

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

HELEN T. MCLEAN,		CASE NO. 11CVF09-11805
Appellant,		JUDGE SHEERAN
vs.		
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,		
Appellee.		

**DECISION AND JUDGMENT ENTRY AFFIRMING DECISION OF OHIO
UNEMPLOYMENT COMPENSATION REVIEW COMMISSION
AND
NOTICE OF FINAL APPEALABLE ORDER**

SHEERAN, J.

This case is a Revised Code 4141.282 administrative appeal, by Helen T. McLean (Appellant), from a “Decision Disallowing Request for Review” that the Ohio Unemployment Compensation Review Commission mailed to Appellant on August 25, 2011. The record that the Commission has certified to the Court reflects the following facts.

On October 27, 2010, Appellant applied, by telephone, to the Ohio Department of Job and Family Services (ODJFS), for unemployment compensation benefits, for a benefit year beginning January 17, 2010 and ending January 15, 2011. Appellant provided ODJFS with a mailing address and an email address, and elected, in her application, to have ODJFS send all correspondence to her at the email address.

In a “Determination of Unemployment Compensation Benefits” issued on November 15, 2010, the Director of ODJFS notified Appellant that she had been ruled ineligible for benefits

and that she had been overpaid benefits to which she was not entitled. The Director ordered Appellant to repay the money to ODJFS. The Director notified Appellant that, if the amount was not paid in full within forty-five (45) days, the matter would be referred to the Ohio Attorney General for collection.

In the November 15, 2010 Determination, the Director notified Appellant:

APPEAL RIGHTS: If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS office provided. You may also file an appeal online at <https://unemployment.ohio.gov>. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 12/06/2010 (21 calendar days after the 'Date Issued')**. If the 21st day falls on a Saturday, Sunday, or legal holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the determination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked no later than 21 calendar days after the ending date of the physical or mental condition. If unemployed, claimants should continue to file weekly claims for benefits while the determination is under appeal. For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>. Claimant may also review the Worker's Guide to Unemployment Compensation.

Appellant did not appeal the November 15, 2010 Determination by the deadline of December 6, 2010.

On March 30, 2011, over four months after the November 15, 2010 Determination was issued, Appellant faxed a notice of appeal to ODJFS. In the notice of appeal, Appellant stated:

*** I am filing this late appeal because I didn't know there was a problem. I really did not know. I only became aware, last week when I received the letter from the Attorney General's office; the last correspondence I received from ODJS [*sic*] was about extended benefits. So I never knew there was something to appeal. I always pride myself on doing the right thing in everything that I do and

believe me if I knew there was a problem I would have taken the time to address it.

In a "Director's Redetermination" issued on April 14, 2011, the Director dismissed Appellant's appeal, based upon the following reasoning:

This agency previously issued a determination regarding the claimant's benefit rights. A copy of this determination was mailed/posted to the address on file of each interested party. On 03/30/2011, HELEN T. MCLEAN filed an appeal of this determination. Section 4141.28(G), Ohio Revised Code, provides that an interested party has 21 days from the mailing/posting date of a determination to file an appeal. The determination at issue became final. The appealing party did not supply reasons to justify the late filing. The appeal was not made within the time limit prescribed by law and cannot be accepted as timely.

On April 22, 2011, Appellant appealed the Director's Redetermination. On April 22, 2011, the Director transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission.

On May 13, 2011, a Commission Hearing Officer conducted a telephone hearing on the sole issue of the timeliness of Appellant's appeal from the November 15, 2010 Determination. Appellant testified. Inasmuch as her testimony was not lengthy, it is quoted in its entirety:

Q: And *** Ms. McLean, did we mail, did the Commission mail your hearing notice to your correct address:

A: I received a hearing notification yes, very timely.

Q: Okay. Alright now *** let me draw your attention to a determination that the ODJFS issued on *** November 15, 2010.

A: Yes Sir.

Q: And did you receive that decision?

A: No Sir, I was not aware that there was an issue.

Q: **Okay, now how do you, *** did you elect to get your correspondence from ODJFS by email or by regular mail?**

- A: **I, I receive *** by email, I receive correspondence.** But if I could add to this a little bit, because I remember that ***** I don't always check my email** so when you send something electronically, when I was collecting unemployment it would prompt me to go into the system, and that's when I would find out some information. So that would be, that would be correct, but **I never received a physical letter about an issue.** I promise you if I had only known I would have addressed it timely.
- Q: **Now, when you say that you never received a physical letter, you mean you never received anything through the regular mail?**
- A: **No Sir, I did not.** Well I received.
- Q: You just get your, well that's, **you had elected to get your correspondence by email right?**
- A: **Yeah,** but I received something physical in the mail about extended benefits and this was after I had notified through the system that I had found full-time work. And I thought, well I was missing a week or two of benefits and I thought I must have been at my end of my tier and then I went into the system to see if I could file, look for more weeks that I could report, but I never thought about going into the correspondence, I thought well, if they'll send me more money, then they will I thought. And I didn't think about it anymore. The first time Sir that I was aware that there was an issue was when I opened up a letter from the Attorney General office and this was, I have a locked mailbox in the complex. So if you had to, if I had to receive something physical from that office I believe that it would have been in my mailbox.
- Q: **Well, you, you elected to get your correspondence by email though, right?**
- A: **Well, yeah I did,** but I didn't know that there was this issue. I promise you I did not know.
- Q: **Okay, now you say, okay you say you didn't always check your email though?**
- A: **No I, well I, yeah I don't, I don't always, I have my work email and my school email box.**
- Q: Now did you later on go into your correspondence and find this decision?
- A: I didn't, no I did not know that there was a. The decision, you mean the recent decision?

