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



THOMAS HULEC  
Plaintiff

Case No: CV-13-811156

Judge: KATHLEEN ANN SUTULA

74 INSTALLATIONS, LLC, ET AL  
Defendant

**JOURNAL ENTRY**

89 DIS. W/ PREJ - FINAL

DEFENDANT'S MOTION TO DISMISS APPEAL AS UNTIMELY, FILED 8/5/2013, IS GRANTED.

ORDER ENTERED. O.S.J.

FINAL.

*O-S-J.*

\_\_\_\_\_  
Judge Signature

\_\_\_\_\_  
Date



STATE OF OHIO )  
COUNTY OF CUYAHOGA COUNTY )

IN THE COURT OF COMMON PLEAS )  
SS. )  
CASE NO. CV 13 811156 )

THOMAS HULEC )

**ORDER GRANTING APPELLEE'S**  
**MOTION TO DISMISS**

Appellant, )

v. )

74 Installations, LLC, et al. )

Appellee )

**Kathleen Ann Sutula, J:**

This matter is before the Court on the Appellee's Motion to Dismiss Appeal as Untimely. Consistent with the following, the Court grants the Appellee's motion to dismiss.

**I. Statement of Facts**

On June 12, 2013 the Ohio Unemployment Compensation Review Commission ("Commission") issued a decision disallowing Appellant Thomas J. Hulec's last request for review in his unemployment compensation appeal. Appellee filed his notice of appeal on July 24, 2013. Appellant filed a motion to dismiss for failure to file the appeal timely. The issue before the Court is whether or not Appellant's notice of appeal was filed timely as required under R.C. 4141.282. Pursuant to R.C. 4141.281(D) (9), the Court conducted a hearing to determine if the appeal was filed timely because the appeal was filed after the 30 day appeal period.

**II. Arguments**

Appellee argues that Appellant's notice of appeal was not filed timely to the Court of

Common Pleas, as required by R.C. 4141.282, because it was not filed within the 30 days.

Appellant argues that he has cause for not timely filing his appeal because he was out of town and did not receive notice of the decision until July 2, 2013. Consequently, the Court should hold that his filing was timely under R.C. 4141.282.

### III. Law

R.C. 4141.282 (A) applies the following deadline for unemployment compensation appeals to the court:

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.

R.C. 4141.282 (C) notes that this timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746, (1949).

R.C. 4141.281 (D) (9) provides extensions of this deadline as follows:

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences...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 a decision within the thirty-day appeal period provided in section 4141.282 of the Revised Code, and a court of common pleas finds that the interested party *did not actually receive the decision within that thirty-day appeal period* (Emphasis added), then the appeal period is extended to thirty days after the interested party actually receives the decision.

The only reason that an appeal period may be extended when appealing to the common pleas court is when the appeal deadline falls on a Saturday, Sunday, or holiday or the party did not receive the decision within the 30-day appeal period. *Tru-Way Design & Eng'g v. Wilson*,

2008-Ohio-475, 6<sup>th</sup> Dist. Lucas County, No. L-07-1240, 2008 Ohio App. LEXIS 416 (Feb. 8, 2008).

#### **IV. Analysis**

Appellant testified that he did not file his appeal within the 30 days because he was working in Pennsylvania for most of June and did not check his mail until he returned home at the beginning of July. However, Appellant's wife and kids visited him in Pennsylvania twice. Furthermore, he did not put a stop order on his mail, nor did he arrange other means by which to receive his mail despite having ample time. The law does not allow individuals to simply ignore their mail by virtue of R.C. 4141.282 (A), which begins tolling the 30 day period from the day that notice is sent out, not received. R.C. 4141.281 (D) (9) does provide extensions for individuals in certain equitable circumstances. However, a determination as to whether or not willful ignorance would have been adequate grounds for Appellant to receive an extension is not required by this Court. Appellant admits that he did ultimately receive the notice within the 30 day period. As such, no extension can be granted by this Court pursuant to R.C. 4141.281 (D) (9). Appellant claims he did not know what to do with the notice that he received on July 2, 2013. However, the notice of the decision has a section titled "Appeal Rights," which clearly outlines the notice of appeal procedure. Though it is not determinative of the motion, Appellant had between July 2 to July 12 to thoroughly read the notice on his own or to retain an attorney.

Ultimately, the statute only requires that the interested party receive the notice of the appeal within the 30 day period from the mailing of the notice, which Appellant concedes. The Commission's decision was mailed on June 12, 2013 and the Appellant had until July 12 to file

his notice of appeal. Appellant filed his notice of appeal on July 24, 12 days after the statutory deadline. Therefore, Appellee's Motion to Dismiss Appeal as Untimely is hereby granted.

**IT IS SO ORDERED.**

DATE: 10.15.13

*K. Ann Sutula*  
KATHLEEN ANN SUTULA, JUDGE

RECEIVED FOR FILING

OCT 16 2013

CUYAHOGA COUNTY  
CLERK OF COURTS  
By *[Signature]* Deputy