

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

HASON USA CORP.	:	
	:	
APPELLANT,	:	CASE NO. 15 CVF 10165
	:	
vs.	:	JUDGE KIMBERLY COCROFT
	:	
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	
	:	
APPELLEE.	:	

DECISION AND ENTRY

COCROFT, J.

This matter comes before this Court upon Appellant Hason USA Corp.’s appeal from an October 21, 2015 Decision of the Unemployment Compensation Review Commission (“Review Commission”) concluding that the employer did not file a timely appeal for reconsideration to the Determination of Employer’s Liability and Contribution Rate Determination, dated February 14, 2015.

As background, on February 14, 2015, a Determination of Employer’s Liability and Contribution Rate Determination was mailed to Appellant, Hason USA Corp., concluding that it was a successor in interest to Odom Industries, Inc. pursuant to R.C. 4141.24, and effective as of August 27, 2014. The record demonstrates that by a facsimile dated May 13, 2015, Appellant’s attorney, Nicole M. Lundrigan, filed a request for reconsideration. On May 21, 2015 the appeal was dismissed for lack of jurisdiction pursuant to R.C. 4141.26(D)(2). On June 18, 2015, Appellant appealed the Director’s Reconsidered Decision to the Review Commission. On August 19, 2015 the Review Commission held a hearing and concluded that Appellant did not file a timely

application for reconsideration as the Determination Rate. The Review Commission concluded that the Rate Determination was final and that ODJFS lacked jurisdiction.

In the Decision mailed on October 21, 2015, the Review Commission's Hearing Officer set forth the following Findings of Fact:

A notice was sent to the employer, by electronic mail, on February 14, 2015. This date of issuance has been established by documentation supplied by the Department.

This notice informed the employer that correspondence was attached regarding the employer's ODJFS unemployment compensation tax account. This correspondence was a copy of the Determination of Employer's Liability and Contribution Rate Determination, dated February 14, 2015, for Hason USA Corp.

This notice was received by Hason USA Corp., by electronic mail on February 14, 2015. It was deleted prior to reviewing the cited correspondence. Hason USA Corp had elected to receive tax correspondence by electronic mail. The last day to file a timely application for reconsideration was March 16, 2015.

Hason USA Corp, through its attorney, filed an application for reconsideration to the Determination of Employer's Liability and Contribution Rate Determination, on May 13, 2015, by electronic mail.

October 21, 2015 Decision.

Accordingly, the Director's Reconsidered Decision, mailed May 21, 2015, was affirmed. The Review Commission reasoned that Appellant did not file a timely application for reconsideration of its February 14, 2015 Rate Determination. The notice/determination was issued, and received by the employer before the appeal period ended. Appellant filed its application after the statutory thirty (30) day time period expired. Therefore, the determination was final, and the Director and Review Commission lacked jurisdiction to reconsider the matter. October 21, 2015 Decision.

Standard of Review

R.C. 4141.26(D)(2) provides, in relevant part:

The court may affirm the determination or order complained of in the appeal if it finds,

upon consideration of the entire record, that the determination or order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of such a finding, it may reverse, vacate, or modify the determination or order or make such other ruling as is supported by reliable, probative and substantial evidence and is in accordance with law...

Law and Analysis

R.C. 4141.26(D)(2) mandates that an employer's request for reconsideration must be filed within thirty (30) days after the mailing of the Director's Determination. Moreover, O.A.C. 4141-21-01 provides, in pertinent part:

An employer applying for reconsideration pursuant to division (D) and/or (E) of section 4141.26 of the Revised Code shall file an application within thirty days after the determination was sent to the employer or the employer's authorized representative. Such application shall provide the name and address and official position of the person filing the application, the name, address, and identification number of the employer, and a brief statement of the reasons for application for reconsideration.

The failure of an employer to comply with the mandatory requirements of R.C. 4141.26(D)(2) results in a loss of jurisdiction. The record demonstrates that the determination was emailed to the employer on February 14, 2015. The record shows that the employer's request for reconsideration was faxed on May 13, 2015 and thus, was not filed within the thirty day statutory time limit. Therefore, the Director lacked jurisdiction to reconsider the determination. The record demonstrates that the Determination of Employer's Liability and Contribution Rate Determination, mailed February 14, 2015 was affirmed. October 21, 2015 Decision.

DECISION

This Court concludes as a matter of law that the Review Commission's October 21, 2015 Decision is supported by the evidence in the record, and that evidence is reliable, probative and substantial. Moreover, the October 21, 2015 Decision is in accordance with law, and is hereby **AFFIRMED.**

On January 22, 2016, Appellant filed a Motion to Supplement the Record. In that motion Appellant is requesting that this Court include in the record a May 13, 2015 letter, with an attached Affidavit, that was sent from Appellant's Attorney, Nicole Lundigran, to Appellee, Ohio Department of Job and Family Services, Office of Unemployment Compensation, Unemployment Tax Appeals, in support of Appellant's appeal of its revised contribution rate.

On February 1, 2016, Appellee filed a memorandum contra asserting that the statutory authority for the Unemployment Compensation Review Commission filing the record with this Court is set forth in R.C. 4141.26.

The issue before the Review Commission and this Court is whether the employer (Appellant) filed a timely application for reconsideration to the Determination of Employer's Liability and Contribution Rate Determination, dated February 14, 2015. Thus, the merits of the underlying case are not before this Court, and the issue regarding the contribution rate clearly is not before this Court. Upon review, Appellant's Motion to Supplement the Record, filed on January 22, 2016, is hereby **DENIED**.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civil Rule 58, the Clerk of Court shall serve notice upon all parties of this judgment and its date of entry.

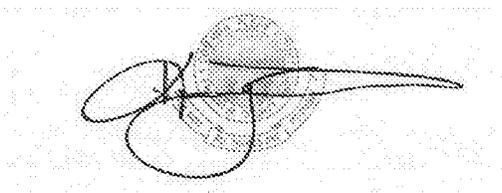
IT IS SO ORDERED.

Copies to all parties registered for e-filing

Franklin County Court of Common Pleas

Date: 02-12-2016
Case Title: HASON USA CORP -VS- OHIO STATE DEPARTMENT JOB & FAMILY SERVI
Case Number: 15CV010165
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'K. Cocroft', is written over a light gray, textured rectangular background.

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 15CV010165

Case Style: HASON USA CORP -VS- OHIO STATE DEPARTMENT
JOB & FAMILY SERVI

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0101652016-01-2299970000
Document Title: 01-22-2016-MOTION - PLAINTIFF: HASON USA
CORP - MOTION TO SUPPLEMENT THE RECORD ON APPEA
Disposition: MOTION DENIED