

In the
Supreme Court of Ohio

MARCUS PRYOR II,	:	Case Nos. 2015-0767; 2015-0770
	:	
Appellee,	:	On Appeal from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES,	:	Court of Appeals
	:	Case No. 27225
Appellant.	:	

**BRIEF OF APPELLANT DIRECTOR,
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

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INTRODUCTION

This case asks a simple procedural question: When a party seeks to invoke the subject-matter jurisdiction of a court of common pleas to review a final order of the Unemployment Compensation Review Commission (“Commission”), does a notice of appeal that fails to, in the words of the statute, “name all interested parties as appellees” suffer from a *jurisdictional* defect, such that the common pleas court never acquires jurisdiction? R.C. 4141.282(D). The answer to this question is yes. The statute’s requirement is jurisdictional because it governs the *content* of a notice of appeal, or in other words, it governs what constitutes a notice of appeal. No one doubts that a timely notice of appeal must be filed to perfect jurisdiction, and that requirement folds in the statutory requirements for what makes a notice. Consequently, when Marcus Pryor filed a defective notice below, by failing to name his former employer, he did not perfect jurisdiction, so the Court should reverse the Ninth District’s contrary holding. *Pryor v. Director, Ohio Dep’t of Job & Family Servs.*, 2015-Ohio-1255 ¶ 11 (9th Dist.) (“App. Op.,” Ex. 3).

The jurisdictional nature of this requirement is shown by the statute’s plain text, the Court’s precedents, and common sense. *First*, the statute’s party-naming requirement in Part (D) builds on Part (C)’s provision that “the timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court” and that the notice “shall identify the decision appealed from.” R.C. 4141.282(C). Just as the requirement of naming the “decision appealed from” is jurisdictional—although it is in a separate sentence within Part (C)—so, too, is the party-naming requirement jurisdictional, and its placement in a “separate” division, part (D), changes nothing. Both the decision-naming and the party-naming define *what* a proper notice of appeal includes. If a party’s notice did not satisfy (D), the party did not file a notice of appeal that satisfies (C), so jurisdiction does not vest in the court of common pleas.

Second, the Court has already found requirements to be jurisdictional when they are imposed on an appellant by statute and govern a notice's *content*. Specifically, the Court has held that requirements are jurisdictional when they are "(1) imposed on the appellant itself and (2) relate[] to the informative content of the document by which the administrative proceeding is instigated." *Shinkle v. Ashtabula Cnty. Bd. of Revision*, 135 Ohio St. 3d 227, 2013-Ohio-397 ¶ 19. Here, the party-naming requirement meets both prongs; indeed, it is hard to see what "informative content" is more important than telling the other parties that their win below is being appealed. And the Court has explained that "naming proper parties" is a "jurisdictional requirement[] in cases that involve statutes" that define party-naming as part of a notice's content. *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880 ¶ 19 (citing *Olympic Steel, Inc. v. Cuyahoga Cnty. Bd. of Revision*, 110 Ohio St. 3d 1242, 2006-Ohio-4091).

Third, enforcing this requirement is common sense, and any other rule is unworkable. When a party is not named in a notice, it likely will not even know about the appeal, and will not know that its rights are at issue. Thus, relying on non-jurisdictional fixes, such as a later motion to add the party, do not work, as they require the party to show up anyway, or require the co-appellee to help do the appellant's job. Worse yet, if naming *all* appellees is not jurisdictional, nothing would prevent a party from naming *no* appellees—as opposed to skipping one of two—and then no appellee is present to tell the other that the case is pending.

Against all this, the Ninth District's contrary view was wrong. It seemed to rely on the mere fact that the party-naming requirement is in a separate division, but as noted above, that does not matter. The appeals court also erred in purporting to rely on *Zier v. Bur. of Unemployment Comp.*, 151 Ohio St. 123, 125 (1949), which held that jurisdictional rules must be followed, but said that party-naming was not such a rule for unemployment-compensation

appeals. *Zier*'s principle leads to a different outcome today because the statute was amended, so that the party-naming rule is now part of the content requirements for a notice. The court also erred in relying on the civil rules as a way to fix defective notices, because the rules cannot trump a statutory requirement, and the rules the court cited do not even apply on their own terms.

For all of these reasons, the Court should reverse the decision below, and it should hold that the statute's common-sense requirement to name parties in a notice of appeal is a jurisdictional requirement for unemployment-compensation appeals.

STATEMENT OF THE CASE AND FACTS

A. Pryor sought judicial review of a Commission finding, but he did not name his former employer as an appellee in his notice of appeal.

This case involves a purely procedural issue about the adequacy of Marcus Pryor's notice of appeal, so the underlying merits of his unemployment claim are not involved. The Unemployment Compensation Review Commission denied Pryor's claim for unemployment benefits. App. Op. ¶ 2. Specifically, a hearing officer rejected his claim in an initial administrative decision, and the full Commission then disallowed review of that denial. *Id.* That later decision was the final administrative decision, so R.C. 4141.282 authorizes an appeal of that decision to the court of common pleas. The Commission's order included instructions to Pryor regarding how to appeal, if he wished:

APPEAL RIGHTS

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282, Revised Code of Ohio. *The appellant must name all interested parties as appellees in the notice of appeal*, including the Director of the Department of Job and Family Services.

See Decision Disallowing Request for Review (“Commission Decision”), Apr. 26, 2012, Supplement (“Supp.”) at S-2 (emphasis added). As the argument below explains, the last sentence quoted above, requiring that all interested parties be named, restates R.C. 4141.282(D). Pryor sought to appeal the Commission’s order, as R.C. 4141.282 authorizes, to the Summit County Court of Common Pleas, but he did not follow the instructions. *Id.* ¶ 6. His notice of appeal was timely, and it was filed in the right place. And Pryor asked the clerk to serve his former employer. *Id.* ¶ 2. But the notice did not name his former employer—the U.S. Department of the Army—as an appellee. *Id.* ¶ 6; *see* Notice of Appeal, Supp. at S-4.

B. The common pleas court dismissed Pryor’s appeal for lack of jurisdiction, but the Ninth District reversed, holding that a failure to name an interested party was a non-jurisdictional defect.

The trial court dismissed Pryor’s appeal for lack of subject-matter jurisdiction. App. Op. ¶ 3. The court found that the requirement to name all interested parties was a jurisdictional one. *Id.* Thus, because Pryor failed to name his former employer as an appellee in the notice of appeal, the notice was jurisdictionally defective. *Id.*; Judgment Entry, Summit Cnty. Court of Common Pleas, Dec. 31, 2013 (Ex. 5).

On appeal, the Ninth District Court of Appeals reversed the trial court’s dismissal of Pryor’s appeal. App. Op. ¶ 1. The appeals court noted that no one disputed that Pryor failed to name his former employer as an appellee in his notice of appeal, and it explained that 4141.282(D) mandates that the notice of appeal include all interested parties, including the former employer. *Id.* ¶ 6. Thus, it agreed with the trial court and the Director that Pryor’s notice was defective, but it characterized that defect as non-jurisdictional. The court concluded that the only jurisdictional requirement is R.C. 4141.282(C)’s requirement of a timely notice identifying the decision appealed. *See id.* ¶¶ 7, 11.

The Ninth District reasoned that R.C. 4141.282(C) provides that “[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.” *Id.* ¶ 7 (quoting statute). It acknowledged that the notice was flawed, but held that both the flaw and its remedy were governed by the civil rules, not the statute:

An appellee may still seek dismissal pursuant to Civ. R. 12(B)(7) (failure to join a necessary party under Civ. R. 19 or 19.1) or pursuant to Civ. R. 12(B)(5) (insufficiency of service of process). Alternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects.

Id. ¶ 11.

The Ninth District acknowledged that its view conflicted with several appeals courts, citing decisions from the First, Second, and Eighth Districts. *Id.* ¶¶ 8-9 (citing *Dikong v. Ohio Supports, Inc.*, 2013-Ohio-33 (1st Dist.); *Mattice v. Ohio Dep’t of Job & Family Servs.*, 2013-Ohio-3941 (2d Dist.); and *Luton v. Ohio Unemployment Review Comm’n*, 2012-Ohio-3963 (8th Dist.)). The court explained that those other courts “concluded that an appellant’s failure to name one of the interested parties to an appeal from the Unemployment Compensation Review Commission’s decision divests the common pleas court of jurisdiction to hear the appeal,” and confirmed that “those appellate courts read the mandate in R.C. 4141.282(D) to name all interested parties in the notice of appeal as jurisdictional.” *Id.* ¶ 8.

