

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

WARD TRUCKING, LLC,	:	
	:	
Appellant,	:	CASE NO. 14CVF-7850
	:	
vs.	:	JUDGE REECE
	:	
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES, <i>et al.</i> ,	:	
	:	
Appellees.	:	

**DECISION AND JUDGMENT ENTRY AFFIRMING THE DECISION OF**  
**THE UNEMPLOYMENT COMPENSATION REVIEW COMMISSION**  
**AND**  
**NOTICE OF FINAL APPEALABLE ORDER**

**REECE, JUDGE**

This is an appeal pursuant to R.C. 4141.282 from a Decision of the Unemployment Compensation Review Commission (the “Commission”).

**I. FACTS**

On February 20, 2014, the Director, Ohio Department of Job and Family Services (“ODJFS”) issued a Redetermination that Claimant Gary R. Ranagan was entitled to unemployment compensation benefits.

On March 17, 2014, Appellant Ward Trucking, LLC filed an appeal.

On April 2, 2014, a hearing was held before a Hearing Officer of the Commission. The Hearing Officer stated that the issue was whether or not the appeal was timely filed, as the deadline for filing the appeal was March 13, 2014. (T. 3). Counsel for Appellant stated that a notice of appearance of counsel had been filed with ODJFS on February 12, 2014, but that ODJFS failed to provide counsel with a copy of the Redetermination. (T. 4-5). Counsel stated that Appellant received a copy of the

Redetermination, told counsel about it on February 28, 2014, and provided a copy to counsel within the appeal period. (T. 6-7).

On April 16, 2014, the Hearing Officer issued a Decision finding that the statutory period for appealing the Redetermination ended on March 13, 2014, and that Appellant's appeal filed March 17, 2014 was not timely and was dismissed. (R. 177-179).

On June 25, 2014, the Commission affirmed the Hearing Officer's Decision. (R. 304-306).

On July 25, 2014, Appellant filed this appeal from the Commission's Decision.

## **II. STANDARD OF REVIEW**

This Court must affirm the Commission's decision unless the decision was unlawful, unreasonable, or against the manifest weight of the evidence. R.C. 4141.282(H). The Court's scope of review in this appeal is limited, and the Court is not to make factual findings or substitute its judgment for that of the Commission. *Irvine v. Unemployment Compensation Review Commission*, 19 Ohio St.3d 15, 18 (1985); *Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45 (1982).

## **III. THE COURT'S FINDINGS AND CONCLUSIONS**

Appellant concedes that the appeal from the Redetermination was filed beyond the 21-day appeal period. (Reply Brief, p. 1). However, Appellant argues that ODJFS failed to provide required notice of the Redetermination to counsel.

Pursuant to R.C. 4141.281(B), a redetermination may be appealed within twenty-one days after it was sent. With respect to determinations of benefits, R.C. 4141.28(D) provides that "The director shall promptly notify the applicant, employers in the

applicant's base period, and any other interested parties of the determination and the reasons for it." R.C. 4141.281(C)(3) provides that "The hearing officer's written decision shall be sent to all interested parties." R.C. 4141.01(I) provides the following definition: "Interested party' means the director and any party to whom notice of a determination of an application for benefit rights or a claim for benefits is required to be given under section 4141.28 of the Revised Code."

R.C. 4141.281(D)(9) provides:

When an interested party provides evidence, which evidence may consist of testimony from the interested party, 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, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision.

Appellant received the Redetermination within the appeal period. (T. 6-7). Appellant then provided a copy of the Redetermination to counsel within the appeal period. (T. 6). However, Appellant argues that ODJFS was also required to provide separate notice to counsel of the Redetermination. Specifically, Appellant argues that counsel is an "interested party" entitled to notice of the Redetermination under R.C. 4141.28 and R.C. 4141.281.

Appellant has provided no legal authority supporting the argument that counsel is an "interested party" under the above statutes. As noted, R.C. 4141.01(I) defines "interested party" as "the director and any party" entitled to notice under R.C. 4141.28. R.C. 4141.28 references the claimant, employers, and the Director of ODJFS; there is no mention of counsel for any party.

Words used in a statute must be accorded their usual, normal and customary meaning. *Brooks Capital Servs., LLC v. 5151 Trabue Ltd.*, 10<sup>th</sup> Dist. No. 12AP-30, 2012-Ohio-4539, ¶17. The word “party” is usually used to refer to a person or legal entity directly involved in a legal matter, not legal counsel.

The Ohio Supreme Court has held that where a right of appeal is conferred by a statute, the appeal can be perfected only in the mode prescribed by that statute, and that "the exercise of the right conferred is conditional upon compliance with the accompanying mandatory requirements." *Zier v. Bur. Of Unemp. Comp.*, 151 Ohio St. 123, paragraph one of syllabus (1949).

In *Kathmandu Incorporated v. Adm., OBES*, 10<sup>th</sup> Dist. No. 99AP-36, 1999 Ohio App. LEXIS 4499, the court found that an agency complied with its statutory duty when it sent notice of a decision to a party but not counsel of record.

In accordance with the above legal authority, the Court finds that the Commission properly dismissed Appellant’s appeal from the Redetermination on the basis that it was not timely filed.

After reviewing the record, the Court finds that the Commission’s Decision is not unlawful, unreasonable, or against the manifest weight of the evidence. Accordingly, the Commission’s Decision is hereby AFFIRMED. This is a final, appealable Order. Costs to Appellant. The Clerk of Courts is directed to serve all interested parties and attorneys with this judgment.

Franklin County Court of Common Pleas

**Date:** 02-07-2015  
**Case Title:** WARD TRUCKING LLC -VS- OHIO STATE DEPARTMENT JOB  
FAMILY SRVS ET AL  
**Case Number:** 14CV007850  
**Type:** DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 14CV007850

Case Style: WARD TRUCKING LLC -VS- OHIO STATE  
DEPARTMENT JOB FAMILY SRVS ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0078502014-10-2399980000  
Document Title: 10-23-2014-MOTION TO EXTEND TIME  
Disposition: MOTION RELEASED TO CLEAR DOCKET