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**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

2018 OCT -5 PM 1:34

BARBARA A. WIELAND
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OHIO

GREGORY A. PIERCE	:	
Appellant	:	CASE NO. 2016 CVF 01279
vs.	:	CASE NO. 2016 CVF 01702
	:	Judge McBride
DIRECTOR OF OHIO DEPARTMENT OF JOB AND FAMILY SERVICES, ET AL.,	:	DECISION/ENTRY
Appellees	:	

W. Kelly Lundrigan and Nicole M. Lundrigan, counsel for appellant Gregory A. Pierce, 1080 Nimitzview Drive, Suite 402, Cincinnati, Ohio 45230.

Attorney General of Ohio, Robin Jarvis, Assistant Attorney General, counsel for the appellee Director of Ohio Department of Job and Family Services, 441 Vine Street, Suite 1600, Cincinnati, Ohio 45202.

This cause is before the court for consideration of the merits of the appeals filed by Gregory A. Pierce in Case Nos. 2016 CVF 01279 and 2016 CVF 01702. Both parties waived oral argument as to the merits of the appeals, and the court held a hearing on March 19, 2018, after which it took the appeals under advisement.

Upon consideration of the appeals, the certified records of the proceedings, the written arguments of counsel, and the applicable law, the court renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

Both cases 2016 CVF 01279 and 2016 CVF 01702 relate to the same set of facts. The appellant Gregory A. Pierce was employed with Ohio Oklahoma Hearst Television Inc. (hereinafter referred to as "Hearst") beginning February 4, 2002.¹ The appellant was discharged in September of 2015.²

On September 28, 2014, the appellant filed an Application for Determination of Benefit Rights.³ On September 30th, the Ohio Department of Job and Family Services (hereinafter referred to as "ODJFS") issued correspondence to the appellant via email titled "New Claim Instruction Sheet."⁴ The sheet read:

**"IMPORTANT INFORMATION – READ CAREFULLY –
KEEP FOR YOUR RECORDS * * ***

You will receive the **Workers' Guide to Unemployment Compensation** in a separate mailing. Carefully read the booklet * * *.

CLAIMS FOR BENEFITS FOR WEEKS OF UNEMPLOYMENT

What? You have filed an application to determine your eligibility for unemployment benefits. However, you must tell ODJFS which weeks you wish to be paid. Each week starts on Sunday and ends on Saturday.

How? For your convenience, you may file your weekly continued claims online or by telephone:

ONLINE: You may log on to your account at the ODJFS unemployment compensation website at:

¹ State of Ohio Unemployment Compensation Review Commission Decision ("UCRC Decision"), dated December 17, 2014.

² Id.

³ Id.

⁴ New Claim Instruction Sheet, dated September 30, 2014.

<https://unemployment.ohio.gov> and select the weekly claim option from the Main Menu.

TELEPHONE: You may call the automated telephone system at 1-877-644-6462 from a touch-phone telephone.

WHEN? * * * Claims must be filed **no later** than 21 days after the last day of the week. *** * *** For more information about filing claims for benefits for weeks of unemployment, refer to your **Workers' Guide to Unemployment Compensation.**"⁵

At the bottom of the sheet, it reads: "Remember, if you do not file a claim for benefits for the week, you will not receive benefits for that week. For more information about filing claims for benefits for weeks of unemployment, refer to your **Worker's Guide to Unemployment Compensation.**"⁶

The Office of Unemployment Compensation issued its determination that the appellant was ineligible for unemployment compensation benefits on October 16, 2014.⁷

The determination stated:

"If unemployed, claimants should continue to file weekly claims for benefits while the determination is under appeal. For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>. Claimants may also review the **Worker's Guide to Unemployment Compensation."⁸**

⁵ (Emphasis original.) Id.

⁶ (Emphasis original.) Id. Of note, the Worker's Guide to Unemployment Compensation is not part of the certified records, and therefore the court is unable to examine the directions it contained for filing claims for benefits. The court can only consider evidence that is part of the certified record. *Abrams-Rodkey v. Summit Cty. Children Servs.*, 163 Ohio App.3d 1, 2005-Ohio-4359, 836 N.E.2d 1, ¶ 31-32 (9th Dist.), citing *Hall v. American Brake Shoe Co.*, 13 Ohio St.2d 11, 14, 233 N.E.2d 582 (1968).

