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LUCAS COUNTY

2014 JUN 13 A 10:29

**THIS IS A FINAL  
APPEALABLE ORDER**

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Dawn Honisko,

Plaintiff-Appellant,

vs.

St. Vincent Mercy Medical Ctr., et al.,

Defendants-Appellees.

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Case No. CI0201304680

OPINION AND JUDGMENT ENTRY

Hon. Myron C. Duhart

This unemployment compensation appeal is before the Court for a decision on the merits. Upon review of the pleadings, administrative record, filings and arguments of the parties, and applicable law, the Court finds that it should affirm the decisions below of the Director ("Director"), Ohio Department of Job and Family Services ("ODJFS"), and the Unemployment Compensation Review Commission ("UCRC"), and should dismiss the instant appeal.

#### **I. BACKGROUND**

On or about February 7, 2013, the plaintiff-appellant, Dawn Honsiko, filed an application for determination of benefits rights with the ODJFS. (April 1, 2013 Corrected Determination of Benefits ["April 1 Determination"].) On April 1, 2013, the ODJFS issued the

April 1 Determination which denied unemployment benefits to Ms. Honisko. (April 1 Determination.) The ODJFS indicated that Ms. Honsiko failed to establish two prerequisites to benefits. First, the ODJFS found: "An issue concerning the claimant's leave of absence [from her employer;] the claimant is on a leave of absence[; s]ince the employer-employee relationship is not severed, [the ODJFS] considers the claimant voluntarily unemployed[, thus, she] cannot meet the availability requirements of [the statute.] Therefore, claimant is ineligible \* \* \* until [the ODJFS] is provided evidence that this issue no longer exists and claimant is otherwise eligible." (Emphasis added.) (April 1 Determination p.2.)

Second, the ODJFS found: "An issue regarding the claimant's ability to work[; t]he claimant is/was unable to work due to physical inability to perform his/her customary job duties \* \* \*. No medical evidence was presented to establish the claimant's ability to engage in other types of employment. Therefore, claimant failed to meet the ability requirements [of the statute]. Therefore, claimant is ineligible \* \* \* until [ODJFS] is provided evidence that this issue no longer exists and claimant is otherwise eligible."

On the second page of the April 1 Determination, the ODJFS notified Ms. Honisko about her appeal rights. That paragraph reads in pertinent part as follows:

**APPEAL RIGHTS: If you do not agree with this determination, you may file an appeal \* \* \*. \* \* \* The appeal should include [1.] the determination ID number, [2.] name, [3.] claimant's social security number, and [4] any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 04/22/2013** (21 calendar days after the 'Date issued'). \* \* \*. (Bold-face sic; other emphasis added.)**

On or about April 16, 2013, Ms. Honsik "provided medical evidence that she was able to work as of February 11, 2013." (Emphasis added.) (Honsik Brief p.3.) On or about May 2, 2013 and June 3, 2013, Ms. Honsik "submitted to ODJFS \* \* \* evidence that she was not on a

leave of absence, but rather **had been terminated.**" (Emphasis added.) (Honsik Brief pp.2-3.) Thereafter, on June 12, 2013 Ms. Honsik formally "filed an **appeal**" of the April 1 Determination. (Emphasis added.) (Honsik Brief p.3.) By Redetermination, issued July 1, 2013, the Director denied her appeal of the April 1 Determination finding the appeal "untimely." (*Id.*)

Ms. Honsik appealed the Redetermination to the UCRC. (*Id.*) In an August 5, 2013 telephone hearing, the UCRC hearing officer focused on the timeliness of Ms. Honisko' appeal of the April 1 Determination. (Honisko Brief p.4.) On August 6, 2013, the hearing officer "issued a decision finding Ms. Honisko ineligible for benefits \* \* \* for a **failure to timely file an appeal** \* \* \*." (Emphasis added.) (Honisko Brief p.4.) The UCRC denied her timely request for review of the August 6 decision. (*Id.*) Ms. Honisko timely filed the appeal to this Court.

## II. **DISCUSSION**

### A. **STANDARD OF REVIEW**

R.C. 4141.282(H) provides for the review by a common pleas court of a final decision by the Commission regarding benefits. *Whaley v. Unemployment Comp. Bd. of Rev.*, 11th Dist. No. 2005-T-0070, 2006-Ohio-7017, at ¶12. That section reads in pertinent part as follows:

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 modify the decision, or remand the matter to the commission. **Otherwise, the court shall affirm the decision of the commission.** (Emphasis added.)

Thus, a court exercising appellate review "may only reverse an unemployment compensation eligibility decision by the Review Commission if the decision is unlawful, unreasonable, or against the manifest weight of the evidence." *Moore v. Comparison Mkt., Inc.*, 9th Dist. No.

23255, 2006-Ohio-6382, at ¶7. The UCRC has the role of resolving factual questions, and the court has the limited role of determining if the Commission's decision is supported by evidence in the certified record. *Id.* at ¶9. "The fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board's decision. \* \* \* **Where the board might reasonably decide either way, the courts have no authority to upset the board's decision.**" (Emphasis added.) *Robertson v. Dir., Ohio Dept. Job & Family Serv.*, 8th Dist. No. 86898, 2006-Ohio-3349, at ¶21 quoting *Irvine v. Unemp. Comp. Bd. of Rev.*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985). The reviewing court is not authorized to receive additional evidence; instead the court "is limited to the record as certified by the review commission." *Abrams-Rodkey v. Summit Cty. Children Servs.*, 163 Ohio App.3d 1, 2005-Ohio-4359, at ¶32.

