

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

<b>Orthopaedic &amp; Spine Center LLC,</b>		<b>Case No. 15CV-02231</b>
<b>Appellant,</b>		<b>Judge McIntosh</b>
<b>vs.</b>		
<b>Ohio Unemployment Compensation Review Commission, et al.,</b>		
<b>Appellees.</b>		

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**Decision and Judgment Entry Granting Motion of Director, Ohio Department of  
Job and Family Services, to Dismiss Revised Code 4141.282 Appeal**

**Notice of Final Appealable Order**

**McIntosh, J.**

This case is a Revised Code 4141.282 appeal, by Orthopaedic & Spine Center LLC (Appellant), from a Decision issued on February 20, 2015 by a Hearing Officer of the Ohio Unemployment Compensation Review Commission. The record that the Commission has certified to the Court reflects the following facts and procedural history.

Leslie M. Butler worked for Appellant from November 11, 2013 to November 10, 2014. On November 11, 2014, Butler applied to the Ohio Department of Job and Family Services (ODJFS) for unemployment compensation benefits for a benefit year beginning November 9, 2014.

In an initial Determination issued on December 2, 2014, ODJFS allowed Butler's application for benefits, having determined that she was discharged by Appellant without just cause in connection with work. Appellant appealed the initial Determination.

In a Director's Redetermination issued on December 19, 2014, the Director of ODJFS affirmed the initial Determination. Appellant appealed the Director's Redetermination, and the Director transferred jurisdiction of the appeal to the Ohio Unemployment Compensation Review Commission.

On January 26 and February 11, 2015, a Commission Hearing Officer conducted a hearing on the appeal. Butler testified, and Appellant presented the testimony of Heather Gore, Virginia Osborne, and Tina Terrill.

In a Decision issued on February 20, 2015, the Hearing Officer affirmed the Director's Redetermination, having concluded that Butler was discharged by Appellant without just cause in connection with work. The Hearing Officer notified the parties:

#### APPEAL RIGHTS

This decision was mailed on: February 20, 2015

A Request for Review before the U.C. Review Commission may be filed by any interested party within twenty-one calendar days after this decision is mailed. Said twenty-one day period is calculated to end on March 13, 2015.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the Hearing Officer's decision. You may file your Request for Review by mailing it to the U.C. Review Commission, PO Box 182299, Columbus, Ohio 43218-2299, or by faxing it to (614) 387-3694.

This decision was sent to the following:

Leslie M. Butler  
247 PARKLAWN CIR  
COLUMBUS, OH 43213-3802  
Via Email

Orthopaedic & Spine Center LLC  
1080 POLARIS PKY 200  
COLUMBUS, OH 43240

Attn: A.G. Velez  
The Law Office of A.G. Velez  
100 E CAMPUS VIEW BLVD STE 250  
THE ONE CROSSWOODS BUILDING  
COLUMBUS, OH 43235-4682

Appellant did not request a review of the Hearing Officer's Decision by the Commission. Instead, on March 12, 2015, Appellant filed a Notice of Appeal with this Court pursuant to R.C. 4141.282.

The Director of ODJFS has now moved the Court to dismiss this appeal on the grounds that the Hearing Officer's Decision is not a decision that is capable of being appealed pursuant to R.C. 4141.282. Appellant has not opposed the motion to dismiss. For the following reasons, the motion must be granted.

Revised Code 4141.281(C) provides:

(1) JURISDICTION

The commission shall provide an opportunity for a fair hearing to the interested parties of appeals over which the commission has jurisdiction. \*\*\*

(2) CONDUCT OF HEARINGS

Hearings before the commission are held at the hearing officer level and the review level. \*\*\*

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(3) HEARING OFFICER LEVEL

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Following a hearing, the hearing officer shall affirm, modify, or reverse the determination of the director in the manner that appears just and proper. The hearing officer's written decision shall be sent to all interested parties. The decision shall state the right of an interested party to request a review by the commission.