On the Director’s motion, the Ninth District certified a conflict. *See* Order Certifying Conflict (“Conflict Order,” Ex. 4). The Court cited the three decisions above, and three others that the Director identified. *See Hinton v. Ohio Unemployment Review Comm’n*, 2015-Ohio-1364 (7th Dist.); *Rupert v. Ohio Dep’t of Job & Family Servs.*, 2015-Ohio-915 (6th Dist.); *Sydenstricker v. Donato’s Pizzeria, LLC*, 2010-Ohio-2953 (11th Dist.). The court certified this question:

When appealing an unemployment compensation decision to the trial court, are the requirements contained in R.C. 4141.282(D), which explains how to name the parties, mandatory requirements necessary to perfect the appeal and vest the trial court with jurisdiction?

See Conflict Order at 2. This Court accepted the conflict for review. It also granted the Director's discretionary appeal, which set forth a legally identical proposition of law, differing from the conflict question only in its wording (see below).

ARGUMENT

Appellant Ohio Department of Job and Family Services's Proposition of Law:

In an unemployment compensation administrative appeal, R.C. 4141.282(D)'s mandate that the "appellant shall name all interested parties as appellees in the notice of appeal" is a jurisdictional requirement, so a defective notice of appeal fails to vest jurisdiction in a common pleas court.

A. R.C. 4141.282's plain text requires a party appealing a Commission order to timely file a notice of appeal, and that notice must name all interested parties as appellees to be a proper notice that vests jurisdiction in the trial court.

This case is straightforward, as the statute's plain text requires a party seeking to appeal an unemployment-compensation decision to name *all* appellees in the notice of appeal. Everything in this statute and in the Court's decisions points to the conclusion that the party-naming requirement is jurisdictional. First, the Court requires strict compliance with such statutory requirements. Second, the statute's text and structure here show that this requirement is a jurisdictional one, as it defines what constitutes a proper notice of appeal. Third, the Court has repeatedly found such requirements to be jurisdictional when they govern the content of the notice itself. Finally, the rule makes sense, and no other approach is workable.

1. Parties appealing administrative decisions must strictly comply with all jurisdictional requirements in the statute creating the right to appeal.

Administrative appeals require strict compliance with all jurisdictional prerequisites in a statute because it is the *statute itself* that creates the right to appeal. The Court has long applied

this rule: When a “statute that authorizes [an] appeal prescribes the conditions and procedure under and by which such appeal may be perfected . . . adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *Am. Rest. & Lunch Co. v. Glander*, 147 Ohio St. 147, 149-50 (1946); *see also State ex rel. Arcadia Acres v. Ohio Dep’t of Job and Family Servs.*, 123 Ohio St. 3d 54, 2009-Ohio-4176 ¶ 12 (“[A]dministrative appeals are authorized by statutes that set forth the conditions for the exercise of judicial authority, and those conditions call for strict compliance”); *Ramsdell v. Ohio Civil Rights Comm’n*, 56 Ohio St. 3d 24, 27 (1990).

The Court has specifically applied this strict-compliance standard to this very context, namely, judicial review of a final order of the Commission. In *Zier v. Bureau of Unemployment Compensation*, the Court rejected the argument that the requirement to set forth the decision appealed from, enumerated in an earlier version of R.C. 4141.282, is non-judicial. 151 Ohio St. 123, 125 (1949). The Court held that “[a]n appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute,” and the “exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.” *Id.* The Court followed and extended this holding in many cases involving other aspects of the statute, as to various versions of R.C. 4141.282. *See In re King*, 62 Ohio St. 2d 87, 88 (1980) (requirement to serve all interested parties with notice is jurisdictional and “[i]t is, therefore, well-established that where a statute confers a right of appeal, as in the instant cause, strict adherence to the statutory conditions is essential”); *Proctor v. Giles*, 61 Ohio St. 2d 211, 214 (1980) (thirty-day time requirement for filing a notice of appeal is jurisdictional and calls for strict compliance); *Todd v. Garnes*, 44 Ohio St. 2d 56 (1975) (same).

2. R.C. 4141.282's plain text confirms that part (D)'s party-naming requirement is jurisdictional.

Since all statutory requirements must be strictly met, the next step is to look at what the statute says. R.C. 4141.282's text is plain, and it shows that the six districts disagreeing with the Ninth District were right: A party appealing a Commission order must file a timely notice to meet R.C. 4141.282(C), and the party must name all interested parties as appellees in the notice of appeal to meet R.C. 4141.282(D). Part (D)'s naming requirement defines what a proper notice of appeal *is*, by its contents, so that requirement is just as much a jurisdictional requirement as part (C) is, and failure to meet it deprives a common pleas court of jurisdiction.

Parts (C) and (D), in context with Parts (A) and (B), set several requirements:

(A) THIRTY-DAY DEADLINE FOR APPEAL

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.

(B) WHERE TO FILE THE APPEAL

An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.

(C) PERFECTING THE APPEAL

The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

(D) INTERESTED PARTIES

The commission shall provide on its final decision the names and addresses of all interested parties. *The appellant shall name all interested parties as appellees in the notice of appeal.* The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

R.C. 4141.282(A)-(D) (emphasis added). In addition, R.C. 4141.01(I) defines “interested party” as “the director and any party to whom notice of a determination of an application for benefit rights or a claim for benefits is required to be given under section 4141.28 of the Revised Code.”

The above plain language is, of course, the starting point. See *In re M.W.*, 133 Ohio St. 3d 309, 2012-Ohio-4538 ¶ 17 (“When analyzing a statute, [this Court] first examine[s] its plain language and appl[ies] the statute as written when the meaning is clear and unambiguous.”). Part (C) says that a timely notice is the “only act required” for jurisdiction, but Part (C) itself does not define “timely,” nor does it say where to file—so Parts (A) and (B) must be incorporated into what (C) requires. Part (A) sets a thirty-day deadline, and Part (B) authorizes filing in various counties, such as the employee’s residence, the employer’s principal place of business, or the place of employment. Thus, Parts (A) and (B) give meaning to (C)’s “only act.”

Part (C) also includes, along with the timely filing requirement, the first content requirement for the notice, namely, identifying the decision appealed. “The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.”

R.C. 4141.282(D) builds on part (C) by adding another content requirement: It says that an appellant “*shall name all interested parties as appellees in the notice of appeal.*” (emphasis added). To leave no doubt, it adds that the “director . . . is always an interested party and *shall be named as an appellee in the notice of appeal.*” *Id.* (emphasis added); see also R.C. 4141.01(I) (defining “interested party” as “the director” and others). The language of part (D), by using the word “shall,” instructs the appellant to do so; the language is not qualified or aspirational and does not leave to courts’ discretion what should be done. See *Malloy v. City of Westlake*, 52 Ohio St. 2d 103, 106 (1977) (“By employing the word ‘shall’ throughout R.C. 2721.12, the

General Assembly manifested a clear intent that the statute’s provisions, including service upon the Attorney General, are mandatory”); *cf. State v. Golphin*, 81 Ohio St. 3d 543, 545-46 (1998) (“use of the term ‘shall’ in a statute or rule connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary”).

In addition, the sentences in part (D) requiring the party-naming have the same structure as the sentence in part (C) requiring the identification of the appealed decision. Nothing distinguishes them other than that the statute is divided and labeled piece-by-piece. But that does not change the analysis, just as the fact that the thirty-day filing requirement is set forth in a separate division, part (A), does not mean that part (C)’s requirement for timely appeal is not defined by part (A). *Cf. Stanjim Co. v. Bd. of Revision of Mahoning Cnty.*, 38 Ohio St. 2d 233, 235 (1974) (holding that R.C. 5715.13 and R.C. 5715.19 both state jurisdictional requirements, and placement in separately numbered provisions does not undercut that). Both requirements are undoubtedly jurisdictional, *see Proctor*, 61 Ohio St. 2d at 214 (thirty-day filing requirement is jurisdictional), and *Zier*, 151 Ohio St. at 127 (requirement to identify decision appealed from is jurisdictional), so the fact that the General Assembly chose to use the same form of expression in part (D) shows that the party-naming requirement is jurisdictional as well. *See Henry v. Tr. of Perry Twp.*, 48 Ohio St. 671, syl. ¶ 1 (1891) (“[i]n the construction of a statute, it is, as a general rule, reasonable to presume that the same meaning is intended for the same expression in every part of the act”).

3. The Court has repeatedly held that requirements governing the content of a notice of appeal are jurisdictional.

The text of R.C. 4141.282 alone shows that the party-naming requirement in part (D) is jurisdictional, and the Court’s similar cases confirm that. The Court has often distinguished between those statutory requirements that govern the *content* of a notice of appeal, which are

jurisdictional, from requirements that are not jurisdictional. In particular, the Court has described as jurisdictional those requirements that are “(1) imposed on the appellant itself and (2) relate[] to the informative content of the document by which the administrative proceeding is instigated.” *Shinkle v. Ashtabula Cnty. Bd. of Revision*, 135 Ohio St. 3d 227, 2013-Ohio-397 ¶ 19 (citing *Zier*, 151 Ohio St. at 126-27). When those two prongs are met, the requirement is one that ““runs to the core of procedural efficiency.”” *Shinkle*, 2013-Ohio-397 ¶ 17 (quoting *2200 Carnegie, L.L.C. v. Cuyahoga Cnty. Bd. of Revision*, 135 Ohio St. 3d 284, 2012-Ohio-5691 ¶ 26).

