



D118301763

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
MAY 24 2017

TERRELL OWENS,

Appellant,

v.

OHIO DEPT. OF JOBS AND FAMILY
SERVICES, et al.,

Appellee.

Case No. A1606700

Judge Allen

ENTRY ADOPTING
MAGISTRATE'S DECISION

Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's Decision rendered on May 4, 2017. The objection period has expired with no objections having been filed and no extensions having been granted. The Magistrate's Decision is AFFIRMED.

The Unemployment Review Commission's decision dated November 10, 2016 is AFFIRMED.

FOR COURT USE ONLY
S.C. Line #: 10

MAGISTRATE
MAY 22 2017
HAS SEEN

ENTERED
COURT OF COMMON PLEAS
MAY 23 2017
LISA C. ALLEN
JUDGE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 53 AND COMMON PLEAS
AS COSTS HEREIN

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

TERRELL OWENS,	:	Case No. A1606700
Appellant,	:	Judge Allen
v.	:	
	:	
OHIO DEPT. OF JOBS AND FAMILY SERVICES, et al.,	:	<u>MAGISTRATE'S DECISION</u>
Appellees.	:	

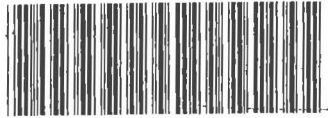
RENDERED THIS 4TH DAY OF MAY, 2017.

This case is an appeal from the Unemployment Compensation Review Commission's ("Review Commission") November 10, 2016 decision¹ disallowing a request for review of the October 3, 2016 hearing officer's decision finding claimant Terrell Owens ("Owens") was discharged from his position with Via Vite, LLC for just cause. This appeal, filed pursuant to R.C. § 4141.282, was taken under submission on the parties' briefs on April 7, 2017.

BACKGROUND

Owens was discharged by Via Vite after allegedly coming to work late or not at all. Owens filed for unemployment compensation benefits and the Director of Ohio Department of Jobs and Family Services ("ODJFS") issued an Initial Determination that allowed benefits to Owens because his employer failed to follow its established disciplinary policy. Via Vite appealed and the decision was affirmed in a Redetermination. Via Vite appealed further and the case was transferred to the Review Commission.

FILED
2017 MAY -5 P 12:55
CLERK OF COURTS
HAMILTON COUNTY, OH
DOMINIC PLEAS



D118108701

The Review Commission held a hearing on September 30, 2016 and Owens was scheduled to appear by phone. Owens did not call in at the appointed time and the hearing officer reversed the Redetermination finding that Owens was discharged for just cause. The decision was issued on October 3, 2016 and was mailed to Owens' address at 1662 Summit RD, APT 2, Cincinnati, Ohio 45237-2026. The decision contained a notice stating that Owens had twenty-one days to appeal and any appeal must be filed by October 24, 2016.

Owens filed a Request for Review to the Review Commission on October 25, 2016. A hearing was held on November 9, 2016. Owens testified he was late filing the appeal because he had problems gathering evidence and mixed up the dates. The Review Commission found that the decision was mailed to Owens' address and was received before the appeal deadline. The Review Commission concluded the Request for Review was untimely and no exception under the statute applied. Therefore, the Request for Review was denied. This appeal to the Court of Common Pleas followed.

STANDARD OF REVIEW

The court shall hear the appeal upon receipt of the certified record provided by the Review Commission. If the court finds that the decision of the Review Commission 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.² Otherwise, the court shall affirm the decision.³ The reviewing court must follow this same standard in assessing just cause determinations.⁴ The determination of factual

¹ / *In re claim of Terrell Owens, C-2016014055*. Appellee Brief, Ex. 2.

² / Ohio Rev. Code § 4141.282(H) (West 2008).

³ / *Id.*

⁴ / *Irvine v. Unemp. Comp. Bd. of Review* (1985), 19 Ohio St.3d 15, 17-18.

questions and the evaluation of witnesses is the responsibility of the hearing officer and Review Commission, and accordingly, parties on appeal are not entitled to a trial de novo in this court.⁵

DISCUSSION

R.C. 4141.281(C)(3) states, “A request for review shall be filed within twenty-one days after the decision was sent to the party, or within an extended period as provided under division (D)(9) of this section.” R.C. 4141.281(D)(1) states, “The date of the mailing provided by the director or the commission is sufficient evidence upon which to conclude that a determination, redetermination, or decision was sent to the party on that date.” R.C. 4141.281(D)(9) states an extension beyond twenty-one days can be granted if the last day of the appeal period ends on a Saturday, Sunday, or legal holiday; an interested party provides certified medical evidence that a physical or mental condition prevented the interested party from filing an appeal; or an interested party did not actually receive the determination within the appeal period.

Unfortunately, none of these exceptions apply in this case and the Review Commission correctly concluded that Owens’ Request for Review was untimely. The appeal period did not end on a weekend or legal holiday. Owens does reference a learning disability in his brief, but did not provide any certified medical evidence of his condition or cite his disability as the reason his appeal was not filed within the statutory period. The decision was mailed to his address and the evidence showed it was received before the appeal period. The decision clearly stated the last day to appeal was October

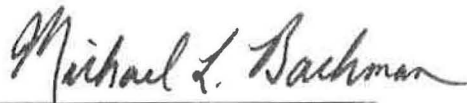
⁵ / *Tzangas, Plakas and Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St. 3d 694, 697. See also *Angelkovski v. Buckeye Potato Chips* (Sep. 27, 1983), 11 Ohio App.3d 159, 161-162 (App. 10 Dist.) (overruled in *Tzangas* for other reasons).

24, 2016. The reasons cited by Owens do not fall within the exceptions outlined in the statute.

Where a statute requires that an administrative appeal be filed within a specified time period, compliance with such requirement is a necessary precondition to invoking the appellate jurisdiction of the administrative agency. *Clemons v. Ohio Dept. of Job & Family Serv.*, 10th Dist. Franklin No. 03AP-976, 2004-Ohio-6251 ¶ 12. Owens essentially asks this court to excuse the fact that his appeal was one day late and afford him another bite at the apple. Given the applicable law and standard of review, this court is unable to do so and is constrained to find in favor of ODJFS. For the reasons above, the court finds the Review Commission's decision was not unlawful, unreasonable, or against the manifest weight of the evidence.

DECISION

The Unemployment Review Commission's decision dated November 10, 2016 is AFFIRMED.



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 or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law 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:

Robin A. Jarvis, Esq.
Assistant Attorney General
1600 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202

Terrell Owens, pro se
1662 Summit Road #2
Cincinnati, OH 45237

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: 5/5/17 Deputy Clerk:  _____