A request for review shall be filed within twenty-one days after the decision was sent to the party, or within an extended period as provided under division (D)(9)

of this section. **The hearing officer's decision shall become final unless a request for review is filed and allowed or the commission removes the appeal to itself within twenty-one days after the hearing officer's decision is sent.**

(4) REVIEW LEVEL

At the review level, the commission may affirm, modify, or reverse previous determinations by the director or at the hearing officer level. At the review level, the commission may affirm, modify, or reverse a hearing officer's decision or remand the decision to the hearing officer level for further hearing. \*\*\*

(5) COMMISSION EXAMINATION

The commission shall consider a request for review by an interested party, including the reasons for the request. \*\*\* The commission may allow or disallow the request for review. **The disallowance of a request for review constitutes a final decision by the commission.** (Emphasis added.)

Revised Code 4141.282(A) provides, "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. (Emphasis added.)"

Pursuant to the doctrine of failure to exhaust administrative remedies, a party seeking court action in an administrative matter must first exhaust the available avenues of administrative relief through administrative appeal. *Anderson v. Interface Elec., Inc.*, 10th Dist. No. 03AP-354, 2003-Ohio-7031, ¶ 11. In Ohio, the doctrine is a court-made rule of judicial economy which is generally required as a matter of preventing premature judicial interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record that is adequate for judicial review. *Id.* If interested parties are not required to exhaust available administrative remedies, there is the possibility that frequent

and deliberate flouting of administrative processes could weaken the effectiveness of any agency by encouraging people to ignore its procedures. *Id.*

Although failure to exhaust administrative remedies is not a jurisdictional defect *per se*, under Ohio law a complainant must exhaust any administrative remedies before invoking the common pleas court's jurisdiction. *Anderson*, ¶ 12. The doctrine has such force that it is the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. *Id.*

In the instant case, Appellant failed to exhaust the administrative remedies available to Appellant under R.C. 4141.281(C)(3). Specifically, Appellant failed to request that the Commission review the Hearing Officer's Decision. As a result of Appellant's failure to request the Commission's review, the Hearing Officer's Decision became final and binding upon Appellant, as a matter of law, on March 13, 2015.

Furthermore, pursuant to R.C. 4141.281(C)(5), a "final decision" is a decision by the Commission disallowing a request for review. Thus, under the statute, a "final decision" is made by the Commission, not by the Director or by a Hearing Officer, and only after an aggrieved party requests a review, which is then denied by the Commission. See *Anderson, supra*, ¶ 15. Revised Code 4141.282(A) provides for an appeal to this Court from a "final decision" of the Commission. In the instant case, there was no "final decision" of the Commission subject to this Court's appellate review, because Appellant did not first request that the Commission review the Hearing Officer's Decision.

For these reasons, Appellant cannot invoke the appellate jurisdiction of this Court. The Director's motion to dismiss this appeal, filed on May 14, 2015, which Appellant has not opposed, is therefore **GRANTED**. This case is hereby **DISMISSED** with prejudice.

So **ORDERED**.

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

Copies electronically transmitted to all counsel of record.

Franklin County Court of Common Pleas

**Date:** 08-10-2015  
**Case Title:** ORTHOPAEDIC & SPINE CENTER LLC -VS- OHIO STATE  
UNEMPLOYMENT REVIEW COMM ADMR ET AL  
**Case Number:** 15CV002231  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a blue circular official seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the center, and "ALL THINGS ARE POSSIBLE" at the bottom.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 15CV002231

Case Style: ORTHOPAEDIC & SPINE CENTER LLC -VS- OHIO  
STATE UNEMPLOYMENT REVIEW COMM ADMR ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0022312015-05-1499980000  
Document Title: 05-14-2015-MOTION TO DISMISS  
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 15CV0022312015-05-2199980000  
Document Title: 05-21-2015-MOTION TO EXTEND TIME  
Disposition: MOTION IS MOOT