- Q: The one dated November 15, 2010?
- A: I did not know that there was this issue going on.
- Q: Had you looked for that decision?
- A: I didn't know that there was an issue. When I reported my full-time work, I didn't really go back into the unemployment system at all. I went in just, maybe a couple of times to see if there was any weeks I could still claim. But then when I saw that there was no weeks, you know, but I never thought that there was an issue.
- Q: Uh huh.
- A: I never knew that there was an issue, and when I received the extension letter, that came to me physically.
- Q: Um hum.
- A: I mean, that came to me physically, I wish I kept it, but it, I didn't think to keep it.
- Q: Well, I'm not sure what the relevance of that is?
- A: Well, my, the relevance, the, what I'm trying to tie it into, if that was sent to my [*sic*] physically, why, something as important as this, why wouldn't that be sent to me physically?
- Q: **Well, okay, you have the option, did you not have the option when you applied for benefits to, to request whether you wanted your correspondence by email or by regular mail?**
- A: **I believe that's true.**
- Q: Okay, okay.
- A: That's true, but I didn't know if something as important as this, I would think that you would send it physically as well. When I received this letter about the hearing, you sent it physically.
- Q: Well, okay that's because we are the Unemployment Compensation Review Commission, we're not part of ODJFS, we don't send anything about by email.
- A: Oh, I wish I had known, I mean, if I had known I, I would have responded timely. And then there were so many errors along the way, when I tried to

work with them on even getting my appeal set up from the time I did find out about it, where I was told I had to wait for six weeks and finally after about four or five weeks of waiting, and because I had even business sense to send it certified, I could prove that they had received it, although they kept telling me they hadn't. And finally I got a hold of a lady who keyed it in for me, I faxed everything to her and her name was Edna and she typed it in for me. Otherwise, I ***.

Q: Okay, and I do see something you sent in, now that ***.

A: But it was never recorded.

Q: I had something to do with ***.

A: I mean there's been so many errors here and I don't think that it was my fault Sir.

Q: Okay and you, and I'm looking at your appeal here, you say, I filed this appeal late because I didn't know there was a problem.

A: Right, I really didn't, and I don't have a witness to that because I don't know how, how would I get a witness for something like that. That doesn't seem right to me, how could someone know what I didn't know. So I don't have a witness, I, I, I only have my character and I know you don't know me, but if you were to, I'm a law abiding citizen, I pay my taxes and I always do it timely. I think that, a person with character, I know you don't know me but I wouldn't, I'm wouldn't on the phone lying about this.

Q: Well, that really doesn't have anything that has to do with *** you know the legal we're attorneys, I'm an attorney.

A: Yeah and I'm not.

Q: (Inaudible) a legal requirement or ***.

A: And I know and I'm not.

Q: It has nothing to do with you personally.

A: But, I, I think what I'm trying to prove is that if what I'm saying to you is the truth. And if, then, wouldn't you have to bear the burden somehow of proving that I am telling, that I'm not telling the truth?

Q: *** just a second.

A: If I didn't know, I mean, I don't know how to prove that to you that Sir. Why would I make this up?

Q: Okay, I mean I'm going into your correspondence and I do see that document there dated November 15, 2010.

A: And when I found out about what was going on in early February, I went back into the system to try to pull some stuff up and I, I didn't see that document, it wouldn't allow me to pull certain documents up.

Q: Well that could be because you waited so long.

A: And I agree.

Q: (Inaudible) They probably will, have (inaudible).

A: I agree and that probably, and that's what I figured out the reason that I couldn't pull it up. But I just, I have, I just, I don't know what else to say other than I did not know that this issue existed. When I went, when I filed for, when I reported my full-time employment I did not go back into the system other than to look to see after I received that letter about extended benefits, if I needed to report more weeks and I thought, well I'll just move on from here. I didn't know that there was, because I, you know, I always reported even the part-time, every nickel I made, I thought I did everything that I needed to do correctly and I, I, you know I made sure of that. So I don't know what else to say to it really.

Q: Okay, alright, *** I will go ahead then and close the hearing. I'll review everything and you'll get a decision in the mail.

A: Okay. *Transcript (Tr.) pp. 4-9.* (Emphasis added.)