## B. ANALYSIS

Ms. Honisko has two primary arguments here. First, she asserts that the documentation she submitted to the ODJFS on April 16, 2013 was within the twenty-one day appeal time, and this document should have constituted a proper notice of "appeal." (Honisko Brief p.4.) Second, " even if she did not timely appeal the [April 1 Determination], she complied with [the Determination's] request to provide evidence that (a) she was able to work; and (b) she was not on a voluntary leave of absence, and therefore should be eligible when she provided this evidence. [Ms. Honisko believes the April 1 Determination] in fact says she would be eligible once she provided this evidence, and therefore no appeal of that [April 1] Determination was required." (*Id.*)

The Director argues that hearing officer properly concluded that Ms. Honisko failed to file a timely appeal of the April 1 Determination. The Director asserts that the April 16

documentation is not a proper "appeal." Therefore, the Director contends that the Court should affirm the decisions of the UCRC, finding that Ms. Honsik's claim for benefits is barred as untimely.

The issue to resolve is whether the April 16 submission is an "appeal" under R.C. 4141.281(A) and (D)(1)

As a general rule, "[a]ny party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party \* \* \*." (Emphasis added.) R.C. 4141.281(A). Additionally, and ordinarily, "[a]ny timely written notice by an interested party indicating a desire to appeal shall be accepted. (Emphasis added.) R.C. 4141.281(D)(1). "Absent the filing of a timely appeal as prescribed in R.C. 4141.281(A), the review commission was without jurisdiction to conduct further review of the director's determination." (Emphasis added.) *Dragon v. State Unemployment Comp. Review Comm.*, 11th Dist. No. 2005-A-0017, 2006-Ohio-1447, at ¶17. One especially relevant issue addressed by the *Dragon* court was what type of filing is an "appeal" as contemplated by R.C. 4141.281(A).

The only evidence found by the lower court that [appellant] had timely filed a notice of appeal of the initial determination was a document dated [on the twenty first day]. This document purports to provide "the specific details" the [ODJFS] had requested regarding [appellee's] termination. The document describes incidents involving [appellee], and [the document] is signed by the \* \* \* president [of appellant employer]. The lower court noted that "there is absolutely no indication [appellant] is requesting a review of the [initial] determination \* \* \*." The trial court also noted that the words "review" and "appeal" are not found in the document. Accordingly, the court was of the opinion that "a fair interpretation of this letter is that it is submitting additional facts to supplement the facts already submitted" rather than indicating the intention to challenge the [initial] decision. (Emphasis added.) *Id.* at ¶9.

Thus, the *Dragon* court distinguished documents providing factual, "specific details," from a formal appeal document which would clearly "indicat[e the appellant] is requesting a 'review' and appeal." *Id.*

In the instant case, this Court finds that Ms. Honisko's April 16 submission is captioned "FMLA papers and Return to work documentation." (See ODJFS Brief Exh.B.) The "papers" and "documentation" appear to be medical records prepared a physician; taken as a whole, the submission supports Ms. Honisko's claim that she was and is able to work as of February 12, 2013. Through the documents in her submission, Ms. Honisko fails to "indicate that [she] desires to appeal." In the same manner as the documentation at issue in *Dragon*, Ms. Honisko's submission appears to be merely a "additional facts to supplement the facts already submitted" rather than "indicating the intention to challenge the [initial] decision." See *Dragon* at ¶9. Thus, the court finds that Ms. Honisko's April 16 submission fails to satisfy R.C. 4141.281(A) and (D). Additionally, the court finds that the submission fails to comply with the "APPEAL RIGHTS" provisions contained at the end of the April 1 Determination.<sup>1</sup> While that notice indicates that the enumerated items of information "should" be included by a claimant with her/his appeal, their absence in this case is additional evidence of Ms. Honisko's failure to "indicat[e] a desire to appeal." R.C. 4141.281(D)(1).

(The Court intentionally leaves the remainder of this page blank.)

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<sup>1</sup> In pertinent part they read as follows:

"If you do not agree with this determination, you may file an appeal \* \* \*. \* \* \* The ***appeal*** should include [1.] the ***determination ID number***, [2.] ***name***, [3.] claimant's ***social security number***, and [4] any ***additional facts*** and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 04/22/2013** (21 calendar days after the 'Date issued') \* \* \*. (Bold face sic; additional emphasis added.)

Ms. Honisko requested an oral hearing on this matter. The Court finds, however, that the statute does not require an oral hearing. *Bellemar Parts Industries, Inc. v. Butler*, 3d Dist. No. 14-90-21, 1991 Ohio App. LEXIS 4642, \*3 (Sept. 27, 1991).

Based on the foregoing, the Court finds that the decisions below were not "unlawful, unreasonable, [nor] against the manifest weight of the evidence," and, accordingly, the Court "shall affirm the decision[s.]" See R.C. 4141.282(H).

**JUDGMENT ENTRY**

The Court hereby ORDERS the decisions below of the Director, Ohio Department of Job and Family Services, and the Unemployment Compensation Review Commission are affirmed, and the instant appeal is denied and dismissed with prejudice. The Court finds no just reason for delay.

6/13/14

M. Duhart  
Myron C. Duhart, Judge

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