Here, R.C. 4141.282(D)’s party-naming requirement easily meets the two criteria the Court identified in *Shinkle*. *First*, the requirement is imposed on the appellant. The text instructs “[t]he appellant” to “name all interested parties as appellees in the notice of appeal.” R.C. 4141.282(D) (emphasis added).

Second, the party-naming requirement “relates to the informative content of the notice of appeal.” In applying this rule, *Shinkle* joined a long line of cases finding that items required to be *included in the notice of appeal* relate to the document’s informative content, while items not included within the notice are not necessarily jurisdictional. *See* 2013-Ohio-397 ¶ 19 (requirement to state the amount of value at issue in the complaint is jurisdictional); *Spencer v. Freight Handlers, Inc.*, 131 Ohio St. 3d 316, 2012-Ohio-880 ¶¶ 20-22 (requirements to join administrator as a party and serve notice of appeal are not jurisdictional because not stated as contents of notice, while those items specified to be in the notice are jurisdictional); *Wells v. Chrysler Corp.*, 15 Ohio St. 3d 21, 24 (1984) (requirement to name employer in the notice of appeal is jurisdictional); *Nucorp, Inc. v. Montgomery Cnty. Bd. of Revision*, 38 Ohio St. 2d 20 (1980) (requirement to deliver additional information after filing complaint is not jurisdictional); *Stanjim*, 38 Ohio St. 2d at 235 (requirement to state reasons for requested reduction in value in

the complaint is jurisdictional); *Zier*, 151 Ohio St. at 126-127 (requirement that notice of appeal set forth the decision appealed from is jurisdictional); *Am. Rest. & Lunch Co.*, 147 Ohio St. at 147 (requirements to attach commissioner’s determination to the notice of appeal and to specify errors complained of in the notice are jurisdictional). This rule covers the party-naming requirement, since the text instructs the appellant to “name all interested parties as appellees *in the notice of appeal.*” R.C. 4141.282(D) (emphasis added).

Spencer also illustrates the Court’s approach in these cases—namely, looking to whether a requirement governs a notice’s content—so it, too, shows why R.C. 4141.282(D)’s party-naming requirement is jurisdictional. In *Spencer*, the Court reviewed a similar provision governing workers’ compensation appeals. The Court explained that the statute’s first paragraph established those items that must be included in the notice of appeal itself, and it said that those items therefore were jurisdictional requirements. 2012-Ohio-880 ¶ 20. However, a requirement that the administrator be made a party was not one of the items specified to be included within the notice itself, and that contrast made all the difference:

R.C. 4123.512(B) requires that certain facts be pled in the notice of appeal. “The notice of appeal shall state the names of the claimant and the employer, the number of the claim, the date of the order appealed from, and the fact that the appellant appeals therefrom.” This sentence does not say “names of the claimant and the employer and the administrator.” The General Assembly could have easily added the administrator as a party to be named in the notice of appeal, but it did not do so.

Id. The Court explained that the statute’s second paragraph did say that the administrator shall be made a party and shall be served, but reasoned that the “second paragraph . . . is not a continuation of the first paragraph, dictating additional items that must be included in a notice of appeal. Instead, the second paragraph lists a number of things that are required in addition to or *subsequent to* a notice of appeal.” *Id.* ¶ 17 (emphasis added).

In other words, *Spencer*'s rule is that those items required to be included in the notice of appeal are jurisdictional, while requirements outside the notice—"in addition to or subsequent to a notice"—are not jurisdictional. *Spencer* even explained that if the Assembly had included "names of the claimant and the employer and the administrator" as part of the required-contents-of-notice sentence, as it did for the decision appealed from, claim number, etc., then the requirement would have been jurisdictional. *Id.* ¶ 21. *Spencer* further contrasted those statutes in which party-naming was required in a notice of appeal, and thus was jurisdictional: "We have recognized that naming proper parties and fulfilling service requirements are jurisdictional requirements in cases that involve statutes that clearly require such for jurisdiction." *Id.* ¶ 19.

Spencer's reasoning shows that the party-naming requirement at issue here is jurisdictional. Here, the party-naming requirement is stated as something that must be included in the notice of appeal; it is not a non-jurisdictional "outside the notice" requirement. It is indistinguishable from the items that *Spencer* said were the jurisdictional requirements in the law at issue there, and it is indistinguishable from R.C. 4141.282(C)'s requirement that the notice specify the order being appealed.

Along with *Shinkle* and *Spencer*, the Court's many decisions cited above follow the same principle. That is why it is not surprising that six appellate districts have found the party-naming requirement here to be jurisdictional; the court below is the sole outlier. *See* Conflict Order (citing cases). Requirements to include something in the notice of appeal are jurisdictional, so the party-naming requirement here is, too.

4. Enforcing the party-naming requirement as jurisdictional is a practical, common-sense approach, while non-enforcement is unworkable.

While the text and precedent discussed above already resolve the case, the Director also notes that enforcing this jurisdictional requirement is also practical and makes sense, while non-

enforcement is impractical. For several reasons, a notice of appeal must name *all* the parties, and any other approach does not work.

First, the statute here allows only two possibilities: strictly requiring that all appellees be named, as the statute says, or allowing a notice with *no appellees* specified, or indeed, with no content at all. (A typical case involves one employer and one employee, but cases often include more employers or employees.) That is, no plausible reading of the statute would lead to a different result depending on *which* appellee was omitted, whether the Director, or an employer in an employee's appeal, or an employee in an employer's appeal. Any possible appellee can be omitted without undermining the appeal's validity, under the appeals court's view. Further, no reading could lead to requiring "any one appellee" to be named, while omitting the other. Therefore, a party could decline to name *any* appellee, perhaps captioning the case "In re Appeal of Appellant [Name]," as some non-adversarial cases are captioned. Indeed, that could be taken further still, and if one takes literally the idea that the "only act" required is the filing of a notice—without regard to content—then nothing is needed, not even identification of the decision appealed from, as the First District observed. "Taken to its logical extreme, a party could write 'Notice of Appeal' at the top of a blank page, file it, and the common pleas court would have subject-matter jurisdiction over the appeal." *Dikong*, 2013-Ohio-33 ¶ 21.

Second, the party-naming requirement is essential to the smooth operation of the process. Of course, parties need to know whether they are being named as appellees in a case that affects them. If either an employer or employee is not named in an appeal, that party's rights could be affected without the party's participation. Meanwhile, the party-naming rule does not *require* parties to participate, but it is essential to giving them a chance to do so. Further, the party-naming must be met at the outset, without later amendment, because the filing of a proper notice

of appeal triggers the next steps in the process, namely, service of the notice *to appellees* and the filing of a transcript of the record of the Commission’s proceedings. *See* R.C. 4141.282(E) (requiring clerk to serve “all appellees” upon filing of the notice); R.C. 4141.282(F) (requiring Commission to file record within forty-five days after notice of appeal is filed). If the appellees are not properly named, the clerk will not know whom to serve; if the Director is not named, the Commission does not know to file the record. This is no formality for formality’s sake; it matters to making the process work. In other words, naming the appellees, along with the order being appealed, is essential to the entire purpose of a notice of appeal—“satisfy[ing] due process concerns by ‘ensur[ing] that the filing provides sufficient notice to other parties and the courts.’” *AT&T Communications of Ohio, Inc. v. Lynch*, 132 Ohio St. 3d 92, 2012-Ohio-1975 ¶ 20 (quoting *United States v. Glover*, 242 F.3d 333, 336 (6th Cir. 2001)).

A failure to name a required party as appellee is not overcome by the fact that some appellants might, as Pryor did here, ask the clerk to serve the party that went un-named as an appellee in the notice. That is so because the approach adopted below says that a failure to name an appellee is a non-jurisdictional flaw regardless of service, so that rule would apply to non-service cases. Further, the court’s view says failure of service is also non-jurisdictional, and also could be cured later. And in any case, a party served, but not named, might not know that it has the right to be a party automatically.

Third, enforcing this party-naming requirement does not ask much of appealing parties, and notably, the Commission’s orders include instructions that include this detail. As quoted fully above, the Order here instructed Pryor, under the heading “APPEAL RIGHTS,” that the “appellant must name *all interested parties as appellees* in the notice of appeal,” so this is not some “gotcha” trap requiring parties to research arcane hidden rules. *See* Commission Decision,

Supp. at S-2; *see also Dikong*, 2013-Ohio-33 ¶ 25 (noting that enforcement “does not lead to an unjust or unreasonable result,” as the Commission’s Orders instruct parties to name all interested parties).