In a Decision mailed to Appellant on May 20, 2011, the Hearing Officer determined that Appellant failed to timely appeal the November 15, 2010 Determination. The Hearing Officer reasoned that, because Appellant elected to receive correspondence from ODJFS by email, she bore the burden of checking her email on a regular basis, and that her failure to check her email did not excuse her failure to file a timely appeal from the November 15, 2010 Determination. The Hearing Officer therefore affirmed the Director's Redetermination issued on April 14, 2011.

On June 8, 2011, Appellant appealed the Hearing Officer's May 20, 2011 Decision to the Commission.

On August 25, 2011, the Commission mailed a "Decision Disallowing Request for Review" to Appellant.

On September 21, 2011, Appellant appealed the Commission's Decision to this Court.

Revised Code 4141.282 governs unemployment compensation appeals to the court of common pleas. *Houser v. Ohio Dept. of Job and Family Servcs.*, 10th Dist. No. 10AP-116, 2011-Ohio-1593, ¶6. More specifically, the statute 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.

R.C. 4141.282(H).

This is the standard of review for unemployment compensation appeals, regardless of the level of appellate review. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St. 3d 694, 696 (1995). In reviewing Commission decisions, a court is not permitted to make factual findings or reach credibility determinations. *Id.* citing *Irvine v. Unemployment Comp. Bd. of Review*, 19 Ohio St. 3d 15, 18 (1985). Similarly, a court may not substitute its judgment on such issues for that of the Commission. *McCarthy v. Connectronics Corp.*, 183 Ohio App. 3d 248, 2009-Ohio-3392, ¶16, citing *Irvine* at 18. Instead, a court must "determine whether the [Commission's] decision is supported by evidence in the record." *Id.*

Revised Code 4141.281 provides:

§ 4141.281. Administrative appeals

(A) APPEAL FILED

Any party notified of a determination of benefit rights *** 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.

(D) SPECIAL PROVISIONS

(1) TIMELINESS OF APPEALS

The date of the mailing provided by the director *** is sufficient evidence upon which to conclude that a determination *** was sent to the party on that date. Appeals may be filed with the director ***. Any timely written notice by an interested party indicating a desire to appeal shall be accepted.

The director *** must receive the appeal within the specified appeal period in order for the appeal to be deemed timely filed, except that: if the United States postal service is used as the means of delivery, the enclosing envelope must have a postmark date or postal meter postmark that is on or before the last day of the specified appeal period; and where the postmark is illegible or missing, the appeal is timely filed if received not later than the end of the fifth calendar day following the last day of the specified appeal period.

The director *** may adopt rules pertaining to alternate methods of filing appeals under this section.

(9) EXTENSION OF APPEAL PERIODS

The time for filing an appeal *** under this section *** shall be extended in the manner described in the following four sentences. When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday. When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period. **When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the**

interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision. * (Emphasis added.)**

Appellant elected to receive her correspondence from ODJFS by email. *Application, Oct. 27, 2010; Tr. pp. 4-6.* On November 15, 2010, the Director sent the November 15, 2010 Determination to the email address provided by Appellant. *Determination of Unemployment Compensation Benefits, Nov. 15, 2010.* Appellant, having requested that ODJFS correspond with her by email, had an obligation to check her email. By her own admission, however, she did not regularly check her email. *Tr. pp. 4-5.* Not having checked her email, Appellant was not aware of the November 15, 2010 Determination until early February 2011, when she received a collection letter from the Attorney General. *Tr. pp. 5, 8.* Even then, she did not file her notice of appeal until March 30, 2011.

The Court has reviewed the certified record in its entirety. Having done so, the Court concludes that the Commission's "Decision Disallowing Request for Review," which the Commission mailed to Appellant on August 25, 2011, is supported by evidence in the record. The Hearing Officer found, and the record supports his findings, that Appellant received the November 15, 2010 Determination by email, pursuant to her own instructions to ODJFS, but due to her failure to check her email, she did not file a timely notice of appeal from that Determination.

Upon consideration of the certified record, the Court finds that the Commission's August 25, 2011 "Decision Disallowing Request for Review" is not unlawful, unreasonable, or against the manifest weight of the evidence. The Decision is therefore **AFFIRMED**.

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

It is so **ORDERED**.

Electronically signed by:
JUDGE PATRICK E. SHEERAN

Copies to:

LOUIS JAY CHODOSH, ESQ. (0005234), Counsel for Appellant, 2392 E. Main St., Columbus, OH 43209

YVONNE TERTEL, AAG (0019033), Counsel for Appellee, 30 E. Broad St., Fl. 26, Columbus, OH 43215

Franklin County Court of Common Pleas

Date: 06-18-2012
Case Title: HELEN T MCLEAN -VS- OHIO STATE DEPT JOB FAMILY SERVICES DIRECTOR
Case Number: 11CV011805
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "Patrick E. Sheeran", is written over a circular, textured seal or stamp.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 11CV011805

Case Style: HELEN T MCLEAN -VS- OHIO STATE DEPT JOB FAMILY SERVICES
DIRECTOR

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes