



FILED
LORAIN COUNTY

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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

CLERK OF COMMON PLEAS
RON NABAKOWSKI

RON NABAKOWSKI, Clerk
JOURNAL ENTRY
Christopher R. Rothgery, Judge

Date 2/17/15

Case No. 14CV184480

MICHELLE E MOORE
Plaintiff

PRO SE
Plaintiff's Attorney

VS

OHIO DEPARTMENT OF JOB & FAMILY SERVICES
Defendant

LAURENCE R SNYDER
Defendant's Attorney

This matter is before the Court for consideration of Appellant Michelle Moore's appeal of the decision of the Ohio Unemployment Compensation Review Commission (hereinafter "Review Commission") pursuant to R.C. 4141.282. Upon consideration of the Appellant's Brief, Appellee's Brief filed by ODJFS, and the certified transcripts of the records, this Court finds as follows.

STANDARD OF REVIEW

R.C. 4141.282 governs unemployment compensation appeals to the Court of Common Pleas. Subsection (H) of that statute provides 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. *Id.*

The Review Commission's function as trier of fact remains intact. As such, this Court should defer to the Review Commission where factual matters, the credibility of witnesses, and the

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weight of conflicting evidence are at issue. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Fahl v. Bd. Of Rev.*, 2 Ohio App.2d 286; *Kilgore v. Bd. Of Rev.*, 2 Ohio App.2d 69. As proceedings such as this are not *de novo* trials, this Court may not make factual determinations or substitute its judgment for that of the Review Commission; for “[i]f the decision is supported by credible proof, the finding may not be disturbed.” *Kilgore*, 2 Ohio App.2d at 71-73. “When reviewing the manifest weight of the evidence, ‘[t]he reviewing court *** weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.’” *Wright v. Director, Ohio Dept. of Jobs & Family Services, et al.*, 9th Dist., 2013-Ohio-2260 at ¶10 quoting *Eastley v. Volkman*, 132 Ohio St.3d. 328.

ANALYSIS AND CONCLUSIONS OF LAW

1) Was the UCRC’s decision unlawful, unreasonable and against the manifest weight of the evidence?

Appellant, Ms. Moore, claims that the denial of her appeal based upon it not being filed timely was improper. Appellant has not pointed to any legal basis for her position. As pointed out by Appellee, there is no dispute that Appellant untimely filed her appeal. As such, the only issue for this Court to consider would be whether Appellant provided sufficient proof to the UCRC that would grant her an extension on filing her appeal pursuant to R.C. 4141.281(D)(9). There is no evidence that Appellant’s “physical condition or mental capacity” prevented her from filing an appeal. *Id.* As such, the only issue is whether Appellant did in fact “receive the determination or decision within the applicable period.” R.C. 4141.281(D)(9). Appellant



acknowledged receipt of these emails in her May 14, 2014 letter to ODJFS and at the July 8, 2014 Hearing with the UCRC. Ex. D to Appellee's Brief and July 8, 2014 UCRC Tr. 11-13. Appellant contended that she thought the emails were spam and so she did not open them until she received written notification from the Ohio Attorney General regarding collection of the overpayments. There is no statutory authority for ODJFS to extend the appeal time other than as provided in R.C. 4141.281(D)(9). Accordingly, based upon the untimely filing, and the lack of an applicable exception in R.C. 4141.281(D)(9), the appeal was denied. Based upon the record before this Court, this Court cannot find that the UCRC decision was unlawful, unreasonable or against the manifest weight of the evidence, and therefore the decision is affirmed.

CONCLUSION

Based upon the above, this Court denies Appellant's Appeal and affirms the decisions of the UCRC in both matters before this Court. Based upon Appellant's Affidavit of Poverty this Court waives the court costs for the within appeals. CASE CLOSED.

IT IS SO ORDERED.

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CHRISTOPHER R. ROTHGERY, JUDGE

cc: MICHELLE MOORE
ATTY. SNYDER

TO THE CLERK: THIS IS A FINAL APPEALABLE ORDER. PLEASE SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR, NOTICE OF THE JUDGMENT AND ITS DATE OF ENTRY UPON THE JOURNAL.

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