In sum, this is a common-sense rule, and it is easy to follow, while non-enforcement threatens many problems in the smooth functioning of appeals. The law mandates it, and common sense supports it, too.

B. The Ninth District’s contrary view was mistaken.

Against all the above, the Ninth District’s contrary analysis offers little to support the opposite outcome. The reasoning that the appeals court relied on is wrong on all counts.

1. The party-naming requirement is not rendered non-jurisdictional merely because the General Assembly placed the filing and naming requirements in separately lettered divisions.

First, the appeals court mistakenly relied on the mere placement of the party-naming requirement in a division (Part (D)) separate from the division (Part (C)) requiring timely filing as the “only act” to perfect jurisdiction. The court distinguished the divisions by saying that “only two things are required [of a valid notice of appeal]: the notice of appeal must be timely filed and must identify the decision appealed.” App. Op. ¶ 11. Notably, the appeals court included as jurisdictional the requirement to “identify the decision appealed,” but that requirement is, in the statute, literally a separate *sentence* from the one stating that the “only act” required is timely filing. Taking the “only act” language literally would mean that requirement should also be non-jurisdictional, and it, too, involves content—and the sole difference is that it is housed in the same division.

But this Court has never said that the law changes based on whether the General Assembly divided provisions into easier-to-read small divisions, versus having several paragraphs under one division. Indeed, in *Spencer*, the Court looked at a statutory division that

had two paragraphs, but it found, based on the text within those paragraphs, that some requirements (those *in* the notice) were jurisdictional and others were not. Just as including items in the same division does not require that they all be treated the same, so, too, does separating items into other divisions not require differential treatment. The *content* matters.

In addition, the Ninth District’s subsection-by-subsection reading would imply, oddly, that *other* provisions defining the requirements in Part (C) are non-jurisdictional. See *City of Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, syl. ¶ 4 (1968) (“The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences”). As explained above in Part A-2 (at 8-10), the statute’s Part (C) says that “timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court,” but it does not *define* what constitutes a timely filing. Part (A) separately sets the thirty-day deadline, but surely that does not mean that the deadline is non-jurisdictional. Nor is filing in the wrong county allowed merely because the provision establishing jurisdiction in certain counties is housed in the separately lettered part (B).

2. The Ninth District’s reliance on *Zier* was mistaken, as that decision, in light of the statutory changes, supports the Director here.

Second, the Ninth District was mistaken in saying that *Zier* supported its outcome, simply because in *Zier* the Court described party-naming as non-jurisdictional. True, that *outcome* seems superficially similar to the outcome the Ninth District reached, but it ignores the Court’s reasoning and the changes to the statute.

In *Zier*, this Court addressed an earlier and critically different version of the statute governing unemployment-compensation appeals. At that time, the statute was more like the workers’ compensation statute the Court reviewed in *Spencer*. The old unemployment statute said that “the notice of appeal shall set forth the decision appealed from and the errors therein

complained of.” App. Op. ¶ 19 (quoting former statute). The statute went on to require service and to identify parties, but it did not state those requirements in terms of the notice itself. *Id.* The Court in *Zier* drew the same line as in *Spencer*, finding the requirements tied to the notice of appeal, such as the then-requirement to identify the grounds for appeal, to be jurisdictional, while finding the other requirements, such as party-naming and service, to be non-jurisdictional. *Zier*, 151 Ohio St. at 126-27.

Here, the appeals court erred in superficially comparing this case to the *result* in *Zier*—as it said that here, too, the naming and service rules were non-jurisdictional, because they were non-jurisdictional in *Zier*—rather than applying the *rule* established in *Zier* (and *Spencer*) to today’s different statute. Today’s unemployment-compensation statute now states the party-naming rule as something required *in the notice of appeal*, so it is now like the grounds requirement was then—a jurisdictional requirement. Indeed, this Court has never read *Zier* to support the Ninth District’s view that, under the later post-*Zier* versions of R.C. 4141.282, “only two things are required: the notice of appeal must be timely filed and must identify the decision appealed.” App. Op. ¶ 11.

To the contrary, this Court has found other elements to be jurisdictional when the changed statute made them so. *In re King*, for example, concluded that under an amended version of R.C. 4141.282, “[i]n order to perfect an appeal . . . the statute explicitly requires that the party appealing serve all other interested parties with notice.” 62 Ohio St. 2d at 88 (1980). The Court also recognized that the General Assembly had amended the statute to override the result of *Joy Mfg. Co. v. Albaugh*, 159 Ohio St. 460 (1953), which had reaffirmed the result of *Zier*. See also *Sullivan v. Kaiser Eng’rs, Inc.*, 62 Ohio St. 2d 304 (1980).

Thus, when drafting the present version of R.C. 4141.282(D), the General Assembly did not write on a clean slate. The immediate predecessor to the current statute—R.C. 4141.28(O)(1)—had adopted an apparently looser approach than the version interpreted in *In re King*, saying that “[f]ailure of an appellant to take any step other than timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the court deems appropriate, which may include dismissal of the appeal.” *Dikong*, 2013-Ohio-33 ¶ 23. Although this Court never addressed the question whether the party-naming requirement in R.C. 4141.28(O)(1) was jurisdictional, lower appellate courts relied on the altered language and interpreted the naming requirement in that version as non-jurisdictional. *See, e.g., Floater Vehicle, Inc. v. Ohio Bureau of Emp’t Servs.*, 4th Dist. No. 1063, 1984 WL 3521, *1 (Jun. 21, 1984) (“the recent amendment of R.C. 4141.28(O) makes failure to serve parties a nonjurisdictional defect”); *Sams v. Ohio Bureau of Employment Services*, 10 Ohio App. 3d 204, 205 (8th Dist. 1983) (“The . . . statute . . . specifically limits the jurisdictional prerequisite to timely filing a notice of appeal with the court of common pleas).

In 2001, the General Assembly amended R.C. 4141.282 specifically to delete this language, reflecting a conscious choice to revert to a stricter regime like that considered in *In re King*, and to override the regime in which various requirements were non-jurisdictional. The General Assembly established that the other R.C. 4141.282 content requirements, including the party naming requirement, are jurisdictional. *See* S.B. 99 Final Analysis, 129th General Assembly, p. 19 (October 31, 2001) (“The act eliminates a provision specifying that failure of an appellant to take any step other than timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the court deems appropriate, which may include dismissal of the appeal.”). The Ninth District, by simply aligning the outcome here with

Zier’s description of party-naming as non-jurisdictional, ignored the statutory amendments and ignored this Court’s repeated teaching that the items required in the notice’s contents are jurisdictional.

All that violates a well-established principle of statutory construction: “When confronted with amendments to a statute, an interpreting court must presume that the amendments were made to change the effect and operation of the law.” *Lynch v. Gallia Cnty. Bd. of Comm’rs*, 79 Ohio St. 3d 251, 254 (1997). Had the General Assembly wanted the party-naming requirement to function in a discretionary manner, they would have left the pre-2001 language in place. Here, the historical evolution of the statutory language confirms the General Assembly’s intent, and of course, “[t]he paramount consideration in determining the meaning of a statute is legislative intent.” *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206 ¶ 34.

3. The Ninth District was wrong to say the Civil Rules could be used to address a failure to meet R.C. 4141.282(D).

The Ninth District also erred in relying on the Civil Rules as a “backup” that could fix the failure to comply with the statute. The court said that although the statute did not render Pryor’s appeal *jurisdictionally* defective, the notice was still procedurally defective. Thus, it said, “an appellee may still seek dismissal pursuant to Civ.R. 12(B)(7) (failure to join a party under Civ.R. 19 or 19.1) or pursuant to Civ.R. 12(B)(5) (insufficiency of service of process).” App. Op. ¶ 11. It added that “[a]lternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects.” *Id.* This conclusion is mistaken for several reasons.

First, the Rules themselves preclude this reasoning, as Civil Rule 1(C) provides that the Civil Rules, “to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure . . . (7) in all other special statutory proceedings,” and Rule 12(B)(7) by its nature

does not apply to R.C. 4141.282 proceedings. A Rule 12(B)(7) motion to dismiss applies to a failure to join parties required to be joined under Rule 19 or 19.1, so Rule 12(B)(7) applies to R.C. 4141.282 only if one or both of those rules applies—but neither does. By its own terms, Civil Rule 19, the compulsory joinder rule, is limited to four situations related to actions arising out of “personal injury or property damage,” none of which apply to R.C. 4141.282 proceedings.

And applying Civil Rule 19 here would conflict with the procedure “originally provided in the special statutory action” at issue, *Robinson v. B.O.C. Group, Gen. Motors Corp.*, 81 Ohio St. 3d 361, 370 (1998) (quoting *Price v. Westinghouse Elec. Corp.*, 70 Ohio St. 2d 131, 132 (1982)), because it would permit joinder of parties who are ineligible to participate under the statute but who satisfy one or more of the three criteria for joinder under Civil Rule 19(A), and it would prohibit joinder of parties required to participate under the statute but who may not satisfy the rule’s criteria. Applying Civil Rule 19 would thus frustrate two purposes of the statute: restricting the number and kind of parties eligible to participate in judicial review of final orders issued by the Commission, and ensuring that parties typically affected by such appeals have a right to participate regardless of whether they satisfy the standard criteria for indispensable parties. Using the rule’s joinder standards, rather than the statute’s, could somehow *include* parties that the statute did not intend, while *excluding* those the statute did intend.

In addition, R.C. 4141.282(D)’s plain text conflicts with Civil Rule 19 in other ways. The Rule addresses parties to be joined “*if feasible*,” whereas R.C. 4141.282(D) simply provides that the appellant “*shall name*,” and thus join, “all interested parties as appellees,” leaving no room for assessing feasibility of joinder. Further, Rule 19(B) requires dismissal of an action if joinder is not feasible only if a four-factor test is satisfied, whereas R.C. 4141.282(D) provides no route for an appeal to proceed if an interested party cannot be joined. Thus, Rule 19 cannot

apply to R.C. 4141.282 proceedings, as the statute establishes standards for determining who is a party that are by nature inconsistent with the Rule-based standards for joinder.

The appeals court's reliance on Civil Rule 12(B)(5), regarding insufficiency of service of process, is equally flawed. For starters, the Ninth District erred in treating a party-naming failure as a species of defective service, as R.C. 4141.282(D) governs party status, not service—and in fact, a separate provision, R.C. 4141.282(E), governs service. And that separate, statutory service provision relieves the appellant of the duty to serve appellees with process, and instead says that “*the clerk* shall serve a copy of the notice of appeal upon all appellees.” R.C. 4141.282(E) (emphasis added). Thus, an appellant's failure to name parties properly cannot be recast as a service failure, thus triggering Civil Rule 12(B)(5), as party-naming and service are distinct functions performed by distinct actors (the appellants versus the clerk). Moreover, a motion to dismiss for insufficiency of service of process may be raised by someone who is already a *party* to a proceeding, but was not served, so someone who was not even named as a party cannot become one through Rule 12(B)(5).

And even if the Civil Rules could somehow apply substantively to fix a party-naming failure, they could not apply procedurally, or practically, or fairly. The motions described by the appeals court can only be filed by a party, so the left-out non-party is stuck. And even if that hurdle could somehow be overcome, and one party could move based on the exclusion of the other, such a “fix” would happen only if a named appellee would go to bat for an unnamed one. But that of course cannot be counted on. One party's rights cannot rely on the helpfulness of a co-party. Further, as explained above, the Ninth District's view would allow notices to be valid even if *no* appellee were named, leaving no one to insist on compliance with the statute or rules.

In the end, if all of these after-the-fact fixes were allowed, appellants will have little incentive to comply with R.C. 4141.282(D) in the first place. Knowing that “Ohio courts have eschewed the harsh result of dismissing an action because an indispensable party was not joined, electing instead to order that the party be joined,” *State ex rel. Bush v. Spurlock*, 42 Ohio St. 3d 77, 81 (1989), no appellant would need to worry about getting it right the first time. That means that courts will constantly be burdened with administering belated cleanups, when it would be much easier to simply follow the General Assembly’s instructions—again, repeated in every Commission order—in the first place.

Nor is this problem cured by Civil Rule 21, regarding joinder or nonjoinder of parties. That rule, outside of the context of special statutory proceedings of this kind, allows joinder of parties by court order. But Civil Rule 21 cannot apply here for the same reasons, discussed above, that Civil Rule 19 cannot apply. Civil Rule 21 allows joinder of parties other than the interested parties contemplated by R.C. 4141.282, by applying the standard supplied by Civil Rule 20 regarding permissive joinder of parties. *See* The Staff Notes to the July 1, 1970 amendment to Civ.R. 20 (“Rule 21 must be read in conjunction with Rule 18, Joinder of Claims and Remedies, and Rule 20, Permissive Joinder of Parties”). Again, a flexible rule-based standard, by varying from the bright-line definition of “interested parties” in the statute, cannot be applied without improperly overriding the statute.

Thus, the Rules cannot be used to fix noncompliance with the statute, and the only way to follow the statute is to follow the statute.

On top of all that, by invoking the Civil Rules to allow jurisdiction where it would otherwise not exist, the Ninth District’s approach violated Civil Rule 82. That rule provides,

“[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of this state.”
The Ninth District’s view surely does that, as it creates jurisdiction that is otherwise lacking.

In sum, none of the Ninth District’s reasoning withstands scrutiny, and no sound reason exists for holding the party-naming requirement to be non-jurisdictional. It is instead jurisdictional, as explained in Part A.

CONCLUSION

For all the above reasons, the Court should conclude that R.C. 4141.282(D)’s requirement that the appellant name all interested parties as appellees in the notice of appeal is a jurisdictional requirement, and it should answer the certified-conflict question “yes.” Accordingly, it should reverse the Ninth District Court of Appeals and reinstate the common pleas court’s dismissal of Pryor’s administrative appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Appellant Director, Ohio Department of Job and Family Services was served by regular U.S. mail and e-mail this 5th day of October, 2015, upon the following:

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Pro Se Appellee

/s Eric E. Murphy

Eric E. Murphy
State Solicitor

In the
Supreme Court of Ohio

MARCUS PRYOR II,	:	Case No. _____
	:	
Appellee,	:	On Appeal from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
DIRECTOR, OHIO DEPARTMENT OF JOB	:	
AND FAMILY SERVICES,	:	Court of Appeals
	:	Case No. 27225
Appellant.	:	

**NOTICE OF APPEAL OF APPELLANT
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

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**NOTICE OF APPEAL OF APPELLANT
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

Appellant Director, Ohio Department of Job and Family Services, gives notice of its jurisdictional appeal to this Court, pursuant to Ohio Supreme Court Rule 5.02 and 7.01, from a decision of the Ninth District Court of Appeals captioned *Marcus Pryor II v. Director, Ohio Department of Job and Family Services*, No. 27225 issued and journalized on March 31, 2015.

Date-stamped copies of the Ninth District's Decision and Journal Entry, and the Court of Common Pleas Judgment Entry are attached as Exhibits 1 and 2, respectively, to the Appellant's Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case raises questions of public and great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Appeal of Appellant Director, Ohio Department of Job and Family Services, was served by U.S. mail this 14th day of May, 2015, upon the following pro se party:

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Pro Se Appellee

/s Eric E. Murphy
Eric E. Murphy
State Solicitor

In the
Supreme Court of Ohio

MARCUS PRYOR II,	:	Case No. _____
	:	
Appellee,	:	On Certified Conflict from the
	:	Summit County
v.	:	Court of Appeals,
	:	Ninth Appellate District
DIRECTOR, OHIO DEPARTMENT OF	:	
JOB AND FAMILY SERVICES,	:	Court of Appeals
	:	Case No. 27225
Appellant.	:	

**NOTICE OF CERTIFIED CONFLICT OF
APPELLANT DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES**

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**NOTICE OF CERTIFIED CONFLICT OF APPELLANT
DIRECTOR, OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

The Director, Ohio Department of Job and Family Services, hereby notifies the Court, pursuant to S. Ct. Rule 8.01, that the Ninth District Court of Appeals has certified a conflict. See Journal Entry, May 5, 2015, in *Marcus Pryor II v. Director, Ohio Dept. of Job & Family Servs.* (9th Dist.), Case No. 27225 (Ex. 1). The Ninth District certified a conflict between its initial decision, 2015-Ohio-1255 (Ex. 2), and these six decisions:

Dikong v. Ohio Supports, Inc., 2013-Ohio-33 (1st Dist.) (Ex. 3);

Mattice v. Ohio Dept. of Job & Family Servs., 2013-Ohio-3941 (2d Dist.) (Ex. 4.);

Rupert v. Ohio Dept. of Job & Family Servs., 2015-Ohio-915 (6th Dist.) (Ex. 5);

Hinton v. Ohio Unemp. Review Comm., 2015-Ohio-1364 (7th Dist.) (Ex. 6);

Luton v. Ohio Unemp. Review Comm., 2012-Ohio-3963 (8th Dist.) (Ex. 7); and

Sydenstricker v. Donato's Pizzeria, LLC, 2010-Ohio-2953 (11th Dist.) (Ex. 8).

The Ninth District certified this issue:

When appealing an unemployment compensation decision to the trial court, are the requirements contained in R.C. 4141.282(D), which explains how to name the parties, mandatory requirements necessary to perfect the appeal and vest the trial court with jurisdiction?

See Journal Entry, Ex. 1, at 1. Appellant is also filing a discretionary appeal in this case. That appeal is not yet filed and thus not docketed with a case number.

Respectfully submitted,

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Counsel for Appellant

Director, Ohio Department of Job and
Family Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Notice of Certified Conflict of Appellant Director, Ohio Department of Job and Family Services was served by U.S. mail this 14th day of May, 2015, upon the following pro se party:

Marcus Pryor II
809 Mishler Road
Mogadore, Ohio 44260

Pro Se Appellee

/s Eric E. Murphy
Eric E. Murphy
State Solicitor

STATE OF OHIO)
COUNTY OF SUMMIT)

)ss:
)

COURT OF APPEALS
DANIEL M. MORRIGAN
IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
2015 MAR 31 AM 8:58

MARCUS PRYOR, II

SUMMIT COUNTY
CLERK OF COURTS
C.A. No. 27225

Appellant

v.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2013 08 4088

Appellee

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

CARR, Judge.

{¶1} Appellant Marcus Pryor, II, appeals the judgment of the Summit County Court of Common Pleas that dismissed his administrative appeal for lack of subject matter jurisdiction. This Court reverses and remands.

I.

{¶2} Mr. Pryor filed in the common pleas court an appeal from the decision of the Unemployment Compensation Review Commission that disallowed a review hearing regarding the denial of his application for unemployment benefits and the ordering of repayment of benefits improperly received. He timely filed his appeal on August 23, 2013, from the commission's decision which was mailed on July 24, 2013. He further directed that the complaint be served on the Director of the Ohio Department of Job and Family Services ("ODJFS") and the Department of the Army. The administrative record was subsequently filed with the trial court.

{¶3} ODJFS filed a motion to dismiss for lack of subject matter jurisdiction. Mr. Pryor responded in opposition, and ODJFS replied. On December 31, 2013, the trial court granted the department's motion and dismissed Mr. Pryor's appeal with prejudice for lack of subject matter jurisdiction. Mr. Pryor filed a motion for reconsideration, requesting that the trial court remand the matter to the review commission to determine whether he was required to repay benefits received, as that matter was not fully resolved by the commission. ODJFS filed a brief in opposition. The trial court declined to reconsider its December 31, 2013 judgment entry for the reason that it had no jurisdiction to review or modify a final judgment. Mr. Pryor filed a timely appeal in which he raises two assignments of error for review. This Court addresses the second assignment of error first as it is dispositive of the appeal.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED WHEN IT DISMISSED THE APPEAL FOR LACK OF SUBJECT-MATTER JURISDICTION.

{¶4} Mr. Pryor argues that the trial court erred by dismissing his appeal from the decision of the review commission for lack of subject matter jurisdiction. This Court agrees.

{¶5} This Court reviews de novo the trial court's dismissal of an action for lack of subject matter jurisdiction. *Lorain Cty. Children Servs. v. Gossick*, 9th Dist. Lorain No. 13CA010476, 2014-Ohio-3865, ¶ 10.

{¶6} R.C. 4141.282 addresses unemployment compensation appeals to the common pleas court. Subsection (A) permits any interested party to appeal a decision of the review commission to the common pleas court "within thirty days after written notice of the final decision of the unemployment compensation review commission was sent to all interested parties[.]" Subsection (D) defines "interested parties" and further requires that the "appellant

shall name all interested parties as appellees in the notice of appeal.” There is no dispute that Mr. Pryor did not name the Department of the Army, his former employer and an interested party to the appeal, in his notice of appeal. ODJFS has argued consistently that Mr. Pryor’s failure to name all interested parties in his notice of appeal constituted a jurisdictional flaw, divesting the common pleas court of subject matter jurisdiction to address the merits of the appeal.

{¶7} R.C. 4141.282(C), however, addresses perfection of the appeal and expressly states: “The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.” Although several of our sister districts have declined to take subsection (C) at face value, instead recognizing jurisdictional ramifications where an appellant fails to strictly comply with subsection (D), this Court concludes that the legislature clearly enunciated the requirements for vesting subject matter jurisdiction in the common pleas court.

{¶8} In the past few years, the First, Second, and Eighth District Courts of Appeals have concluded that an appellant’s failure to name one of the interested parties to an appeal from the Unemployment Compensation Review Commission’s decision divests the common pleas court of jurisdiction to hear the appeal. *See, e.g., Dikong v. Ohio Supports, Inc.*, 1st Dist. Hamilton No. C-120057, 2013-Ohio-33; *Mattice v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Montgomery No. 25718, 2013-Ohio-3941; *Luton v. Ohio Unemployment Revision Comm.*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963. All three appellate courts read the mandate in R.C. 4141.282(D) to name all interested parties in the notice of appeal as jurisdictional. In fact, the *Dikong* and *Mattice* courts have gone so far as to conclude that subsection (D) would be rendered meaningless if the mere timely filing of the appeal from the identified decision pursuant to

subsection (C) were sufficient to vest subject matter jurisdiction in the common pleas court. *Dikong* at ¶ 21; *Mattice* at ¶ 13-14. This Court disagrees with that conclusion.

{¶9} *Dikong*, *Mattice*, and *Luton* all cite *Zier v. Bur. of Unemp. Comp.*, 151 Ohio St. 123 (1949), paragraph one of the syllabus, in support of their conclusion. The high court held: “An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.” *Id.* at paragraph one of the syllabus. The statute governing appeals from decisions of the unemployment compensation board of review in effect at that time read:

Any interested party * * * may * * * within thirty days * * * appeal from the decision of the board of review * * *. Such appeal shall be taken by the filing by the appellant of a notice of appeal with the clerk of such court and with the board of review. Such notice of appeal shall set forth the decision appealed from and the errors therein complained of. Proof of the filing of such notice with the board of review shall be filed with the clerk of such court. All other interested parties before the board of review * * * shall be made appellees. The appellant shall serve notice of the appeal upon all appellees by registered mail or actual delivery to his last known post office address unless such notice is waived.

Zier, 151 Ohio St. at 126-127.

{¶10} Mr. Zier filed his notice of appeal in the common pleas court “from the decision of the board of review denying the right to compensation, in accordance with his right to appeal under [statute].” *Id.* at 124. The high court affirmed the trial court’s dismissal of the appeal for lack of jurisdiction, but only because Mr. Zier failed to “set forth the decision appealed from or the errors therein complained of[,]” not based on the failure to make all interested parties appellees. *Id.* at 127. In fact, the high court distinguished the jurisdictional requirements from the non-jurisdictional ones:

We are in accord with the view that the procedure directed by the above provisions relative to parties and proofs of service of notice *does not constitute*

conditions precedent to jurisdiction, but compliance with the requirements as to the filing of the notice of appeal – the time of filing, the place of filing and the content of the notice as specified in the statute – are all conditions precedent to jurisdiction.

(Emphasis added.) *Id.*

{¶11} In this case, the legislature expressly delineated the jurisdictional requirements in R.C. 4141.282(C). To perfect an appeal, only two things are required: the notice of appeal must be timely filed and it must identify the decision appealed. As the *Zier* court concluded, so does this Court conclude that the provisions in subsection (D) (relative to parties to be named in the notice of appeal) and subsection (E) (relative to service of the notice of appeal) are not conditions precedent to the vesting of subject matter jurisdiction in the common pleas court. Moreover, the conclusion does not render meaningless the requirements in subsections (D) and (E). An appellee may still seek dismissal pursuant to Civ.R. 12(B)(7) (failure to join a party under Civ.R. 19 or 19.1) or pursuant to Civ.R. 12(B)(5) (insufficiency of service of process). Alternatively, once an appeal has been perfected, the appellant may seek leave to amend the notice of appeal to cure any nonjurisdictional defects. Any such defects in Mr. Pryor's notice of appeal, specifically, his failure to name his prior employer as an appellee, did not divest the trial court of jurisdiction to consider his appeal, however. Therefore, in the absence of naming all interested parties, while Mr. Pryor may not be able to fully exercise his right to appeal, he has nevertheless perfected that right. *See Zier* at paragraph one of the syllabus. Accordingly, the trial court erred by granting the department's motion to dismiss for lack of subject matter jurisdiction. Mr. Pryor's second assignment of error is sustained.

ASSIGNMENT OF ERROR I

THE COMMISSION ERRED WHEN IT AFFIRMED THAT PRYOR DID NOT MEET THE MONETARY REQUIREMENT.

{¶12} Pryor argues that the review commission erred by finding that he did not meet the monetary requirements to be entitled to unemployment benefits. Based on our resolution of the second assignment of error, the first assignment of error has been rendered moot and we decline to address it. *See* App.R. 12(A)(1)(c).

