

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
GENERAL DIVISION

Preston W. House,		Case No. 15CV-06466
Appellant,		Judge Sheeran
vs.		
Ohio Unemployment Compensation Review Commission,		
Appellee.		

**Decision and Judgment Entry Affirming “Decision Disallowing Request for Review”
Issued by Ohio Unemployment Compensation Review Commission
on June 30, 2015 (Docket No. C2015-007358)**

**Decision and Judgment Entry Affirming “Decision Disallowing Request for Review”
Issued by Ohio Unemployment Compensation Review Commission
on June 30, 2015 (Docket No. C2015-007359)**

Sheeran, J.

This case is a Revised Code 4141.282 administrative appeal, by Preston W. House (Appellant), from two Decisions that the Ohio Unemployment Compensation Review Commission issued on June 30, 2015. In those Decisions, the Commission denied Appellant’s request for further review of two earlier Decisions issued by a Hearing Officer. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Facts and Procedural History

In January 2013, Appellant applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits. *Transcript, May 22, 2015 (T.) p. 4.* The Director of ODJFS allowed Appellant’s application, and benefits were paid to Appellant.

In a Determination issued on November 27, 2013, the Director found that Appellant had been overpaid benefits to which he was not entitled, and Appellant was ordered to repay the benefits to ODJFS. The Director sent the Determination to Appellant's last known address and notified Appellant that he had the right to appeal the Determination within 21 calendar days. The twenty-first calendar day following November 27, 2013 was December 18, 2013. Appellant did not appeal the Determination by December 18, 2013.

In a Determination issued on December 13, 2013, the Director found that Appellant had been overpaid additional benefits to which he was not entitled, and Appellant was ordered to repay the benefits to ODJFS. The Director sent the Determination to Appellant's last known address and notified Appellant that he had the right to appeal the Determination within 21 calendar days. The twenty-first calendar day following December 13, 2013 was January 3, 2014. Appellant did not appeal the Determination by January 3, 2014.

More than a year later, on March 16, 2015, Appellant appealed the November 27, 2013 Determination and the December 13, 2013 Determination. In Appellant's appeal, he provided the following reasons for filing the appeals late:

This appeal is late due to the lack of knowledge of handling the matter at hand as well as not being able to connect with a representative from your office. Also, I was provided misleading information regarding my benefits. I contacted ODJFS numerous of [*sic*] times which I was put on hold a great deal of time and transferred around to different representatives that could not assist me. Also, I was locked out of my online account, which also required a long hold time for a locked/reset. With that in mind my work schedule did conflict with me getting through to a representative with my lunch break being 30 min. Also, ODJFS is on Eastern Standard Time and my work schedule is on Central Standard Time.

In two Director's Redeterminations issued on April 1, 2015, the Director dismissed Appellant's appeals as untimely. On April 20, 2015, Appellant appealed the Director's Redeterminations to the Ohio Unemployment Compensation Review Commission.

On May 22, 2015, a Hearing Officer for the Commission conducted a hearing solely on the timeliness of Appellant's appeals from the Determinations issued on November 27, 2013 and December 13, 2013. At the hearing, Appellant testified that he never received either Determination. *T. pp. 5-6.*

In two Decisions issued on May 29, 2015, the Hearing Officer found that Appellant's appeals were untimely and affirmed the April 1, 2015 Director's Redeterminations. The Hearing Officer found that the November 27, 2013 and December 13, 2013 Determinations were sent to Appellant's last known address, and that Appellant received the Determinations prior to the expiration of the 21-day appeal periods. The Hearing Officer stated:

The claimant testified in the hearing that he did not receive the determination issued [November 27, 2013] [December 13, 2013]. However, claimant's testimony directly conflicts with his prior statement in the Director's file in which he states, "I received another notice dated [November 27, 2013] [December 13, 2013], which was a notice of determination letter from the State of Ohio for overpayment benefits." His statement goes on to identify the [determinations] in detail. Based on these conflicting statements, the Hearing Officer finds that the claimant's testimony lacked credibility, and finds that he did receive the [determinations], as he stated in his original [appeals].

On June 2, 2015, Appellant appealed the Hearing Officer's May 29, 2015 Decisions to the Commission.

On June 30, 2015, the Commission disallowed Appellant's requests for further review of the Hearing Officer's May 29, 2015 Decisions.

Revised Code 4141.282(D), which governs appeals to this Court from Commission decisions, provides, "The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal."

In each Decision issued on June 30, 2015, the Commission notified Appellant:

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed, *** within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282, Revised Code of Ohio. The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services.

On July 28, 2015, Appellant filed this appeal from the Commission's June 30, 2015 Decisions. Appellant did not, however, name the Director of ODJFS as an appellee, and Appellant did not instruct the Franklin County Clerk of Courts to serve Appellant's notice of appeal on the Director. Consequently, the Director did not appear in this appeal, and the Commission's record was not certified to the Court.

On January 26, 2016, therefore, the Court ordered the Franklin County Clerk of Courts to serve Appellant's notice of appeal on the Director of ODJFS. The Director appeared in the appeal and on February 5, 2016, the Commission certified its record to the Court.

On April 27, 2016, the Court dismissed this appeal for lack of subject matter jurisdiction, because Appellant failed to name the Director of ODJFS as an appellee in Appellant's notice of appeal, as required by R.C. 4141.282(D), *supra*. The Court dismissed this appeal on the authority of *Hinton v. Ohio Unemp. Comp. Rev. Comm.*, 7th Dist. No. 14 MA 45, 2015-Ohio-1364, *Dikong v. Ohio Supports, Inc.*, 1st Dist. No. C-120057, 2013-Ohio-33, and *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953, in which the Courts of Appeal for the First, Seventh, and Eleventh Appellate Districts held that an appellant's failure to name the Director as an appellee was a jurisdictional defect.

