

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

MICHAEL A BARNES,

CASE NO.: 2015 CV 01865

Plaintiff(s),

JUDGE TIMOTHY N. O'CONNELL

-vs-

OHIO DEPARTMENT OF JOBS AND
FAMILY SERVICES et al.,

**DECISION, ORDER AND ENTRY
GRANTING ODJFS' MOTION TO
DISMISS**

Defendant(s).

This matter is before the Court on Appellee/Defendant, Director, Ohio Department of Job & Family Services' ("ODJFS") *Motion to Dismiss* that was filed on April 20, 2015. Appellant Michael Barnes ("Barnes") filed a response on April 28, 2015. ODJFS filed a *Reply* on April 30, 2015.

I. LAW AND ANALYSIS

ODJFS argues that Barnes failed to file his *Notice of Appeal* within 30 days after the written notice of the final decision of the Commission was mailed to him, as required by O.R.C. 4141.282(A). ODJFS contends that the time limitation is a condition precedent to jurisdiction of this Court, and thus the Court lacks jurisdiction over this matter. Further, the final decision clearly stated that Barnes needed to file his appeal in the common pleas court within thirty days despite what anyone else allegedly told him about where to file the appeal.

Barnes argues that the *Motion to Dismiss* should be overruled. Barnes asserts that he spoke to an employee of ODJFS that told him to file his appeal in the Court of Appeals, which Barnes did. Barnes argues he timely filed his *Notice of Appeal* with the Court of Appeals and therefore this Court should overrule the *Motion to Dismiss*.

Barnes seeks an administrative appeal pursuant to O.R.C. 4141.282 from the decision of the State of Ohio Unemployment Compensation Review Commission (the “Commission”). The Commission’s decision was mailed to Barnes on February 11, 2015. Barnes filed his *Notice of Appeal* with this Court on April 8, 2015.

The final decision dated February 11, 2015 of the Commission states:

“APPEAL RIGHTS

An appeal from this decision may be filed to the **Court of Common Pleas** of the county where the appellant, if an employee, is resident or was last employed, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, **within thirty (30) days** from the date of mailing of this decision, as set forth in Section 4141.282(A) (B) (B), Revised Code of Ohio. ***” (emphasis added).

O.R.C. 4141.282(A) states: “[a]ny 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.”

O.R.C. 4141.282(B) states: “[a]n appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.”

“An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.”¹

The written notice of the final decision of the Commission was sent to Barnes on February 11, 2015. Barnes did not file his *Notice of Administrative Appeal* until April 8, 2015. Barnes’ *Notice of Administrative Appeal* was not filed within 30 days from the final decision of the Commission. Filing the *Notice of Appeal* with the Court of Appeals does not satisfy the requirements in O.R.C. 4141.282(A) and does not cure the jurisdictional defect. The final decision from the Commission adequately informed Barnes of the time limit for filing his appeal and the court to file it with. The Court finds that Barnes’ *Notice of Administrative Appeal* filed on April 8, 2015 was untimely. Based on this, the Court lacks subject matter jurisdiction over the matter.² ODJFS’ *Motion to Dismiss* is GRANTED as to this argument.

II. CONCLUSION

After duly considering the above matter, ODJFS’ *Motion to Dismiss* is hereby GRANTED.

This is a final appealable order, and there is not just cause for delay for the purposes of Civ. R. 54. Pursuant to App. R. 4, the parties shall file a Notice of Appeal within thirty (30) days.

SO ORDERED:

TIMOTHY N. O’CONNELL, JUDGE

**To the Clerk of Courts:
Please serve the attorney for each party and each party not
represented by counsel with Notice of Judgment and its
date of entry upon the journal.**

¹ *Crawford v. United Dairy Farmers, Inc.*, Montgomery App. No. CA 25786, 2013 Ohio 5047.

SO ORDERED:

JUDGE TIMOTHY N. O'CONNELL

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Defendant

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² *Fulton v. Unemployment Comp. Review Comm'n*, Lucas App. No. L-07-1209, 2008 Ohio 2094 (May 2, 2008).



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision Sustaining Motion
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FAMILY SERVICES

So Ordered

Timothy N. O'Connell