEFFERS,	:	CASE NO. 2013 CV 04041
	:	
Appellant,	:	JUDGE MICHAEL L. TUCKER
v.	:	
	:	
BENEFIT PAYMENT CONTROL, et al.,	:	DECISION, ORDER AND ENTRY
	:	AFFIRMING THE DECISION OF THE
Appellees.	:	UNEMPLOYMENT COMPENSATION
	:	REVIEW COMMISSION

This matter comes before the court on the notice of administrative appeal filed by Appellant, Joe Jeffers, on July 9, 2013. On August 13th, the court entered a briefing schedule requiring that Mr. Jeffers’s brief be submitted on or before September 11, 2013; that Appellee, the Director of the Ohio Unemployment Compensation Review Commission (“Appellee,” unless otherwise indicated), submit a brief in response on or before October 11, 2013; and that Mr. Jeffers submit a brief in reply, if any, on or before October 25, 2013.

On September 4, 2013, Mr. Jeffers filed his brief. Appellee filed a response on October 7, 2013, and Mr. Jeffers replied on October 24th. As the applicable deadlines have passed, the court may now enter its decision.

**FACTS**

Mr. Jeffers applied to the Ohio Department of Job and Family Services (“ODJFS”) on July 1, 2011 for unemployment compensation benefits, citing “[I]ack of [w]ork” as the reason he became separated from, at the time, his most recent employer. (See R. of Proceedings Before Ohio

Unemployment Comp. Review Comm'n 5, Aug. 2, 2013; Appellant's Br. 3.)<sup>1</sup> On July 21, 2011, ODJFS issued a notice of determination (No. 223221702-1) in which it approved Mr. Jeffers's application for the period running from June 26, 2011 through June 23, 2012. *Id.* at 9. Mr. Jeffers later applied for extended benefits, on January 9, 2012, and ODJFS approved the application in a notice of determination (No. 224012199-1) issued the following day. *Id.* at 19.

On August 23, 2012, ODJFS dispatched a notice of potential issue to Mr. Jeffers. *Id.* at 32. In the notice, ODJFS informed Mr. Jeffers that its "records \* \* \* indicate[d] that [he] [had] claimed and [it] [had] paid unemployment benefits for weeks in which [he] may not [have been] [eligible]." *Id.* The notice explained that ODJFS had acquired information suggesting that Mr. Jeffers "worked and \* \* \* [generated] earnings" during part of the period for which he had already received unemployment benefits, and that he might have been unable to work for part or all of the same period. *See id.* at 33-34. ODJFS requested that Mr. Jeffers provide documentation in response and cautioned in bold type that his "[f]ailure to comply [with its request] [could] result in [the issuance of] an overpayment decision \* \* \*." *Id.* at 32-34.

Finding that Mr. Jeffers "[was] unable to work due to physical inability to perform [his] customary job duties" and noting that "[n]o medical evidence was presented to establish [Mr. Jeffers's] ability to engage in other types of employment" for the period in question, ODJFS issued a notice of determination on November 2, 2012 (No. 225260575-1) in which it found that Mr. Jeffers "failed to meet the ability requirements of the Ohio Unemployment Compensation Law." *Id.* at 21. In other words, ODJFS determined that Mr. Jeffers "[was] ineligible" to receive unemployment compensation benefits for a period running "from [June 26, 2011] until" such time

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<sup>1</sup> Citations to the record rely on the pagination generated when using Adobe software to view the PDF copy of the transcript of the record that the Ohio Unemployment Compensation Review Commission filed with this court on August 2, 2013. The transcript itself is not otherwise paginated, except to the extent that documents included in the transcript were themselves originally paginated. Further, Mr. Jeffers failed to paginate his brief, which he filed by facsimile, in violation of Mont. Co. C. P. R. 1.15(I)(B)(1); citations to Mr. Jeffers's brief in this decision refer to the facsimile page numbers appearing in the upper right-hand corner of each page of the brief as the court received it.

as Mr. Jeffers “provided evidence that [the foregoing] issue no longer exist[ed] and [he] [was] otherwise eligible.” *Id.* The notice also stated that Mr. Jeffers had “been overpaid benefits to which [he] was not entitled” in the amount of \$10,309.00. *Id.*

Mr. Jeffers filed an appeal on November 12, 2012. *Id.* at 24. On December 3, 2012, ODJFS issued a director’s redetermination (No. 225260575-2) affirming the determination of November 2nd. *Id.* The redetermination included the following statement in bold type: “TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 12/24/2012,” adding that “[i]f the [twenty-first] day falls on a Saturday, Sunday, or [l]egal [h]oliday, your deadline has already been extended to include the next scheduled work day.” *Id.* at 26 (capitalization in original). The next such day was Monday, December 24, 2012. *Id.* at 87.

