



D117820110

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
Foley, J.
HON. J. PATRICK FOLEY III
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

CYNTHIA RADCLIFFE,

: Case No. A 1604976

Appellant,

: Judge J. Patrick Foley III

vs.

DIRECTOR, OHIO DEPARTMENT
OF JOBS AND FAMILY SERVICES,
et al.

ENTRY ADOPTING THE
MAGISTRATE'S DECISION

ENTERED
APR 05 2017

FILED
CLERK # 10

Appellees.

This case came to be heard upon an appeal from the decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") that disallowed benefits to the Appellant, Cynthia Radcliffe, and found her appeal to be untimely. After due consideration of the certified record of the Review Commission, the legal briefs filed by the parties, and the applicable legal authority, the Magistrate found that the decision of the Review Commission was not unlawful, unreasonable or against the manifest weight of the evidence. The objection period has expired and no objections to the decision were filed nor were there any extensions granted. WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's Decision is hereby affirmed.

Costs are to be paid by the Appellant. This is the final appealable order. There is no just reason for delay.

Foley, J.
JUDGE J. PATRICK FOLEY III MAGISTRATE

APR 06 2017
HAS SEEN

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO



CYNTHIA RADCLIFFE,

: Case No. A 1604976

D117483327

Appellant,

: Judge J. Patrick Foley III

vs.

: Magistrate Michael L. Bachman

DIRECTOR, OHIO DEPARTMENT
OF JOBS AND FAMILY SERVICES,
et al.

: MAGISTRATE'S DECISION

Appellees.

RENDERED THIS 7th DAY OF MARCH, 2017

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") Decision Disallowing Request for Review of the Hearing Officer's decision denying Cynthia Radcliffe's ("Appellant") claim for unemployment benefits on the basis that Appellant failed to appeal the Determination within twenty-one days after it was issued. This appeal was taken under submission upon the conclusion of review of the administrative record and the briefs.

FILED
2017 MAR -9 AM 11:53
CLERK OF COURTS
HAMILTON COUNTY, OH
COMMON PLEAS

BACKGROUND

The Appellant filed for unemployment compensation benefits. The Appellee, Director, Ohio Department of Job and Family Services ("ODJFS"), issued an Initial Determination that held that the Appellant quit work with her employer, Premium Personnel, without just cause. The Claimant appealed the Initiation Determination on June 17, 2016. A Redetermination was issued by ODJFS indicating that the Claimant's appeal was untimely. The Appellant filed an appeal from the Redetermination and

ODJFS transferred jurisdiction of the appeal to the Review Commission pursuant to R.C. 4141.281(C).

An evidentiary hearing was held before a hearing officer for the Review Commission. The Hearing Officer affirmed the Redetermination. The hearing officer found that the Appellant's appeal was faxed on June 17, 2016, when the last day to appeal under R.C. 4141.281(A) was June 7, 2016. The Appellant requested further review of the claim by the Review Commission, but the Review Commission disallowed the Appellant's request. The Appellant appealed to this Court, seeking reversal of the Review Commission's adverse decision.

STANDARD OF REVIEW

This Court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the Court finds that the Review Commission's decision was "unlawful, unreasonable, or against the manifest weight of the evidence", it shall reverse, vacate, or modify the decision, or remand the issue to the Review Commission. R.C. 4141.282(H). Otherwise, the court shall affirm the Review Commission's decision. R.C. 4141.282(H); *Williams v. Ohio Dept. of Job & Family Servs.*, 129 Ohio St. 3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20. A reviewing court must not make factual findings or determine a witness's credibility and must affirm the Review Commission's decision if there is competent, credible evidence to support it. *Id.*

DISCUSSION

The court has reviewed the record provided by the Review Commission and the briefs of ODJFS and the Appellant. The Appellant admits that her appeal was untimely filed. The Appellant mistakenly believed that her appeal of another claim against Kelly

Services also served as an appeal against Premium Personnel. When the Appellant realized that she erred, she filed an appeal against Premium Personnel but it was late.

ODJFS contends that the Appellant's reason for her untimely appeal is not one of the exceptions listed in R.C. 4141.281(D)(9) that would allow for an extension of the time to file an appeal. A review of the exceptions listed in R.C. 4141.281(D)(9) reveals that the Appellant's reason for untimely filing her appeal does not allow for an extension of time to file. The last day for the Appellant to appeal was not a Saturday, Sunday, or legal holiday. The Appellant did actually receive the Initial Determination prior to the appeal period. Moreover, the Appellant was not prevented from appealing because of a physical or mental condition. "Where a statute confers a right of appeal, the appeal can only be perfected in the manner prescribed by that statute." *Griffith v. J.C. Penney Co., Inc.*, 24 Ohio St. 3d 112, 113; 493 N.E.2d 959 (1986).

DECISION

The decision of the Review Commission dismissing the Appellant's unemployment compensation claim is hereby AFFIRMED. The Court cannot find that the hearing officer's decision is unlawful, unreasonable or against the manifest weight. The Appellant's appeal to the Initial Determination was untimely. Therefore, the Appellant's claim for unemployment benefits was properly dismissed.



**MICHAEL L. BACHMAN
MAGISTRATE,
COURT OF COMMON PLEAS**

NOTICE

Objections to the Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision. A party shall not assign as error on appeal the court's adoption of any factual finding of fact or legal conclusion, whether or not specifically designated as a finding of fact or conclusion under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Copies sent by Clerk of Courts to:

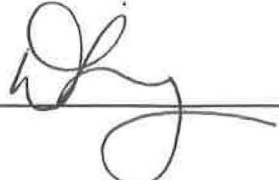
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING DECISION HAVE BEEN SENT BY ORDINARY MAIL TO ALL PARTIES OR THEIR ATTORNEYS AS PROVIDED ABOVE.

Date: 3/17/17

Deputy Clerk:  _____