

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

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COURT OF COMMON PLEAS

Case Number: CV 2010 06 2452

MARISSA STARKS,

NOV 07 2011

Plaintiff,

MARY L. SWAIN Judge Andrew Nastoff
CLERK OF COURTS

vs.

DIRECTOR, OHIO DEPARTMENT
OF JOB AND FAMILY SERVICES,

Defendant.

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* DECISION AND ENTRY
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* FINAL APPEALABLE ORDER
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This matter is before the Court upon the appeal of Marissa Starks ("Starks") from a decision of the Ohio Unemployment Compensation Review Commission ("Review Commission") dismissing her appeal to the Initial Determination as untimely. For the following reasons the Court affirms the Review Commission's decision.

FACTS

On March 17, 2009, Starks filed a claim for unemployment compensation after losing her job with Tri-State Hospital Supply Corporation. The Ohio Department of Job and Family Services Office of Unemployment Compensation ("ODJFS") allowed Starks' unemployment compensation claim after finding she was discharged without just cause. Starks received unemployment benefits for the week ending March 28, 2009 through the week ending July 25, 2009.

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On November 25, 2009, ODJFS issued a determination finding that Starks was ineligible for those unemployment benefits because she was physically unable to work during the period she collected the benefits. ODJFS found that Starks was overpaid benefits and ordered her to repay \$4,860.00. The determination conspicuously stated that **“TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 12/16/2009** (21 calendar days after the ‘Date Issued’).”

Starks appealed the determination on January 28, 2010. ODJFS issued a Director’s Redetermination on February 16, 2010 that refused to accept Starks’ appeal because it was not filed within the statutorily prescribed time period. Starks appealed the redetermination, at which point ODJFS transferred jurisdiction to the Review Commission.

A Review Commission hearing officer held a telephone hearing on April 7, 2010, at which Starks appeared with counsel. During the hearing, Starks admitted that when she applied for unemployment benefits, she requested to receive correspondence from ODJFS by electronic mail. Starks testified that in November and December of 2009, her home computer was infected with a virus that prevented her from accessing her e-mail account. According to Starks, she could not access her e-mail account until she returned to college in January 2010, at which point she used a public computer and became aware of the November 25, 2009 determination ordering her to repay the benefits. Starks testified that she “did not have computer access at the time [the

determination] was submitted to me and that's why I did not appeal at the time it was given to me in November of 2009."

On April 9, 2010, the hearing officer issued a decision affirming the Director's Redetermination, finding that Starks' appeal to the initial determination was untimely and properly dismissed. On April 30, 2010, Starks requested a review of the hearing officer's decision. The Review Commission disallowed the request for review on May 12, 2010. Starks then appealed to this Court pursuant to R.C. 4141.282. Starks argues that the hearing officer's decision was unlawful, unreasonable, and against the manifest weight of the evidence.

LAW AND ANALYSIS

The Review Commission's determination that a claimant filed an untimely appeal is appealable to the court of common pleas: "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." R.C. 4141.282(H). Thus, this Court may not make factual findings or determine a witness's credibility and must affirm the Review Commission's finding if some competent, credible evidence in the record supports it. *Id.* In other words, this Court may not reverse the Review Commission's decision simply because "reasonable minds might reach different conclusions." *Id.* The Court's review is confined to the certified record provided by the commission. *Id.*

R.C. 4141.281(A) states that “[a]ny party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.” R.C. 4141.281(D)(9) extends the time to file an appeal upon sufficient evidence establishing that a “party did not actually receive the determination or decision within the applicable appeal period . . .” In that instance, “the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision.” R.C. 4141.281(D)(9).

The Court finds that a party actually receives a determination when their e-mail account, within the appeal period, receives an e-mail from ODJFS containing a copy of the determination. A party need not read or even open the e-mail from ODJFS to have actually received it. *See Konieczka v. U.C.R.C.*, 8th Dist. App. No. 95697, 2011-Ohio-4094, ¶ 6 (holding that a claimant received a decision that was e-mailed to him before the appeal deadline, though he never opened the e-mail and “didn’t know how to navigate on the computer.”). This interpretation is consistent with R.C. 4141.281(A)’s requirement that the determination merely be sent to a party. The Court’s interpretation is also consistent with Ohio Administrative Code 4141-19-01(B)(3)(a), which states that an appeal submitted electronically is timely filed when it is received at the appropriate e-mail address within the statutorily prescribed time period.

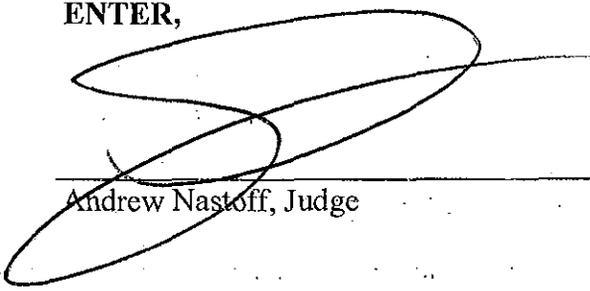
The hearing officer's decision that Starks' appeal was untimely was not unlawful, unreasonable, or against the manifest weight of the evidence. Starks testified that the determination was "given to [her] in November of 2009." This testimony provides competent and credible evidence that prior to December 16, 2009, the last day of the appeal period, Starks actually received an e-mail from ODJFS containing the determination requiring her to repay her benefits. Starks' failure to open or read the e-mail until some point in January 2010 did not toll the appeal period; her subsequent appeal fell outside of the twenty-one day period and was untimely.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the order of the State of Ohio Unemployment Compensation Review Commission is **AFFIRMED.**

This is a final appealable order.

SO ORDERED.

ENTER,



Andrew Nastoff, Judge

cc:

Ronald T. Bella
2200 Kroger Building
1014 Vine Street
Cincinnati, Ohio 45202
Attorney for Appellant, Marissa Starks

Robin A. Jarvis
1600 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
Attorney for Appellee, Director, Ohio Department of Job and Family Services

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