

On September 12, 2014, the Court ordered a briefing schedule, pursuant to Gen.R. 5.03(B), later amended on October 2, 2014, requiring Mitruk to file a brief in support of the appeal on or before October 24, 2014. On October 29, 2014, Debra G filed a motion to dismiss the appeal, for failure of Mitruk to file her appellant's brief. On November 3, 2014, the Court entered an Order requiring Mitruk to file her brief or face dismissal for want of prosecution.

On November 18, 2014, Mitruk filed correspondence, and on November 26, 2014, the Court deemed the correspondence as Mitruk's brief. On January 9, 2015, the ODJFS filed a Motion to Dismiss the appeal. Debra G filed no appellee brief. Mitruk filed nothing in opposition to the Motion to Dismiss. The matter is decisional.

Mitruk worked for Debra G from July 1, 2008 until January 3, 2014. Mitruk claimed that Debra G fired her without cause, while Debra G claimed that Mitruk quit without cause. On January 8, 2014, Mitruk applied for unemployment benefits.¹ On January 23, 2014, Debra G objected to Mitruk receiving unemployment benefits.²

On January 29, 2014, ODJFS issued its determination, disallowing unemployment compensation benefits and finding Mitruk quit employment without just cause.³ Mitruk appealed this determination. On February 18, 2014, Mitruk appealed the determination regarding disallowance of benefits and the finding she quit without just cause.⁴ By letter of February 26, 2014, Debra G again objected to Mitruk receiving unemployment benefits, alleging she quit

¹Certified Transcript of the Record of Proceedings (Aug. 15, 2014), Director's File.

²Director's File.

³Director's File, Determination of Unemployment Compensation Benefits (Jan. 29, 2014).

⁴Director's File.

without cause.⁵

While her appeal was pending, ODJFS issued periodic requests for information as to the issue of Mitruk's ability to work and as to the issue of Mitruk's attempts to seek suitable work, beginning the first week of February, 2014.⁶ There is nothing further in the record indicating appeal as to either of these two issues.

On March 10, 2014, the ODJFS affirmed the disallowance of unemployment benefits, finding Mitruk quit without just cause.⁷ On March 27, 2014, Mitruk timely appealed the Director's Redetermination, and the matter was transferred to the Commission for review.⁸

On April 16, 2014, the Commission held a telephonic hearing of Mitruk's appeal. Mitruk appeared, with Jermaine Hernandez as her witness. Sarah Tokles appeared on behalf of Debra G as its manager/owner, with employees Tina Harman and John Halledt as witnesses.⁹ Both Mitruk and Tokles attempted to introduce the issue of Mitruk's February foot surgery, but the hearing officer limited questioning to the issue of Mitruk's discharge and the incident of January 3 or 4, 2014, leading to the discharge.¹⁰

On April 25, 2014, the Commission reversed the Director's decision and found that Debra

⁵Certified Transcript of the Record of the Proceedings, Director's File.

⁶Director's File.

⁷Director's File.

⁸Director's File.

⁹Certified Transcript of the Record of the Proceedings, Review Commission File, Transcript of Testimony of April 16, 2014.

¹⁰Review Commission File, Transcript of Testimony of April 16, 2014, 26.

G discharged Mitruk without just cause.¹¹ Specifically, the hearing officer found:

The Director's Redetermination, issued March 10, 2014, is reversed with respect to claimant's separation from Debra G. Inc.

The claimant was discharged by Debra G. Inc without just cause in connection with work.

Claimant's Application for Determination of Benefit Rights is no longer disallowed based upon a disqualifying separation from employment. This case is remanded to the Ohio Department of Job and Family Services to determine claimant's monetary entitlement and any charges to the base period employers.