On April 5, 2013, Mr. Jeffers filed an appeal from the director’s redetermination, and ODJFS transferred the appeal to the Ohio Unemployment Compensation Review Commission (the “Commission”) three days later. (*See R.* at 29, 31, 43, 77-78.) A hearing officer for the Commission conducted a telephone hearing on April 30, 2013, considering only the question of whether Mr. Jeffers had timely filed “or met the exceptions for filing an untimely appeal.” *Id.* at 75, 78. Mr. Jeffers participated in the hearing and offered testimony in support of his position. *Id.* at 77-83.

The hearing officer issued a decision on May 1, 2013 dismissing Mr. Jeffers’s appeal because it had been “filed beyond the statutory appeal period.” *Id.* at 87 (citations omitted). Mr. Jeffers submitted a request for review to the Commission on the same day, and the Commission issued a decision affirming the hearing officer on or about June 20, 2013. *Id.* at 96, 99, 119. On July 9, 2013, Mr. Jeffers timely filed a notice of appeal from the Commission’s decision with this court. *Id.* at 119; Appellant’s Notice of Appeal 1, July 9, 2013.

## STANDARD OF REVIEW

According to R.C. 4141.282(A)-(B), “within thirty days after written notice of [a] final decision of the unemployment compensation review commission [has been] sent to all interested parties, [any interested party] may appeal the decision \* \* \* to the court of common pleas” for “the county where the appellant, if an employee, is a resident or was last employed,” or, if the appellant is an employer, where the appellant “is a resident or has a principal place of business.” The common pleas court, under R.C. 4141.282(H), “shall hear the appeal on the certified record provided by the [unemployment compensation review] commission.” If the court “finds that the decision \* \* \* was unlawful, unreasonable, or against the manifest weight of the evidence,” then “it shall reverse, vacate, or modify the decision, or remand the matter.” *Id.* Otherwise, the court “shall affirm” the decision. *Id.*

In hearing such an appeal, a common pleas court may not “make factual findings or \* \* \* determine the credibility of witnesses,” but it has “the duty to determine whether the \* \* \* decision [was] supported by the evidence in the record.” *Tzangas, Plakas & Mannos v. Adm’r, Ohio Bureau of Employment Servs.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206, 653 N.E.2d 1207 (citation omitted). The court should not, however, “substitute its judgment for that of the [unemployment compensation review] commission. *Atkins v. Dir., Ohio Dep’t of Job & Family Servs.*, 10th Dist. Franklin No. 08AP-182, 2008-Ohio-4109, ¶ 13 (citation omitted).

## LAW AND ANALYSIS

According to R.C. 4141.281(A), any “party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written [notice of] determination was sent to the party” or within “an extended period as provided under [R.C. 4141.281(D)(9)],” if applicable. Mr. Jeffers did not timely appeal the redetermination issued by ODJFS on December 3, 2013, and he did not satisfy any of the requirements listed in R.C.

4141.281(D)(9) for obtaining an extension of time. Therefore, in light of the provisions of R.C. 4141.281(A) and (D), and in light of its review of the record of this matter on appeal, the court affirms the decision of the Commission.

ODJFS issued the aforementioned redetermination on December 3, 2012. (R. at 24.) Pursuant to R.C. 4141.281(A), Mr. Jeffers had until Monday, December 24, 2012 to appeal the redetermination, but he did not file a notice of appeal until April 5, 2013—a little more than three months past the applicable deadline. *Id.* at 29, 31, 36. Mr. Jeffers testified during his hearing before the Commission on April 30, 2013 that he was “confused” with respect to appealing the redetermination because he had already “appealed a couple of things a couple of times” and, as a result, had “thought everything was \* \* \* taken care of.” *Id.* at 79-80. He also testified that he was being “treated for anxiety and depression” at or around the time he received notice of the redetermination in December, 2012. *See id.* at 80-81.

R.C. 4141.281(D)(9) sets forth the four reasons that the time specified in R.C. 4141.281(A) for initiating an appeal should be extended. Specifically, the time for an appeal “shall” be extended when:

(1) “the last day of an appeal period is a Saturday, Sunday, or legal holiday”; (2) “an interested party provides certified medical evidence stating that the interested party’s physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period”; (3) “an interested party provides evidence, \* \* \*, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period”; and (4) “an interested party provides evidence, \* \* \*, that is sufficient to establish that the party did not actually receive a decision within the thirty-day appeal period provided in [R.C. 4141.282], and a court of common pleas finds that the interested party did not actually receive the decision within that thirty-day appeal period, then the appeal period is extended to thirty days after the interested party actually receives the decision.”

