

**IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO**

LYLE A. GRAHAM,

Appellant,

vs.

PRESRITE CORPORATION, et al.,

Appellees.

*
*
*
*
*
*
*
*

CASE NO. 2011 CV 1159

JUDGE YOST

JUDGMENT ENTRY

FILED
2012 OCT 19 PM 3 55
CAROL A. MEAD
CLERK OF COURT
ASHTABULA COUNTY
OHIO

PROCEEDING: Motion to Dismiss for Lack of Jurisdiction, filed February 13, 2012.

This is a *pro se* appeal by an employee from a decision of the Unemployment Compensation Review Commission, denying unemployment benefits. Counsel for the appellee, Ohio Department of Job and Family Services, has asserted that the Court lacks jurisdiction because of the failure of the appellant to timely file his Notice of Appeal, and therefore asks the Court to dismiss this case for lack of subject matter jurisdiction, pursuant to ORC §4141.282(A). The appellant, Lyle A. Graham, has not filed a response to the Motion to Dismiss.

The appeal was filed in this court on December 21, 2011. The decision of the Unemployment Compensation Review Commission disallowing the appellant's request for review, states that it was mailed on November 3, 2011. The appellant states that he is appealing from a decision letter dated November 11, 2011. Attached to the appeal document is a statement directed to the Bureau of Unemployment, acknowledging and apologizing for the delay in filing.

ORC§4141.282(A) states "Any interested party, within thirty days after written notice of the final decision of the unemployment compensation review commission was

sent to all interested parties, may appeal the decision of the commission to the court of common pleas." In addition, the "Appeal Rights" appended to the Decision of the review commission explains the statutory requirement that the appeal must be filed within thirty days from the date of mailing the decision, and further explains grounds upon which an employee may ask the Court to determine the timeliness of a late appeal.

In the case of *Fowler v. Summa Health Systems, et al.*, 9th Dist. No.Civ.A. 22091, 2004-Ohio-6740, the employee-appellant filed a notice of appeal in the Court of Common Pleas one day late. The Court dismissed the appeal as untimely. The Court of Appeals affirmed. In the case of *Nicoll v. Ohio Department of Job & Family Services, et al.*, 2nd Dist. No.24509, 2011-Ohio-5207, the employee-appellant filed a notice of appeal in the Court of Common Pleas three days late. The Court stated that the thirty day time frame for appeal begins to run on the date the decision was mailed and noted that the timeliness of the appeal was jurisdictional. The trial court dismissed the appeal and the Court of Appeals affirmed.

Curiously, with his appeal, the appellant filed a statement directed to the Bureau of Unemployment, apologizing for the delay in filing because he did not have the money. As the appellee has pointed out, since the appellant-employee is representing himself, he is charged with knowledge of the law and legal procedures and is held to the same standard as litigants represented by counsel.

The appeal in this case was actually filed eighteen days late. Even going by the appellant's statement that he is appealing from the decision dated November 11, the appeal would still be ten days late. Thus, the Court finds that the appeal in this case

was not filed within the thirty day time period specified in ORC§4141.282(A) and therefore holds that the appellee's motion to dismiss the appeal must be granted.

ORDER: The appeal in this case is dismissed on the grounds that the court does not have jurisdiction to proceed.

THIS IS A FINAL APPEALABLE ORDER. Within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and the date upon every party who is not in default for failure to appear and shall note the service in the appearance docket.

The Clerk is directed to serve notice of this judgment and its date of entry upon the journal upon the following: Lyle A. Graham and Susan M. Sheffield, Esq.



GARY LYOST, JUDGE

18

GLY/sak