On May 11, 2016, the Supreme Court of Ohio held that R.C. 4141.282 does not require an appellant to name all interested parties in order to perfect an appeal. See *Pryor v. Dir., Ohio Dept. of Job & Family Servs.*, Slip Op. 2016-Ohio-2907, ¶ 1. The Supreme Court held that R.C.

4141.282 imposes only one jurisdictional requirement for perfecting an appeal from a decision of the Ohio Unemployment Compensation Review Commission: “The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court.” R.C. 4141.282(C).

On May 12, 2016, therefore, this Court vacated its April 27, 2016 decision dismissing this appeal for lack of subject-matter jurisdiction, and reinstated the appeal to the Court’s docket.

On May 16, 2016, the Court issued a “Second Amended Case Schedule,” in which the Court directed Appellant to file a brief in support of this appeal on or before July 8, 2016. The Court further scheduled the appeal for a non-oral hearing on July 29, 2016, on which date the appeal would be deemed submitted to the Court for a decision on the merits.

Appellant has not filed a brief in support of this appeal in accordance with the Second Amended Case Schedule. On July 29, 2016, therefore, the appeal was deemed submitted to the Court for a decision on the merits.

Analysis

Revised Code 4141.282(H), which governs this appeal, provides:

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.

In reviewing Commission decisions, a court may not make factual findings or determine witness credibility. *Henderson v. Dir., Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 12AP-154, 2012-Ohio-5382, ¶ 7. Factual questions remain solely within the province of the Commission. *Id.* Similarly, a court may not substitute its judgment for that of the Commission. *Id.* The fact that reasonable minds might reach different conclusions is not a basis for the

reversal of the Commission's decision. *Id.* Instead, a court must determine whether the Commission's decision is supported by evidence in the record. *Id.*

The issue in this appeal, therefore, is whether the Commission's June 30, 2015 Decisions, concluding that Appellant did not timely appeal the November 27, 2013 and December 13, 2013 Determinations, are supported by evidence in the record.

At the hearing on May 22, 2015, Appellant testified that he never received the November 27, 2013 and December 13, 2013 Determinations. *T.* 5-6. However, in documents submitted by Appellant to ODJFS and to the Commission, he stated that he received both Determinations, and that he received them within the 21-day appeal periods. *T.* 6-7. Based upon Appellant's contradictory statements, the Hearing Officer found that Appellant was not credible, and the Hearing Officer did not believe Appellant's hearing testimony that he never received the Determinations. The Hearing Officer found that Appellant received the Determinations within the 21-day appeal periods and that Appellant failed to timely appeal the Determinations.

As stated above, factual determinations are solely the function of the Commission and, in this case, its Hearing Officer. The Commission's Decisions are supported by evidence in the record, and the Court will not substitute its judgment for that of the Commission.

Conclusion

Having reviewed the record certified to the Court by the Ohio Unemployment Compensation Review Commission, the Court concludes that the Commission's June 30, 2015 Decisions, disallowing Appellant's requests for further review of the Hearing Officer's May 29, 2015 Decisions, were not unlawful, unreasonable, or against the manifest weight of the evidence. The Decisions are therefore **AFFIRMED**.

This is a final, appealable order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 08-15-2016
Case Title: PRESTON HOUSE -VS- OHIO STATE DEPARTMENT JOB
FAMILY SERVICE
Case Number: 15CV006466
Type: DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Patrick E. Sheeran". The signature is written over a blue circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top edge and "COMMON PLEAS COURT" around the bottom edge. In the center of the seal, there is a smaller emblem with the text "FRANKLIN COUNTY OHIO" and "1803" below it. At the very bottom of the seal, the phrase "THINGS ARE" is visible.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 15CV006466

Case Style: PRESTON HOUSE -VS- OHIO STATE DEPARTMENT
JOB FAMILY SERVICE

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0064662016-08-1099940000
Document Title: 08-10-2016-MOTION - PLAINTIFF: PRESTON
HOUSE - RESUBMITTED MOTION FOR JUDGMENT DUE TO M
Disposition: MOTION IS MOOT
2. Motion CMS Document Id: 15CV0064662016-08-1099950000
Document Title: 08-10-2016-MOTION - PLAINTIFF: PRESTON
HOUSE - RESUBMITTED MOTION FOR JUDGMENT DUE TO I
Disposition: MOTION IS MOOT
3. Motion CMS Document Id: 15CV0064662016-08-1099970000
Document Title: 08-10-2016-MOTION - PLAINTIFF: PRESTON
HOUSE - RESUBMITTED MOTION FOR JUDGMENT DUE TO I
Disposition: MOTION IS MOOT
4. Motion CMS Document Id: 15CV0064662016-08-1099980000
Document Title: 08-10-2016-MOTION - PLAINTIFF: PRESTON
HOUSE - RESUBMITTED MOTION FOR JUDGMENT DUE TO I
Disposition: MOTION IS MOOT
5. Motion CMS Document Id: 15CV0064662016-07-2099980000
Document Title: 07-20-2016-MOTION FOR JUDGMENT ON
PLEADINGS - DEFENDANT: OHIO STATE DEPARTMENT JOB
FAMILY SERVICE
Disposition: MOTION GRANTED