{¶13} Moreover, to the extent that Pryor may have addressed this issue in his motion for reconsideration before the trial court, we are compelled to decline to address it. A dismissal of an action with prejudice for lack of subject matter jurisdiction constitutes a final, appealable order. *See* R.C. 2505.02(B). The trial court properly concluded that it had no authority to reconsider a final judgment and that any substantive ruling on the issues for reconsideration would constitute a nullity. *See U.S. Bank v. Schubert*, 9th Dist. Lorain No. 13CA010462, 2014-Ohio-3868, ¶ 12. Accordingly, there is no substantive issue arising out of the motion for reconsideration for this Court's review.

III.

{¶14} Mr. Pryor's second assignment of error is sustained. This Court declines to address his first assignment of error. The judgment of the Summit County Court of Common Pleas is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.


DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

MARCUS H. PRYOR II, pro se, Appellant.

SUSAN M. SHEFFIELD, Associate Assistant Attorney General, for Appellee.

STATE OF OHIO)

COURT OF APPEALS
)ss. DANIEL M. HINDS
2015 MAY -5 AM 11:02

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT)

MARCUS PRYOR, II

SUMMIT COUNTY
CLERK OF COURTS

C.A. No. 27225

Appellant

v.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES

JOURNAL ENTRY

Appellee

Appellee has moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on March 31, 2015, and the judgments of the First District Court of Appeals in *Dikong v. Ohio Supports, Inc.*, 1st Dist. Hamilton No. C-120057, 2013-Ohio-33; Second District Court of Appeals in *Mattice v. Ohio Dept. of Job & Family Servs.*, 2d Dist. Montgomery No. 25718, 2013-Ohio-3941; Sixth District Court of Appeals in *Rupert v. Ohio Dept. of Job & Family Servs.*, 6th Dist. Lucas No. L-14-1139, 2015-Ohio-915; Seventh District Court of Appeals in *Hinton v. Ohio Unemp. Rev. Comm.*, 7th Dist. Mahoning No. 14 MA 45, 2015-Ohio-1364; Eighth District Court of Appeals in *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. Cuyahoga No. 97996, 2012-Ohio-3963; and Eleventh District Court of Appeals in *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. Lake No. 2009-L-149, 2010-Ohio-2953. Appellant has responded to the motion.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the “judgment * * * is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]” *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St. 3d 594, 596 (1993). “[T]he alleged conflict must be on a rule of law -- not facts.” *Id.*

EXHIBIT 4

Appellee has proposed that a conflict exists between the districts on the issue of the jurisdictional effect of R.C. 4141.282(D). Appellant does not oppose certification of a conflict, although he proposes an alternate phrasing of the legal issue. Upon consideration, we find appellant's proposition of the legal issue to more precisely recite the conflict. Accordingly, we find that a conflict of law exists and, therefore, certify a conflict on the following issue:

When appealing an unemployment compensation decision to the trial court, are the requirements contained in R.C. 4141.282(D), which explains how to name the parties, mandatory requirements necessary to perfect the appeal and vest the trial court with jurisdiction?



Judge

Concur:

HENSAL, P.J.

MOORE, J.

DANIEL M. HERRIGAN

2013 DEC 31 PM 1:39

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MARCUS PRYOR, II,

Plaintiff-Appellant,

v.

DIRECTOR, OHIO DEPARTMENT OF
JOB AND FAMILY SERVICES,

Defendant-Appellee.

) CASE NO.: CV 2013 08 4088

) JUDGE CALLAHAN

) JUDGMENT ENTRY

) Final, Appealable Order

This matter is before the Court upon Defendant-Appellee Director, ODJFS's Motion to Dismiss for Lack of Jurisdiction filed on October 16, 2013. Plaintiff-Appellant Marcus Pryor, II, filed a Motion in Opposition on October 21, 2013. Additionally, Defendant-Appellee Director, ODJFS, filed a Reply Brief on October 28, 2013. In accordance with the Local Rules, briefing of this Motion is closed and the Court will proceed to consider the pending Motion to Dismiss.

Defendant-Appellee ODJFS moves to dismiss the instant administrative appeal of the July 24, 2013 decision by the Unemployment Compensation Review Commission ("UCRC") for lack of subject matter jurisdiction. Specifically, it is alleged Plaintiff-Appellant Pryor failed to name the employer as an appellee in the Notice of Appeal and thus the common pleas court lacks subject-matter jurisdiction over the administrative appeal. Plaintiff-Appellant Pryor

argues based on decisions from the Ohio Supreme Court he has complied with the statute and his Amended Notice of Appeal cures any alleged defects.

R.C. 4141.282 governs the filing of administrative appeals of decisions from the Unemployment Compensation Review Commission to the court of common pleas. The statute not only authorizes the appeal, it also sets forth the conditions and procedures for filing and perfecting the appeal. *Zier v. Bur. of Unemployment Comp.*, 151 Ohio St. 123, 125, 84 N.E.2d 746 (1949). An appeal can only be perfected in the manner set forth in the statute. *Id.* “[W]here a statute confers the right to appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *Id.* at 125-26, quoting *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 70 N.E.2d 93 (1946), paragraph one of the syllabus. Thus, the statute is mandatory and jurisdictional and failure to comply with the statute will result in a dismissal of the appeal for lack of subject-matter jurisdiction. *In re King*, 62 Ohio St.2d 87, 88-89, 403 N.E.2d 200 (1980).

An administrative appeal must be perfected in order to vest jurisdiction in the court of common pleas to hear the appeal. *Anderson v. Interface Elec., Inc.*, 10th Dist. No. 03AP-354, 2003-Ohio-7031, 2003 Ohio App. LEXIS 6359, ¶17, citing *Zier*, 151 Ohio St. at 125. In an administrative appeal from the Unemployment Compensation Review Commission’s final decision, “[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court.” R.C. 4141.282(C); *Zier*, 151 Ohio St. at 25. An appeal by an employee is perfected by filing a written notice of appeal in the court of common pleas where the employee is a resident or was last employed, within thirty days of the mailing of the final decision of the unemployment compensation review commission to the parties. R.C.

4141.282(A) and (B); see *Nicoll v. Ohio Dept. of Job and Family Servs.*, 2d Dist. No. 24509, 2011-Ohio-5207, 2011 Ohio App. LEXIS 4298, ¶18. The notice of appeal shall name all interested parties as appellees. R.C. 4141.282(D). "Interested parties" is defined as those individual and entities whose names and addresses are included in the UCRC final decision. *Id.* Failure by an appellant to name the employer as an appellee is a jurisdictional defect. *Luton v. State of Ohio Unemployment Rev. Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963, 2012 Ohio App. LEXIS 3494, ¶12; *Mattice v. Ohio Dept. of Job and Family Servs.*, 2d Dist. No. 25718, 2013-Ohio-3941, 2013 Ohio App. LEXIS 4105, ¶14. If the appeal is not properly perfected, then the common pleas court lacks jurisdiction and the appeal must be dismissed. *Anderson*, 2003-Ohio-7031, at ¶17; *Mattice*, 2013-Ohio-3941, at ¶16.

Plaintiff-Appellant attempts to argue that while he did not name the employer, he served the employer and thus he has complied with the statute and jurisdiction is vested in the court. Plaintiff-Appellant is attempting argue that the employer has notice of the administrative appeal and he has substantially complied with the statutory requirements. Plaintiff-Appellant's position, however, overlooks the fact that he did not name the employer in the notice of appeal as required by R.C. 4141.282(D). The UCRC's final Decision of July 24, 2013 instructs the parties under the heading of "APPEAL RIGHTS" that "[t]he appellant must name all interested parties as appellees in the notice of appeal, ***." The July 24, 2013 Decision then listed four names and addresses: Marcus Pryor, II, 32 North Ave., Cincinnati, OH 45215; Department of Army, Attn. Army Personnel Records Division, Ahre-Pdr-Ucx, Fort Knox, KY 40122-5500; Department of Army, 040664 Aprn Home DET FC, Fort Stewart TC, GA 31314; and Director, Ohio Department of Job Family Services, 30 E. Broad Street, 32nd Floor, Columbus, Ohio

43215. These four names are the interested parties that were required to be named in the notice of appeal. The August 23, 2013 Notice of Appeal only lists Marcus Pryor and the ODJFS as parties. The Department of Army is not listed in the Notice of Appeal. While Plaintiff-Appellant filed and served the Notice of Appeal, the Notice of Appeal itself is defective as it did not name the Department of Army as an appellee. Service of the notice of appeal upon the employer, alone, does not satisfy the statutory requirements to perfect an appeal. See *Luton*, 2012-Ohio-3963, at ¶12.

