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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CHRISTOPHER CALLIHAN
Plaintiff

DIRECTOR, OHIO DEPT OF JOBS & FAMILY SVCS,
ET AL
Defendant

Case No: CV-15-845750

Judge: PETER J CORRIGAN

JOURNAL ENTRY

96 DISP.OTHER - FINAL

THE MATTER BEFORE THE COURT IS AN ADMINISTRATIVE APPEAL FILED BY APPELLANT CHRISTOPHER CALLIHAN PURSUANT TO R.C. 4141.282. THE REVIEW COMMISSION DISALLOWED APPELLANT'S REQUEST FOR REVIEW, FINDING THE APPEAL UNTIMELY. APPELLANT APPEALS THIS DECISION.

THE ONLY ISSUE TO BE DECIDED IS WHETHER APPELLANT'S ADMINISTRATIVE APPEAL WAS TIMELY FILED.

APPELLANT APPLIED FOR UNEMPLOYMENT COMPENSATION BENEFITS ON FEBRUARY 12, 2012. ON FEBRUARY 21, 2012, HE WAS GRANTED BENEFITS. ON MAY 15, 2013, APPELLEE ISSUED A DETERMINATION NOTIFYING APPELLANT OF AN ALLEGED OVERPAYMENT DUE TO AN ISSUE WITH HIS UNEMPLOYMENT ELIGIBILITY. ON MAY 20, 2013, APPELLANT'S ATTORNEY SUBMITTED HIS NOTICE OF REPRESENTATION AND APPELLANT'S APPEAL OF THE DETERMINATION. ON JUNE 14, 2013, APPELLEE ISSUED A REDETERMINATION UPHOLDING THE MAY 15, 2013 DETERMINATION. APPELLANT STATED HE DID NOT RECEIVE THIS DECISION AND APPELLEE ACKNOWLEDGES IT DID NOT MAIL A COPY OF THE DECISION TO APPELLANT'S ATTORNEY. APPELLANT BECAME AWARE THAT HE STILL OWED AN OVERPAYMENT WHEN HIS INCOME TAX REFUND WAS GARNISHED BY THE STATE. IT WAS AT THIS POINT, APPELLANT CONTACTED HIS ATTORNEY. ON JANUARY 28, 2015, APPELLANT'S ATTORNEY REQUESTED A COPY OF THE DECISION. APPELLEE REISSUED THE REDETERMINATION DECISION TO BOTH APPELLANT AND HIS ATTORNEY ON FEBRUARY 2, 2015. APPELLANT APPEALED THE REDETERMINATION ON FEBRUARY 17, 2015.

APPELLANT STATES THAT HE RECEIVED THE DECISION BUT DOES NOT REMEMBER THE DATE IT WAS RECEIVED. LATER, THE IMPLICATION IN THE RECORD INDICATES THAT APPELLANT RECEIVED THE DECISION AFTER HIS ATTORNEY REQUESTED A COPY. WHILE THE REVIEW COMMISSION DETERMINED IT WAS REASONABLE TO ASSUME APPELLANT RECEIVED THE JUNE 14, 2013 REDETERMINATION IN THE MAIL THROUGH THE NORMAL COURSE OF BUSINESS, THIS ASSUMPTION IS NOT BASED ON FACTS IN THE RECORD AS THERE IS NO EVIDENCE APPELLANT RECEIVED IT WITHIN THE TWENTY-ONE DAY PERIOD PRIOR TO FILING HIS APPEAL ON FEBRUARY 17, 2015. THEREFORE, ACCORDING TO R.C. 4141.281(D)(9), WHICH SPECIFICALLY STATES THAT AN APPEAL PERIOD BEGINS AFTER THE APPELLANT/CLAIMANT ACTUALLY RECEIVES THE DETERMINATION OR DECISION, NOT AFTER THE CLAIMANT MAY BECOME AWARE OF THE DETERMINATION OR DECISION, APPELLANT'S FEBRUARY 17, 2015 APPEAL WAS TIMELY FILED.

AS THE RECORD DOES NOT SUPPORT WITH RELIABLE CREDIBLE EVIDENCE THE HEARING OFFICER'S CONCLUSION THAT APPELLANT RECEIVED THE JUNE 14, 2013 DECISION IN TIME TO TRIGGER AN EARLIER APPEAL TIME LIMIT, THE REVIEW COMMISSION'S DECISION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS UNREASONABLE AND UNLAWFUL. THE DECISION IS REVERSED AND REMANDED.

COSTS TO APPELLEE.

COURT COST ASSESSED AS DIRECTED.

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER

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PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

A handwritten signature in black ink, appearing to read "R. J. ...". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Judge Signature

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