This decision rules only on the issue(s) set forth above.¹²

The decision provided notice that the time for appeal of the decision ended May 16, 2014.¹³

On April 30, 2014, ODJFS sent notice to Debra G regarding the allowance of unemployment benefits and the amount chargeable to Debra G as the base period employer.¹⁴ On May 21, 2014, Debra G faxed its appeal of the April 25, 2014 ruling reversing the Director's Redetermination and allowing Mitruk unemployment compensation benefits. On June 9, 2014, the Commission held hearing on Debra G's appeal, with Tokles again appearing on behalf of Debra G. Mitruk also participated in the hearing, but did not give testimony. The only issue addressed on appeal was the timeliness of Debra G's appeal of the decision issued April 25, 2014.¹⁵

¹¹Certified Transcript of the Record of the Proceedings, Review Commission File, Decision (Apr. 25, 2014).

¹²Review Commission File, Decision (Apr. 25, 2014), 5.

¹³Review Commission File, Decision (Apr. 25, 2014), 6.

¹⁴Review Commission File, Debra G. Inc.'s appeal faxed March 21, 2014, page 4 of 10.

¹⁵Review Commission File, Transcript of Testimony of June 9, 2014, 3.

On June 10, 2014, the Commission dismissed Debra G's appeal as untimely.¹⁶ Notice of the decision was mailed to Mitruk and Debra G. On July 10, 2014, Mitruk perfected an appeal of the June 10, 2014 decision, dismissing the Debra G appeal, and attached a copy of that decision to her appeal. Additionally, Mitruk included a narrative identifying a June 9, 2014 dismissal of appeal by the hearing officer, and raising issues unrelated to the finding that Debra G discharged her without just cause. Specifically, Mitruk alleges Debra G wrongfully discharged her without acknowledging the Commission's finding in her favor as to her discharge without just cause. Additionally, Mitruk alleges unfair or unlawful working conditions not considered in her appeal. As remedy, Mitruk seeks unemployment benefits for the period between January 4, 2014 and February 7, 2014.¹⁷

Unemployment compensation appeals are governed by statute, with appellate rights limited to those rights conferred by statute. See *Griffith v. J.C. Penney Co.*, 14 Ohio St.3d 112, 493 N.E.2d 959 (1986) (citations omitted.) Pursuant to R.C. 4141.281(A), any party may appeal a determination of an unemployment compensation claim, as Mitruk initially appealed disallowance of benefits in this case. Mitruk also appealed the redetermination by the Director, affirming disallowance of benefits, as provided under R.C. 4141.281(B). The matter proceeded to hearing before the Commission, pursuant to R.C. 4141.281(C), with the Commission reversing the determination in Mitruk's favor. Pursuant to R.C. 4141.281(C)(3), Debra G's request for review of that reversal needed to be filed within twenty-one days of ruling. After Debra G filed its request for review beyond the statutory time limit, the Commission dismissed Debra G's

¹⁶Certified Transcript of the Record of the Proceedings, Review Commission File, Decision (Jun. 10, 2014).

¹⁷Notice of Appeal (Jul. 10, 2014).

appeal.

As an initial matter, the Court notes the irregularity of the present appeal. Mitruk, and not Debra G, is appealing the dismissal of Debra G's appeal at the administrative level. However, R.C. 4141.282(A) permits any interested party to appeal the Commission's dismissal to this Court. Prior to Debra G's appeal, the Commission determined that Mitruk was discharged without just cause and allowed Mitruk's unemployment compensation claim. Based on other documents within the Director's File, it appears that additional eligibility issues were raised at the administrative level, separate from the determination that Mitruk was discharged without just cause and separate from the allowance of benefits.¹⁸ There is no record of any appeal of these separate issues at the administrative level, and Mitruk identifies only the June 10, 2014 dismissal as the decision appealed. The only issue before this Court, therefore, is dismissal of Debra G's appeal.

The standard this Court must apply is governed by R.C. 4141.282(H), which 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.

