

**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION**

IRIS DRAKE,	:	
	:	
Appellant,	:	CASE NO. 13CV-06-6265
	:	
vs.	:	JUDGE SCHNEIDER
	:	
	:	
OHIO STATE UNEMPLOYMENT	:	
COMPENSATION REV. COMMISSION, et al.,	:	
	:	
Appellees.	:	

DECISION AND ENTRY

**AFFIRMING THE DECISIONS OF THE STATE OF OHIO UNEMPLOYMENT
COMPENSATION REVIEW COMMISSION DATED APRIL 22, 2013 AND MAY 8, 2013**

SCHNEIDER, JUDGE

This matter comes before this Court upon an appeal pursuant to R.C. 4141.282(H) from a April 22, 2013 Decision of the Ohio State Unemployment Compensation Review Commission (“Commission”) denying unemployment compensation benefits to Appellant Iris Drake, a former employee of Appellee McGraw-Hill, Inc. (“Employer”), and a May 8, 2013 Decision disallowing Appellant Iris Drake’s Request for Review of the April 22, 2013 Decision. The April 22, 2013 Decision found that Appellant Drake failed to file within twenty-one (21) days an appeal to the Commission of a January 24, 2013 redetermination by the Ohio Department of Job and Family Services (“ODJFS”) denying her application for benefits. The May 8, 2013 Decision confirmed the denial of Appellant Drake’s appeal as being untimely filed.

Statement Of The Case

On November 29, 2012, Appellant Drake filed a claim for unemployment benefits for a benefit year beginning on November 25, 2012. On December 18, 2012, Appellee Director of the

Ohio Department of Job and Family Services (“Director”) issued an initial determination finding that Appellant Drake (claimant) was not eligible for benefits as a result of the termination of her employment with McGraw-Hill, Inc. On January 24, 2013, the Director issued a Redetermination Determination affirming the prior decision of Appellant Drake’s ineligibility.

Appellant Drake had twenty-one (21) days, or until February 14, 2013, to perfect an appeal to the Commission. Ms. Drake did not file an appeal from the Redetermination with the Commission until March 29, 2103. On April 2, 2013, ODFJS transferred jurisdiction to the Commission pursuant to R.C. 4141.281.

On April 19, 2013, Review Commission Hearing Officer Jessica Harmon conducted an evidentiary hearing via telephone. Appellant appeared and testified on her own behalf. During the evidentiary hearing, Appellant admitted that she received the January 24, 2013 Redetermination in January of 2013, but that she did not file an appeal until March of 2013 because she was dealing with her son’s health issues.

In her April 22, 2013 Decision, the hearing officer made the following factual findings:

“On January 24, 2013, the Director sent the Redetermination to the last known address of the appellant. The date is evidenced by the “date issued” set forth on the Redetermination. The appellant received the Redetermination prior to February 14, 2013, the last day to appeal set forth in the statute. The Claimant was dealing with personal issues regarding her son’s health.

On March 29, 2013, the appellant filed an appeal by fax.”

See April 22, 2013 Decision, p. 3 of 5. The Hearing Officer also found based on the evidence presented at the evidentiary hearing and in the record:

The statutory appeal period ended on February 14, 2013. Claimant testified that she did not file her appeal timely because she was dealing with her son’s health issues. Although this is unfortunate, claimant has not established that her mental capacity prevented her from filing a timely appeal. Claimant chose to focus on her son at this time but this is not a legal reason in which to extend the appeal deadline.

The appeal was filed beyond the statutory appeal period. (*See Holmes v. Press*, 64 Ohio St.2d 187, and *McCruter v. Board of Review*, 64 Ohio St.3d 277).

Id. p. 4 of 6.

In her April 22, 2013 Decision, the Hearing Officer dismissed Appellant Drake's appeal as untimely.

On April 23, 2013, Appellant Drake filed a Request for Review of the Hearing Officer's Decision. Thereafter, the Commission denied Appellant's request and issued a Decision concluding that upon a review of the entire record, Appellant's Request for Review should be disallowed. *See* May 8, 2013 Decision.

Standard of Review

When reviewing a decision of the Unemployment Compensation Review Commission, this Court must affirm the Commission's decision unless it concludes, upon review of the record, that the decision is unlawful, unreasonable or against the manifest weight of the evidence. *See* R.C. 4141.282(H); see also *Tzangas, Plakas & Mannos v. Ohio Bur. Emp. Serv.*, 73 Ohio St.3d 694, 696, 1995-Ohio-206 and *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18 (1985). Under this strict standard, the Court is not permitted to make factual findings or determine the credibility of witnesses, as factual questions remain solely within the commission's province. *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, ¶ 20; *Tzangas*, 73 Ohio St.3d at 696. Nor may the Court rewrite the Commission's decision merely because it could or would interpret the evidence differently. *Kilgore v. Board of Review*, 2 Ohio App.2d 69 (1965). The parties are not entitled to a trial *de novo*. *Id.*

Instead, it is the duty of this Court to determine whether the decision is supported by the evidence in the record. *Tzangas* at 696; *Irvine* at 18. "If some competent, credible evidence supports the commission's decision, then the court must affirm the decision." *Moore v. Ohio*

Unemp. Comp. Rev. Comm., 2012-Ohio-1424, ¶ 20. A court cannot reverse the commission's decision merely because reasonable minds might reach different conclusions based on the evidence in the record. *Id*; *Tzangas* at 697; *Irvine* at 18. Moreover, when evaluating whether the decision is supported by the evidence, "[e]very reasonable presumption must be made in favor of the [decision] and the findings of facts [of the commission]." *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988).