⁷ Office of Unemployment Compensation, dated Oct. 16, 2014.

⁸ (Emphasis original.) Id.

On October 24, 2014, the appellant appealed the determination.⁹ On November 7th, the director of the Office of Unemployment Compensation affirmed the determination to deny benefits to the appellant upon finding that he voluntarily quit his employment with Hearst without just cause.¹⁰ On November 18th, the appellant filed an appeal from the redetermination.¹¹

On November 20, 2014, ODJFS transferred jurisdiction to the Unemployment Compensation Review Board.¹² On December 9th, a hearing was held before a hearing officer.¹³ On December 17, 2015, the hearing officer issued a decision finding that the appellant was discharged for just cause and otherwise affirmed the director's redetermination denying unemployment benefits.¹⁴

The appellant filed a request with the Unemployment Compensation Review Commission (hereinafter referred to as "UCRC") to review the hearing officer's decision on January 2, 2015.¹⁵ On March 11th, the Commission affirmed the hearing officer's decision.¹⁶ The appellant appealed to the Clermont County Court of Common Pleas on April 9, 2015 in Case No. 2015 CVF 00470. On February 12, 2016, the court reversed UCRC's denial of unemployment compensation benefits.¹⁷

⁹ UCRC Decision, dated Nov. 7, 2014.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ UCRC Decision, dated Nov. 7, 2014.

¹⁵ *Pierce v. Director of Ohio Department of Jobs & Family Servs.*, C.P. Clermont No. 2015 CVF 00470 (Feb. 12, 2016).

¹⁶ Id.

¹⁷ Id.

On March, 7, 2016, the Office of Unemployment Compensation issued its determination reflecting the court's reversal and allowance of benefits.¹⁸ The one-year benefit year began on September 28, 2014, and allowed a weekly benefit amount of \$499, for a total benefits payable amount of \$12,974.¹⁹

Relevant to Case No. 2016 CVF 01279, in a determination issued by the Office of Unemployment Compensation on May 20, 2016, the appellant was informed that "[c]laims for the period 9/28/2014 through 10/11/2014 were not filed within the time limits established by the Ohio Unemployment Compensation Law and Administrative Rule 4141-27-05. * * * Therefore, the claimant is not eligible to receive benefits from 9/28/2014 through 10/11/2014."²⁰

On June 1, 2016, the appellant appealed the determination.²¹ On June 16th, the director of the Office of Unemployment Compensation affirmed the determination finding that the appellant's claim for September 28, 2014 through October 11, 2014 was untimely.²² On July 5th, the appellant filed an appeal from the redetermination.²³

On July 6, 2016, ODJFS transferred jurisdiction to UCRC.²⁴ On August 1st, a hearing was held before a hearing officer.²⁵ When asked why he did not file his claim for the period of September 28th through October 11th of 2014 until May 12, 2015, the appellant responded:

¹⁸ Office of Unemployment Compensation, dated March 7, 2016.

¹⁹ Id.

²⁰ Office of Unemployment Compensation, dated May 20, 2016.

²¹ Letter of Appeal, dated June 1, 2016.

²² Office of Unemployment Compensation, dated June 16, 2016.

²³ Letter of Appeal, dated July 5, 2016.

²⁴ ODJFS Transfer to UCRC, dated July 6, 2016.

²⁵ UCRC Decision, Docket No. H-2016010489. There is no date listed on the decision indicating when it was issued.

"I was denied my initial claim and then received your letters indicating to continue to file my weekly claims, but every time I went to your website to do so, it told me 'no new weekly claims could be filed.' So, once we went through all the appeal process and went to court and the court ruling came in, I went back again, still couldn't file anything, so then I had my attorney contact the Department to see what were [sic] supposed to do * * *."²⁶

When asked whether he contacted ODJFS after being unable to file online, the appellant responded: "Just tried to do it on-line under the (inaudible) when the websites that no weekly claims could be filed, I didn't call because I assumed you guys were under the same umbrella that if your website told me one thing, you were going to tell me the same thing on the phone."²⁷ The appellant first contacted ODJFS to speak to a representative in February of 2015.²⁸

The hearing officer issued a decision finding that the appellant's claim was untimely and affirming the Director's redetermination.²⁹ The hearing officer made the following findings of fact:

"Claimant was unemployed during the weeks ending October 4, 2014 and October 11, 2014. He did not file his weekly claims for benefits for those weeks until May 12, 2016. He tried to file his weekly claims online while his case was being appealed. When he was unable to do so, claimant did not contact the Ohio Department of Job and Family Services (ODJFS) to see why he could not file these weekly claims. Claimant did not contact an ODJFS representative for help in filing these claims until February 2016."³⁰

²⁶ Tr., pg. 5 (Aug. 1, 2016).

²⁷ Tr., pg. 5 (Aug. 1, 2016).

²⁸ Tr., pg. 6 (Aug. 1, 2016).

²⁹ UCRC Decision, Docket No. H-2016010489.

³⁰ Id.

The hearing officer concluded that the appellant had not shown good cause as to why his claims should not be timely filed.³¹

On August 4, 2016, the appellant appealed the hearing officer's decision.³² On August 17, 2016, UCRC issued a decision disallowing a request for review of the hearing officer's decision.³³ The appellant appealed UCRC's decision disallowing request for review on September 14, 2016 in the Clermont County Court of Common Pleas in Case No. 2016 CVF 01279.

Relevant to Case No. 2016 CVF 01702, in three determinations issued by the Office of Unemployment Compensation on June 28, 2016, the appellant was informed that he was ineligible to receive benefits, due to not filing claims within the time limits, for three for unemployment compensation benefits claims for October 12, 2014 through November 15, 2014, October 19, 2014 through November 29, 2014, and March 1, 2015 to March 7, 2015.³⁴ On July 11, 2016, the Office of Unemployment Compensation issued three more determinations denying appellant's claims for the same reason for the following periods: January 11, 2015 to January 17, 2015, February 15, 2015 to February 21, 2015, and March 1, 2015 through March 7, 2015 (the June 28th letter also denied this last time period).³⁵

On July 19th and August 1st of 2016, the appellant appealed the five determinations.³⁶ On August 3rd and 16th, the director of the Office of Unemployment Compensation affirmed the determinations finding that the appellant's five claims were

³¹ Id.

³² Letter of Appeal, dated Aug. 4, 2016.

³³ UCRC Decision, dated Aug. 17, 2016.

³⁴ Office of Unemployment Compensation Letter, dated June 28, 2016.

³⁵ Office of Unemployment Compensation Letters, dated July 11, 2016 and August 1, 2016.

³⁶ Letter of Appeal, dated June 1, 2016.

untimely.³⁷ On August 23rd and September 6th, the appellant filed an appeal from the redeterminations.³⁸

On August 25th and September 8th of 2016, ODJFS transferred jurisdiction to UCRC.³⁹ The five claims were all heard before one hearing officer on September 16th.⁴⁰ As in the previous hearing, the appellant explained that he tried to file claims online but experienced technical difficulties. When asked why he did not pick-up the phone and call, the appellant testified: "I could have, but again, when you're directing me to your website in this day and age, I did the majority of my communication on-line. I don't pick up the phone anymore. So, I'm under the assumption your website is correct."⁴¹

The hearing officer issued a decision finding that the appellant's claim was untimely and affirming the Director's redetermination.⁴² The hearing officer made the following findings of fact:

"Claimant's application was initially denied by ODJFS. The claimant received a copy of both 'The New Claim Instruction [sic] and 'The Worker's Guide to Unemployment Compensation'. Both documents state that you can file a claim by computer or by phone. The claimant's application for benefits was denied by an initial determination. He attempted to file a weekly claim and/or register for continued claims by computer. The computer would not allow him to file any claims, or register for continued claims as required. The claimant did not attempt to file claims by phone, nor did he seek assistance until after a decision was issued in his favor and the application for the benefit year beginning September 28, 2014 was allowed. The Clermont County Court of Common Pleas issued its decision on February 12, 2016

³⁷ Office of Unemployment Compensation Letters, dated August 3, 2016 and August 16, 2016.

³⁸ Letter of Appeal, dated August 23, 2016 and September 6, 2016.

³⁹ ODJFS Transfers to UCRC, dated August 25, 2016 and September 8, 2016.

⁴⁰ UCRC Decision, Docket No. H-2016012986. There is no date listed on the decision indicating when it was issued.

⁴¹ Tr., pg. 7 (Sept. 16, 2016).

⁴² Tr., pg. 7 (Sept. 16, 2016).

allowing the claimant's application based upon a nondisqualifying separation."⁴³

The hearing officer concluded that, since the appellant never telephoned ODJFS for help in filing his claims, his argument that he could not fulfill his responsibility to timely file by computer had no merit.⁴⁴

On October 10, 2016, the appellant appealed the hearing officer's decision on the five claims.⁴⁵ On October 26, UCRC issued a decision allowing a request for review of the hearing officer's decision.⁴⁶ On November 9, 2016, the UCRC affirmed the hearing officer's decision.⁴⁷ The appellant appealed the UCRC's decisions on December 9, 2018 in the Clermont County Court of Common Pleas in Case No. 2016 CVF 01702.

Relevant to both Case Nos. 2016 CVF 01279 and 2016 CVF 01702, the court indicated in its briefing schedule that the parties could submit one brief as to both cases, if they so chose. Further, the parties waived oral argument on the appeal. On January 31, 2018, the appellant filed his appellate brief in support of his appeal as to both cases. On March 1st, ODJFS filed its appellate brief as to both cases. The court took the appeals under advisement on March 19th.

STANDARD OF REVIEW

⁴³ UCRC Decision, Docket No. H-2016012986.

⁴⁴ *Id.*

⁴⁵ Letter of Appeal, dated Oct. 10, 2016.

⁴⁶ UCRC Decision, Dated Oct. 26, 2016.

⁴⁷ UCRC Decision, Dated Nov. 9, 2016.

The standard of review in unemployment compensation benefits cases is "well-established."⁴⁸ R.C. 4141.282(H) sets forth a common pleas court's standard of review in appeals taken from a decision of the Unemployment Compensation Review Commission.⁴⁹ A reviewing court must reverse, modify, remand, or vacate the commission's decision when the decision is "unlawful, unreasonable, or against the manifest weight of the evidence."⁵⁰ "Otherwise, the court shall affirm the decision of the commission."⁵¹

In determining if the commission's decision is supported by the "manifest weight of the evidence," courts apply the "civil manifest weight of the evidence standard."⁵² The standard requires the decision to be "supported by some competent, credible evidence going to all the essential elements of the case * * *."⁵³

Reviewing courts, including trial courts, are not permitted to "make factual findings or to determine the credibility of witnesses."⁵⁴ Moreover, an appeal to a trial or appellate court cannot result in a *de novo* trial.⁵⁵ The Unemployment Compensation Review Board

⁴⁸ *Johnson v. Edgewood City School Dist. Bd. of Edn.*, Unempl. Ins. Rep. (CCH) P 10, 268, 2010-Ohio-3135, ¶ 9 (12th Dist.).

⁴⁹ *Warren County Auditor v. Sexton*, 12th Dist. Warren No. 05CV64632, 2007-Ohio-7081, ¶ 18.

⁵⁰ R.C. 4141.282(H) and *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 1995-Ohio-206, 653 N.E.2d 1207, paragraph one of the syllabus. See *Warren Cty. Aud. V. Harpur*, 12th Dist. Warren No. CA2016-01-003, 2016-Ohio-7547, ¶13, citing R.C. 4141.282(H) (holding same).

⁵¹ *Bernard v. Unemployment Comp. Review Comm'n*, 136 Ohio St.3d 264, 2013-Ohio-31, 994 N.E.2d 437, ¶ 9, citing R.C. 4141.282(H).

⁵² *Mustafa v. St. Vincent Family Ctrs., Inc.*, Unempl.Ins.Rep. (CCH) P 10, 326, 2012-Ohio-5775, ¶ 6 (10th Dist.).

⁵³ *Mustafa*, 2012-Ohio-5775, ¶ 6, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

⁵⁴ *Tzangas*, 73 Ohio St.3d at 696. See *Harpur*, 2016-Ohio-7547 at ¶ 13, citing *Tzangas*, 73 Ohio St.3d at 696 (holding same).

⁵⁵ *Id.* at 696-97.

is the only fact finder.⁵⁶ When decisions are “close questions,” reviewing courts leave the board’s decisions undisturbed.⁵⁷

However, the reviewing courts share the duty to determine “whether the board’s decision is supported by evidence in the record.”⁵⁸ Notwithstanding, “[t]he fact that reasonable minds might reach different conclusions is not a basis for the reversal of the board’s decision.”⁵⁹ Hence, the reviewing court “must affirm the commission’s findings if some competent, credible evidence in the records” supports the decision.⁶⁰

The claimant bears the burden of proving “entitlement to unemployment compensation benefits.”⁶¹ Under R.C. 4141.46, “Sections 4141.01 to 4141.46, inclusive, of the Revised Code [governing unemployment compensation benefits] shall be liberally construed.” Thus, courts must “bear in mind that the unemployment compensation statutes should be construed liberally in favor of the applicant.”⁶² Even so, courts “have never read R.C. 4141.46 to say that courts must interpret statutes and regulations with deference to the interpretation of the affected party and against the interpretation of the state agency charged with enforcement of the statutory/regulatory scheme.”⁶³ Rather, “courts * * * must give due deference to an administrative interpretation formulated by an

⁵⁶ *Id.* at 697.

⁵⁷ *Irvine v. State Unemployment Compensation Bd. of Review*, 19 Ohio St.3d 15, 18, 482 N.E.2d 587 (1985).

⁵⁸ *Tzangas*, 73 Ohio St.3d at 696.

⁵⁹ *Id.*, quoting *Irvine*, 19 Ohio St.3d 15.

⁶⁰ *Williams v. Ohio Dept. of Job and Family Servs.*, 129 Ohio St.3d 332, 2011-Ohio-2897, 951 N.E.2d 1031, ¶ 20.

⁶¹ *Irvine*, 19 Ohio St.3d at 17.

⁶² *Johnson v. SK Tech, Inc.*, 2d Dist. Montgomery No. 23522, 2010-Ohio-3449, ¶ 19, citing *Clark Cty. Bd. of Mental Retardation & Developmental Disabilities v. Griffin*, 2d Clark No. 2006-CA-32, 2007-Ohio-1674, ¶ 10.

⁶³ *Bernard*, 2013-Ohio-3121 at ¶ 12.

agency with substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command."⁶⁴

LEGAL ANALYSIS

R.C. 4141.29 governs eligibility and qualification requirements for claimants desiring unemployment compensation benefits. Under R.C. 4141.29:

(A) No individual is entitled to a waiting period or benefits for any week unless the individual:

(1) Has filed a valid application for determination of benefit rights in accordance with section 4141.28 of the Revised Code;

(2) Has made a claim for benefits in accordance with section 4141.28 of the Revised Code;

(3)(a) Has registered for work and thereafter continues to report to an employment office or other registration place maintained or designated by the director of job and family services. Registration shall be made in accordance with the time limits, frequency, and manner prescribed by the director.

(b) For purposes of division (A)(3) of this section, an individual has 'registered' upon doing any of the following:

(i) Filing an application for benefit rights;

(ii) Making a weekly claim for benefits;

(iii) Reopening an existing claim following a period of employment or nonreporting.

(c) After an applicant is registered, that registration continues for a period of three calendar weeks, including the week during which the applicant registered. However, an individual is not registered for purposes of division (A)(3) of this section

⁶⁴ *Bernard*, 2013-Ohio-3121 at ¶ 12, quoting *Swallow v. Indus. Comm.*, 36 Ohio St.3d 55, 57, 521 NE.2d 778 (1988).

during any period in which the individual fails to report, as instructed by the director, or fails to reopen an existing claim following a period of employment.

(d) The director may, for good cause, extend the period of registration. * * *⁶⁵

Ohio Adm.Code 4141-27-05 additionally imposes time limitations for claimants filing for benefits:

“(A) When a benefit year has been established and a claim for benefits is filed for a week of total or partial unemployment, to be valid, the claim must be filed not later than the end of the third calendar week immediately following such week.

(B) In exceptional cases, when it is shown to the satisfaction of the director that an individual has been deterred by circumstances beyond the individual’s control from filing a claim as prescribed in this rule, the director may extend the time limitations to file.”⁶⁶

Thus, when a claimant does not timely file his or her claim, ODJFS may exercise its discretion to extend the filing time in exceptional cases, when the claimant was deterred from filing by circumstances beyond his or her individual control. Several decisions have examined this standard. Upon reviewing the available case law, this court has observed that courts tend to find that claimants who fail to file claims by telephone after experiencing technological problems with the online filing system have *not* experienced circumstances beyond their control that warrant an extension of the time limitation for filing. By contrast, claimants have been deterred by circumstances beyond their control when they have not not timely filed because ODJFS employees expressly instructed them not to file claims.

⁶⁵ (Emphasis added.) R.C. 4141.29(A).

⁶⁶ Ohio Adm.Code 4141-27-05.

The recent case of *Huth v. Director, Ohio Department of Job & Family Services*, 2017-Ohio-4430, 93 N.E.3d 124 (5th Dist.) is instructive. In *Huth*, the appellant was initially denied unemployment compensation benefits, but the appellate court found the commission's decision was against the manifest weight of the evidence, reversing it.⁶⁷ On remand, the Office of Unemployment Compensation issued a determination of unemployment compensation benefits finding that the appellant had failed to timely file claims under R.C. 4141.29(A)(4) and Ohio Adm.Code 4141-27-05, and therefore was ineligible for benefits.⁶⁸

After following the administrative appeal process, a hearing officer held a hearing at which the appellant testified that he attempted to file weekly claims for benefits through the ODJFS website.⁶⁹ The appellant averred that, when he tried to file his weekly claims, he received a notice stating "no weekly claims can be filed."⁷⁰ He maintained that he tried multiple times to file weekly claims online, but did not contact ODJFS by telephone.⁷¹ At the hearing, the appellant testified that he did not call because he believed he needed to await the outcome of the appeal.⁷² He also stated that, when he could not file online, there was "no instruction on the screen to call ODJFS."⁷³ The appellant confirmed that he had received a copy of the Worker's Compensation Guide to Unemployment Benefits and had read the portion stating that he should contact ODJFS if he had trouble.⁷⁴

⁶⁷ *Huth v. Director, Ohio Department of Job & Family Services*, 2017-Ohio-4430, 93 N.E.3d 124, ¶¶ 2-3 (5th Dist.).

⁶⁸ *Id.* at ¶ 4.

⁶⁹ *Id.* at ¶ 7.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at ¶ 9.

Further, he also received the New Claim Instruction Sheet.⁷⁵ The hearing officer issued a decision reaffirming the Director's Redetermination, and the trial court affirmed the Commission's decision.⁷⁶

The appellate court found that there was competent, credible evidence to support the Commission's finding that the appellant failed to make valid weekly claims.⁷⁷ In making this determination, the court explained that "under the statutory and regulatory analysis, the focus is on the appellant's actions, as the claimant, and whether he timely filed weekly claims."⁷⁸ The court reasoned that his claims were not timely, despite his difficulties filing online, because he had received multiple documents instructing him that he needed to file claims during the appeal process and instructing him to contact the processing center for assistance if he was unable to file his claims.⁷⁹

Another instance of untimely claims arose in *Folck v. Patton*, 2d Dist. Clark No. 2013-CA-105, 2014-Ohio-2304. In *Folck*, the appellant filed several claims that were denied on the basis that they were untimely filed, which the trial court affirmed.⁸⁰ The appellant claimed that they were untimely filed " * * * because of technical problems with the computer system at the Ohio Department of Job and Family Services."⁸¹ At the prior hearing on the issue, the hearing officer had found that the appellant had failed to present any evidence to support his claim that he was deterred by circumstances beyond his control from filing a claim so as to permit the department to extend the filing time under

⁷⁵ *Id.*

⁷⁶ *Id.* at ¶¶ 17-18.

⁷⁷ *Id.* at ¶ 38.

⁷⁸ *Id.* at ¶ 37.

⁷⁹ *Id.* at ¶¶ 39-40.

⁸⁰ *Folck v. Patton*, 2d Dist. Clark No. 2013-CA-105, 2014-Ohio-2304, ¶ 16.

⁸¹ *Id.* at ¶ 37.

R.C. 4141.29(A)(3) and Ohio Adm.Code 4141-27-05.⁸² The appellate court affirmed on the basis that “[t]here is no evidence that Folck was prevented from timely filing his claims via telephone.”⁸³

On the other hand, the deadline for filing claims was extended in the case of *Crabtree v. Board of Review*, 9th Dist. Summit C.A. No. 11125, 1984 Ohio App. LEXIS 9381 (Feb. 16, 1984). *Crabtree* involved a prior regulation, Ohio Adm.Code 4141-27-07, but like Ohio Adm.Code 4141-27-05, it provided for the deadline to be extended for filing claims in “exceptional cases * * * when an individual has been deterred by circumstances beyond his control from filing a claim * * *.”⁸⁴ In *Crabtree*, the appellant did not sign up for benefits during the pendency of her appeal, and she testified that she did so because an Unemployment Compensation Office employee instructed her not to do so.⁸⁵ The referee had found that “[a]ny reliance by the claimant on such a statement was at her own risk as Section 4141.29(A)(3), Revised Code of Ohio, does not provide for the waiver of the registration requirement under any circumstances.”⁸⁶ The trial court reversed, and the appellate court affirmed that decision, finding that “[u]nder her statement of facts and the regulations cited, we cannot conclude that the trial court erred in finding it was unreasonable for the Administrator to fail to grant an extension * * *.”⁸⁷

⁸² Id. at ¶ 39.

⁸³ Id.

⁸⁴ *Crabtree v. Board of Review*, 9th Dist. Summit No. C.A. 11125, 1984 Ohio App. LEXIS 9381, *5 (Feb. 16, 1984).

⁸⁵ Id. at *1-2.

⁸⁶ Id. at *4.

⁸⁷ Id. at *6. See *In re Kaiser*, UCBR B97-01734-0000 (Nov. 13, 1997) (Where an individual attempts to register for work with the bureau, is told there will be a delay in the decision on her claim because of an investigation of her base period employer, and she receives no claim forms in the mail, her attempt will be considered a valid registration for work); *In re Garisek*, UCBR 555700-BR (July 22, 1985) (A claim for benefits filed two months after the week of unemployment to which it relates is not barred by Ohio Adm.Code 4141-27-05 where the claimant waited because

By contrast, the appellate court in *Board of Review v. Jewell*, 8th Dist. Cuyahoga No. 40438, 1980 Ohio App. LEXIS 13817 (Feb. 14, 1980), found that an appellant did not show exceptional circumstances when the claimant did not file claims during the pendency of an appeal simply because she was unaware of the regulation requiring her to do so.⁸⁸ The same result was reached in *Feim v. Board of Review*, 5 Ohio App.2d 175, 381 N.E.2d 1340 (10th Dist. 1980), in which the claimant likewise did not timely file claims because he was unaware that he had to continue filing claims during the pendency of his appeal.⁸⁹

The appellant cites to *Hason USA Corporation v. Director, Ohio Department of Job & Family Services*, 10th Dist. Franklin No. 16AP-150, 2016-Ohio-8273, in support of his position. However, *Hason* is unpersuasive because it dealt with different issues than those in this case. Namely, *Hason* involved R.C. 4141.26, which deals with employer contribution rates. There, the appellate court found that the e-mail ODJFS sent to an employer did not give it notice of its revised unemployment contribution rate determination because the e-mail did not include the revised determination as an attachment and made no mention of the rate revision. Instead, the email merely informed the employer of a new message regarding its unemployment compensation tax account. Thus, the period in which the employer had to apply for reconsideration of the revised determination did not begin until the date on which the ODJFS actually delivered a copy of the revised determination to the employer. Because *Hason* does not deal with R.C. 4141.29 or Ohio

misinformed by bureau employees that he must await their receipt of initial claim forms he had filed in another state while there seeking work).

⁸⁸ *Board of Review v. Jewell*, 8th Dist. Cuyahoga No. 40438, 1980 Ohio App. LEXIS 13817, *11-13 (Feb. 14, 1980).

⁸⁹ *Feim v. Board of Review*, 5 Ohio App.2d 175, 178, 381 N.E.2d 1340 (10th Dist. 1980).

Adm.Code 4141-27-05, and there are multiple cases that have dealt with these provisions, the court does not find *Hason* instructive in the present case.

In turning to the case at bar, the court concludes that the appellant has failed to show that the Unemployment Compensation Review Decision denying his claims as untimely was unlawful, unreasonable, or against the manifest weight of the evidence. As with the cases in *Huth* and *Folk*, the appellant experienced technical difficulties submitting his weekly claims online, but failed to telephone ODJFS for assistance. The courts in those two cases found that the appellants were not involved in exceptional cases, in which the appellants showed that they were deterred by circumstances beyond their control from filing a claim.⁹⁰

In the instant case, the appellant knew he needed to file weekly claims during the pendency of his appeal. He had received multiple communications informing him of this responsibility, all of which directed him to either call ODJFS or use the online portal to file. Indeed, the Office of Unemployment Compensation correspondence to the appellant on October 16, 2014 indicated "For additional information, call the ODJFS automated telephone system at 1-877-644-6562 and select the General Information option or visit the agency's website at <https://unemployment.ohio.gov>."⁹¹ The appellant, however, did not call ODJFS to speak to a representative for additional information until February of 2015 for his claims benefit year that began on September 28, 2014. The appellant failed to do so because he assumed a representative would provide him with the same information as the ODJFS website, which was that "no weekly claims can currently be filed." He also preferred to make the majority of his communication online.

⁹⁰ Ohio Adm.Code 4141-27-05.

⁹¹ Office of Unemployment Compensation, dated Oct. 16, 2014.

Based on the record before it, the court cannot conclude that ODFJS's decision was unlawful, unreasonable, or against the manifest weight of the evidence for failing to find that the appellant was deterred by circumstances beyond his control from filing a claim as prescribed under Ohio Adm.Code 4141-27-05.⁹² First, the court notes that the language in Ohio Adm.Code 4141-27-05 states that the director "may" extend the filing deadline, which is discretionary language, as opposed to mandatory language. Likewise, R.C. 4141.29(A) states that the director "may" extend the registration period, which is also discretionary.

Second, the court must affirm ODJFS's findings if some competent, credible evidence in the records supports the decision, which is present here.⁹³ The appellant knew he was required to continue filing claims during his appeal, but he did not seek assistance from ODJFS when he incurred technological problems because of an assumption that ODJFS would provide him the same information and he had a personal preference for online communication. This is not a case in which the appellant contacted an ODJFS representative by phone and was provided misinformation about the requirement to continue to file claims. The fact that reasonable minds might reach different conclusions about whether the appellant was deterred by circumstances beyond his control is not a basis for the reversal of ODJFS's decision.⁹⁴ ODJFS has reasonably found that the appellant had control because he had an alternative option available for filing his claims, by calling ODJFS, and he elected not to use it. As this is not a trial *de*

⁹² Ohio Adm.Code 4141-27-05.

⁹³ *Williams*, 2011-Ohio-2897 at ¶ 20.

⁹⁴ *Tzangas*, 73 Ohio St.3d at 697 quoting *Irvine*, 19 Ohio St.3d 15.

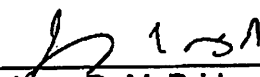
novo, the court finds it does not have grounds to reverse, modify, remand, or vacate ODJFS's decision.

CONCLUSION

For the foregoing reasons, the court holds that (1) the appellant's assignment of error in Case No. 2016 CVF 01279 that the Unemployment Compensation Review Decision was unlawful, unreasonable, or against the manifest weight of the evidence is not well-taken and is decision is hereby affirmed, and (2) the appellant's assignment of error in Case No. 2016 CVF 01702 that the Unemployment Compensation Review Decision was unlawful, unreasonable, or against the manifest weight of the evidence is not well-taken and is decision is hereby affirmed.

IT IS SO ORDERED.


DATED: 10-5-18



Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that a copies of the foregoing Decision/Entry were sent on this 5th day of October 2018 by e-mail to W. Kelly Lundrigan, attorney for the plaintiff, at klundrigan@lundrigan-law.com, and Nicole M. Lundrigan, at nlundrigan@lundrigan-law.com, and to Robin A. Jarvis, attorney for the defendant Director of Ohio Department of Job and Family, at rjarvis@ag.state.oh.us, and by regular U.S. mail to the defendant Ohio Oklahoma Hearst Television Inc., 1700 Young Street, Cincinnati, Ohio 45202.



Judicial Assistant to Judge McBride