Pursuant to R.C. 4141.282(A), Mitruk filed her appeal within the thirty-day deadline, identifying

¹⁸Mitruk filed her application for benefits as provided under R.C. 4141.28, and after hearing before the Commission, benefits were allowed. Eligibility for benefits is governed under R.C. 4141.29, requiring the application for benefits, as well as a demonstration that the claimant is available for and actively seeking suitable work. See R.C. 4141.29(A)(4). A failure to be available and seek suitable work may disqualify an otherwise eligible claimant from receiving unemployment benefits. See e.g. *Bergstedt v. Steinbacher*, 27 Ohio App.3d 93, 97, 499 N.E.2d 902 (3d Dist. 1985)("Under the provisions of R.C. 4141.29(A)(4)(a), this lack of availability for work mandatorily disqualifies any individual from being entitled to benefits for any week that such lack of availability exists.")

the decision appealed from pursuant to R.C. 4141.282(C). The Commission filed the record, pursuant to R.C. 4141.282(F), and the Court issued its briefing schedule pursuant to R.C. 4141.282(G).

In her correspondence deemed the appellant's brief, Mitruk does not address the issue of timeliness of Debra G's appeal of the Commission's decision. Furthermore, the Commission reversed the determination of the Director, finding Mitruk's termination was not a "disqualifying separation from employment," and returning the matter to ODJFS for a determination of Mitruk's "monetary entitlement and any charges to the base period employers [Debra G]." Instead of addressing the sole issue in this appeal, Mitruk continues to argue that she did not quit, but was fired without cause while including numerous unrelated allegations against Debra G and Tokles.

In seeking dismissal of this appeal, the ODJFS argues that there is no controversy for this Court to address, as the Commission's final decision was in Mitruk's favor, requiring dismissal of Mitruk's appeal. While it is true that Mitruk is appealing a decision that is adverse to Debra G and in her favor, however, R.C. 4141.282(A) permits appeal of the final decision by "[a]ny interested party[.]" Mitruk is an interested party, and filed her appeal within the thirty day time period. Therefore, the present appeal is within the Court's jurisdiction to consider as provided under R.C. 4141.282.

In appealing the final decision, the Court notes that Mitruk raises allegations unrelated to the matter on appeal. These additional allegations are not before this Court. Review in the present appeal, by statute, is confined to a review of the final decision dismissing Debra G's appeal, and based solely on the record of the administrative proceeding. Therefore, while the Court has jurisdiction to consider the appeal and dismissal is not proper, the Court may not


consider the additional allegations raised by Mitruk, as such allegations are beyond the scope of her appeal.

Accordingly, considering the present appeal based on the record as certified by the Commission, this Court finds no basis to reverse the Commission's final decision. The Commission found that Mitruk did not quit, but was discharged without just cause. It was Debra G's untimely request for review of that finding that resulted in the dismissal now appealed by Mitruk. The Commission's finding was based on the receipt of the April 25, 2014 decision by Debra G before the end of the statutory appeal period on May 16, 2014, and the untimely faxed request for review on May 21, 2014. Moreover, while Tokles indicated confusion as to the correct appeal deadline based on incorrect advice from an ODJFS employee, the Commission found that principles of estoppel did not extend the time to file, and dismissed the appeal as untimely.

The Commission's finding is consistent with the law. See e.g. *Geauga Welding & Pipeline Co. v. Germano*, 11th Dist. Geauga No. 2005-G-2636, 2006-Ohio-1004, ¶9 (dismissal of administrative appeal proper as compliance with time requirement was necessary to invoke the agency's jurisdiction to consider the appeal); *Mateer v. Dir., Ohio Dep't of Job & Family Servs.*, 10th Dist. Franklin No. 07AP-966, 2008-Ohio-1426, ¶10 (principles of estoppel do not apply to state agencies, and the notification adequately informs appellant of the 21 day period to file an appeal). Furthermore, no party has argued that dismissal based on Debra G's untimely request for review was improper or otherwise contrary to law. The final decision must therefore be affirmed on appeal to this Court.

JUDGMENT ENTRY

It is therefore ORDERED that the June 10, 2014 final decision of the Ohio Unemployment Compensation Review Commission, dismissing the Appeal of Appellee Debra G, Inc., is hereby AFFIRMED.



JUDGE STACY L. COOK