R.C. 4141.281(D)(9) (emphasis added). Mr. Jeffers automatically received an extension for the first of these four reasons, and he has made no claim that he did not receive any applicable notices. (*See*

R. at 80, 87; Appellant's Br. 3-6.) When the second reason applies, "the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period." R.C. 4141.281(D)(9) (emphasis added).

Mr. Jeffers argued before the Commission that his deadline for appealing the redetermination issued by ODJFS on December 3, 2012 should have been extended under R.C. 4141.281(D)(9) as the result of his physical condition or mental capacity. (*See* R. at 79-81.) With his notice of appeal to the Commission of April 5, 2013, Mr. Jeffers included a letter dated February 26, 2013 from a physician in Arizona and a copy of a form submitted—apparently in or around August, 2012—to ODJFS by a physician in Bellbrook, Ohio. *See id.* at 39-40. Neither of these documents was certified, however, and neither of them stated or even suggested that any physical or mental condition for which Mr. Jeffers was being treated had prevented him from timely filing a notice of appeal from the redetermination. *See id.* The physician in Bellbrook, Ohio, for instance, indicated that she had last seen Mr. Jeffers on May 19, 2011, and the physician in Arizona indicated only that she had begun treating Mr. Jeffers for "anxiety and depression" on "August 16, 2012." *Id.* In addition, Mr. Jeffers provided no evidence, certified or otherwise, to show when, or if, his physical or mental condition ended. *See id.* at 31-40.

The record shows that Mr. Jeffers failed to appeal to the Commission from the redetermination issued by ODJFS within the time allowed under R.C. 4141.281(A). *Id.* at 24, 31. Although R.C. 4141.281(D)(9) mandates that the time for filing such an appeal be extended when a party "provides certified medical evidence stating that [his] physical condition or mental capacity prevented [him] from [timely] filing an appeal or request for review," Mr. Jeffers failed to provide any certified medical evidence to the Commission. Consequently, based on the facts, testimony and other evidence available to the Commission for consideration of Mr. Jeffers's appeal of April 5,

2013, this court cannot conclude that the Commission's decision was unlawful, unreasonable or against the manifest weight of the evidence.

**CONCLUSION**

The court finds that the Commission's decision of June 20, 2013 was not unlawful, unreasonable or against the manifest weight of the evidence. Therefore, the court affirms the Commission's decision and denies Mr. Jeffers's appeal.

**THIS IS A FINAL APPEALABLE ORDER UNDER CIV.R. 58, AND THERE IS NO JUST CAUSE FOR DELAY FOR PURPOSES OF CIV.R. 54. PURSUANT TO APP.R. 4, THE PARTIES SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.**

**SO ORDERED**

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s/MICHAEL L. TUCKER, JUDGE

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ROBIN A. JARVIS  
(513) 852-3497  
Attorney for Appellee, Director of the Ohio Unemployment Compensation Review Commission

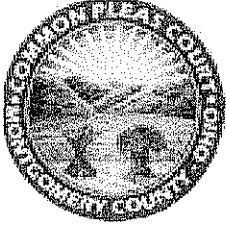
Copies of this document were sent to all parties listed below by ordinary mail:

JOE JEFFERS  
1535 NORTH HORNE, UNIT 106  
MESA, AZ 85203-3676  
Plaintiff

BENEFIT PAYMENT CONTROL  
ATTN: KELLEY BARNES  
4020 EAST 5TH AVENUE  
COLUMBUS, OH 43219-1811

ANN M. SCOTT, Bailiff

(937) 225-4448



General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Type:** Decision  
**Case Number:** 2013 CV 04041  
**Case Title:** JOE JEFFERS vs BENEFIT PAYMENT CONTROL

So Ordered

*Michael L. Tucker*



IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

JOE JEFFERS

VS.

BENEFIT PAYMENT CONTROL et al

CASE NO. 2013 CV 04041

JUDGE MICHAEL L. TUCKER

You are hereby notified that a Decision has been filed with the Clerk of Common Pleas Court on 02/20/2014.

Pursuant to Ohio Civil Rule 58 (B) you are notified that a judgment has been filed that may be a final appealable order.

Under Ohio Appellate Rule 4(A) you shall file your notice of appeal within either:

- 30 days from the entry of judgment or order being appealed OR
- 30 days of service of the notice of judgment and its entry if service was not made within the 3 day period in Ohio Civil Rule 58 (B).

If you intend to appeal the judgment of the trial court, you must file your notice of appeal with the clerk of the trial court. Please refer to 2nd District Court of Appeals Local Appellate Rule 2 concerning the \$100 deposit. Please refer to Ohio Appellate Rule 3 (D) for a detailed description of the content of the notice of appeal.

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