

Commission reached this decision based upon the facts as found in the certified record of the proceedings below.

The Ohio Department of Job and Family Services (“ODJFS”) originally allowed Adams’s claim for unemployment benefits on July 7, 2002. Based on this, Adams received compensation for the weeks ending December 21, 2002; January 4, 2003; February 1, 2003; and February 8, 2003 through July 5 of that year.

On November 6, 2003, a determination was issued that Adams made fraudulent misrepresentations in order to obtain benefits she was not otherwise entitled. Adams claimed to have received notice of this determination sometime between November and December 2003, but she could not provide an exact date. *See* Copy of U.C. Review Commission File, Hearing Transcript, p. 4:4.¹ Regardless, Adams stated that she had filed an appeal with the Review Commission between November 28 and December 7, before specifically settling on December 6 as the day on which she faxed her appeal. *Id.*, p. 4:5.

The Review Commission, however, never received this alleged appeal. In fact, it was not until Adams filed another appeal on March 9, 2004, that notice was received of Adams’s appeal. A hearing was scheduled for May 11, 2004. At that hearing, the hearing officer concluded that Adams had worked for Bath and Body Works three of the weeks she had been collecting unemployment benefits, but she had not reported this income to ODJFS. Furthermore, the hearing officer determined that Adams’s appeal was not timely filed since under Ohio Revised Code Sections 4141.281(A) and 4141.281(D)(9) any appeal related to this matter had to have been filed by November 28, 2003.

¹ All further citations to the hearing transcript shall be noted as “TR.”

Adams moved for further appeal with the Review Commission, and the Review Commission denied that final administrative appeal. Adams now appeals to this Court and argues for the introduction of new evidence for *de novo* review.

I. Standard of Review

Upon appeal to the Court, section 4141.282(H) of the Ohio Revised Code delineates the standard of review this Court must apply. Specifically, R.C. §4141.282(H) requires the Court to affirm the Review Commission's decision unless that decision is unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.* (1995), 73 Ohio St.3d 694. This Court, therefore, may only consider whether or not the decision made by the administrative agency is supported by competent and credible evidence. *MacMillan v. Flow Polymers, Inc.* (Cuyahoga 2004), Nos. 83197 & 83203, 2004-Ohio-1252.

Section 4141.282(H) and prior versions of the statute have been quite explicit that "in an unemployment compensation appeal the proceedings in the trial court are not proceedings *de novo* and new evidence may not be taken." *Corns v. Transport Assoc., Inc.* (Hamilton 1983), 1983 WL 5282. As if the plain language of the statute was not enough, Ohio's courts have repeatedly stressed that Chapter 2506 does not govern appeals from state agencies. See e.g., *Noe Bixby Road Neighbors v. Columbus City Council* (Franklin 2002), 150 Ohio App.3d 305; *Fair v. School Emp. Retirement System of Ohio* (Franklin 1975) 44 Ohio App.2d 115.

When the statutory purposes and roles of ODJFS and the Review Commission are examined, it is certain that these agencies are state agencies and not arms of a political subdivision. See e.g., O.R.C. §4141.06. Any argument, therefore, for new

evidence arising under the auspices of Chapter 2506 of the Revised Code is non-persuasive as that chapter is inapplicable to the circumstances of this case.

Given the law as detailed above, Adams's request to introduce new evidence for *de novo* review must fail. Adams was offered the opportunity to proffer evidence concerning the timeliness issue at the hearing, but she declined to do so. *See* Tr. p. 7:2-3. By statute this Court is limited solely to the record as developed at the administrative level.

II. The Timeliness of Adams's Appeal

The issue, therefore, for the Court to determine is whether the Review Commission's decision deeming Adams's appeal untimely was unlawful, unreasonable, or against the manifest weight of the evidence. As previously detailed, Section 4141.281(A) requires an appeal to be filed within 21 days after the written determination. The right to appeal a re-determination, such as the one that denied Adams unemployment benefits, is established by this statutory framework. Any appeal taken from the decision, therefore, must comply in strict accordance with the statute. *Miller v. Cuyahoga Cnty. Auditor Office of Human Resources* (Cuyahoga 1999), 1999 WL 500166.

In this instance, Adams appealed the decision on March 9, 2004. There is no doubt that this falls well outside the 21-day window provided for under the statute. Although Adams asserts that she sent a fax appealing the November 6 redetermination, there is no evidence that any fax actually was transmitted.

Although, Ohio Administrative Code 4146-13-01 permits a claimant to file an appeal via fax, the regulations also specify when those faxed appeals are deemed filed.

In particular, the Administrative Code states that an appeal is considered filed when the fax is actually received. *See* Oh. ADC 4146-13-01(B). A recent Eighth District Court of Appeals case offers some illumination as to how this Court should proceed.

In *Weisblat v. Unemployment Comp. Review Com'n of Ohio* (2003 Cuyahoga), 2003-Ohio-3540, the appellant claimed to have mailed her appeal within the 21-days mandated by the statute. The Review Commission, however, did not have any records that evidenced receipt of the appeal. At the hearing held on that matter, the only evidence concerning the alleged mailing was the appellant's testimony. The Review Commission decided that the appeal was untimely, the Common Pleas Court affirmed that ruling, and the appellate court upheld the trial court's decision.

In its holding, the 8th District noted that the appellant did not submit any evidence in support of her contention. Absent that evidence, the appeals court held that the Review Commission was in a better position to assess the credibility of the appellant and that its finding that the appeal was untimely was not against the weight of the evidence.

Although *Weisblat* deals with an appeal sent through the postal system, it is on point in so far as the record was void of any evidence of the appellant's assertions that an appeal had been timely filed. Similarly, in the case presently before the Court, there is no evidence that Adams sent her faxed appeal between November 28 and December 7. Likewise, there is a lack of evidence to support any claims that she did not receive the re-determination order shortly after the ruling was issued on November 6.

While a party's self-serving statements may be sufficient evidence in some contexts, such as a Civil Rule 60(B) motion arguing for relief based on lack of actual

receipt of the complaint, see e.g. *Riley v. Cleveland Television Network* (Cuyahoga 2004), 2004-Ohio-3299, this Court cannot ignore the plain language of the Revised and Administrative Code, along with the precedents of the Cuyahoga County Court of Appeals. As a result, the Review Commission's decision is supported by the manifest weight of the evidence.

III. Conclusion

Having reviewed the entire certified record, the Court affirms the decision of the State of Ohio Unemployment Review Commission finding that Appellant's appeal was untimely filed. The Court holds that this is based on competent and credible evidence and is not unlawful, unreasonable, or against the manifest weight of the evidence.

FINAL.

DATE: December ____, 2004

KATHLEEN ANN SUTULA, JUDGE

SERVICE

A copy of the foregoing Journal Entry and Opinion has been sent via regular U.S.

mail on this _____ day of December, 2004, to the following:

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