In the facts before the Court, the record supports the finding that Appellant Drake did not timely appeal the Director's January 24, 2013 Redetermination.

Law and Analysis

R.C. 4141.281(A) provides:

Any party notified a determination of benefit rights or a claim for benefits determination may appeal within twenty-one days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.

As noted above, on December 18, 2012, the Director issued an initial determination holding that Appellant Drake was not eligible for unemployment benefits as a result of the termination of her employment with Mc-Graw Hill Inc. A Redetermination Determination was issued on January 24, 2013, affirming the initial ineligibility decision. The Redetermination was sent to Ms. Drake via electronic e-mail on January 24, 2013, and Ms. Drake has admitted that she received the Redetermination in January of 2013. Appellant Drake had twenty-one days, or until February 14, 2013 to perfect an appeal to the Commission. Ms. Drake did not file an appeal from the Redetermination with the Commission until March 29, 2103.

As a result of Appellant Drake's failure to timely request an appeal of the Redetermination, the Commission lacked jurisdiction to entertain Appellant Drake's arguments on appeal. The appeals procedures prescribed by statute are mandatory, as the unemployment

compensation administrative process is a special statutory proceeding. As long recognized by the Ohio Supreme Court,

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.

Zier v. Bureau of Unemployment Compensation, 151 Ohio St. 123, syllabus ¶ 1 (1949). *See also Holmes v. Union Gospel Press*, 64 Ohio St.2d 187, 188 (1980)(“We have consistently held that where a statute confers a right of appeal, as in the instant case, strict adherence to the statutory conditions is essential for the enjoyment of the right to appeal.”).

Additionally, it must be noted that while Appellant Drake argued throughout the administrative appeal process, including at the April 19, 2013 evidentiary hearing, that she should be excused from knowingly filing an untimely appeal because her son was sick and her “attention completely shifted” to dealing with her son’s health issues, Appellant is mistaken in her belief that this is a sufficient legal reason in which to extend the appeal deadline. It is not. Claimant did not establish that her mental capacity prevented her from filing a timely appeal, and repeatedly admitted that she received the redetermination via electronic mail at or near the time that it was mailed and that it was her conscious choice to focus on her son and to file a late appeal.

Under Ohio law, Appellant Drake has the burden of proving that she is timely filed her appeal of the Redetermination denying her application for benefits and any legally sufficient reasons she did not timely file an appeal. *See Vickers v. Ohio State Bur. of Emp. Serv.* (Apr. 22, 1999), 10th Dist. No. 98AP-656, 1999 Ohio App. LEXIS 1794. The record demonstrates that the Appellant chose to represent herself throughout the appeal process, including at the hearing stage of this administrative proceeding. Ohio law is clear that *pro se* litigants are to be held to

the same standard as an attorney. With respect to procedural rules, *pro se* litigants are held to the same standards as a practicing attorney. *Copeland v. Rosario* (Jan. 28, 1998), 9th Dist. No. 18452 at 6, 1998 Ohio App. LEXIS 260 at *7. They are not accorded greater rights and must accept the results of their mistakes and errors. *Kilroy v. B.H. Lakeshore*, 111 Ohio App.3d 357, 363 (1996); *Harris v. Hous. Appeals Bd.*, 9th Dist. No. 20499, 2003-Ohio-724, p. 11. The *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and adhere to court rules. *Kessler v. Kessler*, 2010-Ohio-2369, ¶ 8 (10th Dist.); *Meyers v. First Natl. Bank*, 3 Ohio App.3d 209, 210 (1st Dist.1981); *Erie Ins. Co. v. Bell*, 2002-Ohio-6139 (4th Dist.). If the court (or administrative agency) treats a *pro se* litigant differently, the court or agency begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel. *Justice v. Lutheran Social Services*, Franklin Cty. No. 92AP-1153, unreported, 1993 Ohio App. LEXIS 2029 at *6 (10th Dist.). As a result, this Court overrules Appellant Drake's arguments.

Instead, the Court finds that record contains competent, credible evidence supporting the Commission's finding that Appellant Drake did not timely appeal the Director's January 24, 2013 Determination and did not have a valid, legal reason for failing to do so. Accordingly, this Court concludes that the April 22, 2013 and May 8, 2013 Decisions of the Commission are lawful, reasonable and are not against the manifest weight of the evidence.

DECISION

Accordingly, this Court hereby **AFFIRMS** the April 22, 2013 and May 8, 2013 Decisions of the Unemployment Compensation Review Commission.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not

in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS

IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

IT IS SO ORDERED.

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Franklin County Court of Common Pleas

Date: 02-26-2014

Case Title: IRIS DRAKE -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV ET AL

Case Number: 13CV006265

Type: ENTRY

It Is So Ordered.

/s/ Judge Charles A. Schneider

Court Disposition

Case Number: 13CV006265

Case Style: IRIS DRAKE -VS- OHIO STATE UNEMPLOYMENT
COMPENSATION REV ET AL

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes