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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

FRANK R. RUDIN	)	CASE NO. CV 17 881398
	)	
Appellant/Plaintiff,	)	JUDGE JOHN P. O'DONNELL
	)	
vs.	)	<u>JUDGMENT ENTRY AFFIRMING</u>
	)	<u>A DECISION OF THE</u>
DIRECTOR, OHIO DEPT. OF JOB	)	<u>UNEMPLOYMENT COMPENSATION</u>
AND FAMILY SERVICES, <i>et al</i>	)	<u>REVIEW COMMISSION</u>
	)	
Appellees/Defendants.	)	

*John P. O'Donnell, J.:*

This case is an appeal by appellant/plaintiff Frank Rudin from a decision of the Ohio unemployment compensation review commission that dismissed as untimely his request for review of a March 8, 2017, hearing officer's decision affirming a redetermination issued by the Ohio Department of Job and Family Services. Rudin filed a merit brief and the ODJFS filed a brief defending its position. The record also includes the transcript of proceedings and testimony at the administrative level. I have considered the briefs and evidence and this judgment entry follows.

STATEMENT OF FACTS

Rudin filed a claim for unemployment benefits with the ODJFS in July 2016 and received benefits through most of December. But in late December the ODJFS found him ineligible for

three of the weeks in December because he had deactivated his online resume at OhioMeansJobs.com for those weeks, contrary to his obligation under section 4141.29(A)(4)(b) to keep it active. The ODJFS demanded a return of the overpayment for those three weeks. Rudin appealed that decision, and on January 25, 2017, the ODJFS issued a redetermination affirming his ineligibility for the three weeks and ordering repayment of the amount paid for that time.

Rudin appealed the redetermination and jurisdiction was transferred to the unemployment compensation review commission. A hearing was held before a hearing officer, who issued a decision by email on March 8, 2017, affirming the ODJFS's redetermination. That decision included a notice to Rudin captioned "APPEAL RIGHTS," which says:

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 29, 2017. This decision of the Review Commission will be final if not appealed within the time limit described above.

Rudin appealed the hearing officer's decision by mailing his request for review. The envelope is postmarked April 1, 2017, three days after the expiration of the appeal period.

A hearing was then held to consider only whether Rudin's request for review was timely. If not, the review commission was without jurisdiction to decide the merits of the request for review. At the hearing, Rudin testified that he received the hearing officer's decision by email<sup>1</sup> and that his only attempt to appeal the decision is the one postmarked April 1, 2017<sup>2</sup>. When he

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<sup>1</sup> Transcript of the May 11, 2017, hearing, page 5, line 14.

<sup>2</sup> *Id.*, page 6, line 5.

was asked why he was not able to file the request for review by the deadline, he could only say "I thought I did get one in."<sup>3</sup>

The commission issued its decision on May 12, 2017. It dismissed Rudin's request for review because it was not filed within the 21-day statutory appeal period prescribed by R.C. 4141.281(C)(3). Rudin then filed a timely appeal of the decision on untimeliness with this court pursuant to R.C. 4141.282.

### LAW AND ANALYSIS

The applicable standard of review is found in R.C. 4141.282(H), which states as follows:

The court shall hear the appeal on the certified record provided by the commission. If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or modify the decision, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

Here, the hearing officer issued the underlying decision on March 8. R.C. 4141.281(C)(3) controls when a request for review from that decision must be filed. It states, in pertinent part, that:

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.

So, unless the time is extended under R.C. 4141.281(D)(9), Rudin's request for review had to be filed within 21 days from March 8. That deadline – as Rudin was accurately informed in the March 8 hearing officer's decision – was March 29. When an appeal is sent by U.S. mail,

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<sup>3</sup> *Id.*, page 6, line 20.

and except where the postmark on the request for review is illegible or missing – neither of which is the case here – the date of the postmark is the date of filing. R.C. 4141.281(D)(1). The envelope containing Rudin’s request for review is postmarked April 1, 2017, which is after the March 29 close of the appeal period.

The 21-day appeal period may only be extended for the following reasons that could be relevant to this case: (1) when the last day of the appeal period is a Saturday, Sunday, or legal holiday; (2) when certified medical evidence is filed within the 21-day period that states the appellant’s physical condition or mental capacity prevents a timely appeal; or (3) when the appellant provides sufficient evidence to establish that the decision was not received within the applicable appeal period. R.C. 4141.281(D)(9).

But none of these exceptions to the 21-day appeal deadline apply here. First, March 29, the last day of the 21-day period, fell on a Wednesday. Second, Rudin never claimed, much less offered evidence of, a physical condition or mental capacity which prevented him from filing a timely appeal. Last, Rudin admitted to receiving the decision within the appeal period.

As a result, Rudin’s April 1 request for review of the March 8 decision affirming the January 25 decision of the ODJFS was not filed in time to vest jurisdiction in the review commission to hear the merits of the appeal under R.C. 4141.281 and the May 12 decision of the commission dismissing Rudin’s request for review is supported by the manifest weight of the evidence and lawful.

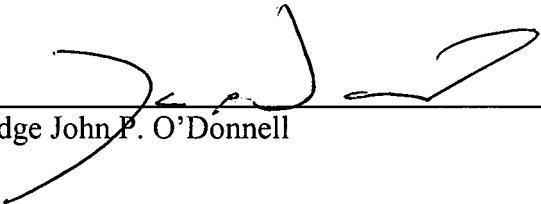
This leaves as Rudin’s last chance to prevail in this appeal an examination of whether the May 12 decision was unreasonable. "Unreasonable" has been defined as having no sound reasoning process that would support a decision. *Eckert v. Jacobs*, 1<sup>st</sup> Dist. No. C-910445, 1992 Ohio App. LEXIS 5920, 7 (Nov 25, 1992). "Unreasonable" does not mean heartless, rigid,

uncaring, callous or cruel. The determination that Rudin filed his appeal too late is reasonable based upon a simple calculation of 21 days from the March 8 date of decision and the absence of evidence supporting a statutory extension of time after the deadline date or even a compelling reason to permit the late appeal other than "I thought I did get one in."

**CONCLUSION**

For these reasons, the May 12 decision of the unemployment review commission was lawful, reasonable and supported by the manifest weight of the evidence and is hereby affirmed.

**IT IS SO ORDERED:**

  
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Judge John P. O'Donnell

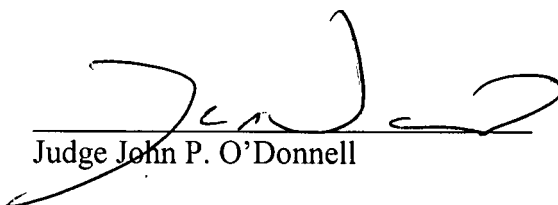
December 14, 2017  
Date

**SERVICE**

A copy of this judgment entry was sent by email on 12/14/2017 to the following:

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Judge John P. O'Donnell