Additionally, Plaintiff-Appellant's assertion that he only needed to comply with R.C. 4141.282(C) is incorrect. This section of the statute states "[t]he timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court." Plaintiff-Appellant's position ignores the remaining portions of the statute that also must be followed in order to vest jurisdiction, namely the requirement to name the employer as an appellee in the notice of appeal. The statute unequivocally states the appellant shall name all interested parties as appellees in the notice of appeal. In this case, Plaintiff-Appellant timely filed a deficient Notice of Appeal. The Notice of Appeal was deficient because it failed to list the employer as an appellee. The timely filing of a deficient notice of appeal does not vest this Court with jurisdiction over the administrative appeal. See *Luton*, 2012-Ohio-3963, at ¶14; *Mattice*, 2013-Ohio-3941, at ¶16. Moreover, the concept of "substantial" compliance with R.C. 4141.282 has been rejected based on the holdings of *Zier* and *In re King*: the "failure of a party to strictly comply with the statutory requirements will cause the appeal to be dismissed for lack of jurisdiction." *Luton*, 2012-Ohio-3963, at ¶15, citing *Sydenstricker v. Donato's Pizzeria, LLC*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953, 2010 Ohio App. LEXIS 2455.

Further, Plaintiff-Appellant's reliance on *Spencer v. Freight Handlers, Inc.*, 131 Ohio St.3d 316, 2012-Ohio-880, 964 N.E.2d 1030, is misplaced as that case involves a workers' compensation appeal. Administrative appeals from the Industrial Commission are governed by R.C. 4123.512, while administrative appeals from the UCRC are governed by R.C. 4141.282. These are different statutes with different statutory requirements to perfect an appeal. Accordingly, the holding in *Spencer* is inapplicable in this matter. See *Luton*, 2012-Ohio-3963, at ¶17.

Similarly, Plaintiff-Appellant's reliance upon *Welsh Dev. Co., Inc. v. Warren Cty. Reg. Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604, 946 N.E.2d 215, is also in error as that case involved an administrative appeal from an administrative agency pursuant to R.C. Chapter 2505 et seq. Again, the requirements to perfect an appeal from an administrative agency under R.C. Chapter 2505 et seq. are different from the statutory requirements to perfect an appeal from the UCRC. Thus, the holding in *Welsh* is not controlling in this matter.

Lastly, this Court disagrees with Plaintiff-Appellant's suggestion that the common pleas court look to the Appellate Rules of Procedure or any other relevant statutes to address the issue of how to perfect an appeal from the UCRC. R.C. 4141.282 clearly sets forth the statutory requirements for perfecting an administrative appeal from the UCRC. Moreover, there is abundant case law dealing directly with the issue at hand: a trial court lacks subject-matter jurisdiction in an administrative appeal when the appellant fails to name the employer as an appellee in the notice of appeal. See *Luton, supra*; *Mattice, supra*; *In re King, supra*. Accordingly, this Court must follow R.C. 4141.282 and the relevant case law in deciding the

pending Motion to Dismiss and not the Appellate Rules of Procedure and other unrelated statutes and irrelevant case law.

Plaintiff-Appellant attempts to correct his oversight in failing to name the employer in the Notice of Appeal by moving the Court and filing an Amended Notice of Appeal. An appellant may amend the notice of appeal to correct any errors, such as a failure to name an appellee, within the original 30-day timeframe following the mailing of the final determination by the UCRC. *Dikong v. Ohio Supports, Inc.*, 1st Dist. No. C-120057, 2013-Ohio-33, 2013 Ohio App. LEXIS 38, ¶26; R.C. 4141.282(A). In this case, the UCRC issued its final Decision on July 24, 2013. Thus, the 30-day appeal period expired on August 23, 2013, the same day Plaintiff-Appellant filed his Notice of Appeal. Plaintiff-Appellant filed a request to amend his Notice of Appeal in his Motion in Opposition filed on October 21, 2013. Additionally, Plaintiff-Appellant filed, without leave of court, an Amended Notice of Appeal on November 14, 2013. Plaintiff-Appellant's Motion to file an Amended Notice of Appeal and the Amended Notice of Appeal were both filed after August 23, 2013; the deadline to file the Notice of Appeal and any amendments thereto, and thus were untimely.

This Court is aware Plaintiff-Appellant Pryor was acting pro se at the time that he filed his Notice of Appeal. While Plaintiff-Appellant Pryor was entitled to represent himself in this matter, he is bound by the same rules and procedures as those litigants who retain counsel. *First Resolution Invest. Corp. v. Salem*, 9th Dist. No. 24049, 2008-Ohio-2527, 2008 Ohio App. LEXIS 2131, ¶7. Plaintiff-Appellant Pryor is held to the same standards as an attorney and must comply with the law, statutes and Ohio Rules of Civil Procedure. *Sherlock v Meyers*, 9th Dist. No. 22071, 2004-Ohio-5178, 2004 Ohio App LEXIS 4686, ¶3, citing *Martin v Wayne Cty. Natl.*

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Bank, 9th Dist. No. 03CA0079, 2004-Ohio-4194, 2004 Ohio App. LEXIS 3827, ¶14; *Kilroy v B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). The pro se plaintiff must accept the results of his own mistakes and/or errors. *Martin*, 2004-Ohio-4194, at ¶14.

Based on the foregoing, Plaintiff-Appellant has failed to timely amend his Notice of Appeal and to perfect the instant administrative appeal. Accordingly, this Court does not have subject-matter jurisdiction over the instant administrative appeal and cannot consider the merits of Plaintiff-Appellant Marcus Pryor, II's administrative appeal.

Conclusion

Plaintiff-Appellant Marcus Pryor, II's Motion to File Amended Notice of Appeal is **denied**. The Amended Notice of Appeal filed on November 14, 2013 is **stricken** from the record.

Defendant-Appellee Director, ODJFS's Motion to Dismiss is well-taken and is **GRANTED**. The administrative appeal filed on August 23, 2013 is **dismissed with prejudice** for lack of subject-matter jurisdiction. Costs to Plaintiff-Appellant Marcus Pryor, II.

This is a final, appealable order.

IT IS SO ORDERED.


JUDGE LYNNE S. CALLAHAN

cc: Attorney Susan M. Sheffield
Plaintiff-Appellant Marcus Pryor, II, pro se



State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

DECISION DISALLOWING REQUEST FOR REVIEW

In re claim of:

Claimant Representative:

Marcus H. Pryor II - Appellant
*SSN: XXX-XX-8858

*If the complete SSN is needed to identify the claimant, please call UCRC Staff at 1-866-833-8272. Due to privacy laws, the Commission can confirm, but not provide the full SSN.

Employer:

Employer Representative:

Department of Army
UCO No.: 0950801000
Issues: VAL-APP-12

Director:
Ohio Department of Job and family Services

On July 04, 2013, the appellant filed a request for review.

Date This Decision Mailed: July 24, 2013

Issues: (References are to the Revised Code of Ohio, Chapter 4141, unless otherwise noted. Issues pertaining to a specific employer are listed below their names.)

OP
Was the claimant credited with a waiting period, or paid benefits, to which the claimant was not entitled for reasons other than fraudulent misrepresentation?

An individual who within three years of the end of the individual's benefit year or within six months after the determination under which the individual was credited with a waiting period or paid benefits, whichever is later, has been paid benefits, or credited with a waiting week to which the individual was not entitled, shall have the claim canceled. Benefits that are overpaid shall be repaid to the bureau, or withheld from future benefits, unless the overpayment results from a clerical error in a decision, or an error in an employer's report. 4141.35 (B) O.R.C.

VAL-APP-12

Did the claimant file a valid application for determination of benefits rights?



RCEI13204X000000020C

An individual is entitled to a valid application if the individual is unemployed when they file and has been employed in covered employment in at least 20 qualifying weeks within the base period, has had an average weekly wage of at least \$222.00, and for applications filed on or after August 1, 2004, the reason for separation from the individual's most recent employment is not disqualifying under sections 4141.29 (D)(2) or 4141.291 ORC. The base period is the first four of the last five completed calendar quarters prior to filing. 4141.01 (O)(Q)(R) ORC.

The appellant shown above filed a Request for Review to the Review Commission, pursuant to the provisions of Section 4141.281 (C) (3), Revised Code of Ohio, from the Hearing Officer's decision.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Request for Review should be disallowed.

DECISION

The Request for Review is hereby disallowed.

Unemployment Compensation Review Commission

Gregory Gantt, Chairman
Sylvester Patton, Vice-Chairman

APPEAL RIGHTS

An appeal from this decision may be filed to the Court of Common Pleas of the county where the appellant, if an employee, is resident or was last employed, or of the county where the appellant, if an employer, is resident or has the principal place of business in this state, within thirty (30) days from the date of mailing of this decision, as set forth in Section 4141.282, Revised Code of Ohio. The appellant must name all interested parties as appellees in the notice of appeal, including the Director of the Department of Job and Family Services.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Court of Common Pleas to determine the timeliness of your appeal. The court may find the appeal to be timely if you did not receive this decision within thirty (30) days after it was mailed to you. For more information refer to the booklet "Workers' Guide to Unemployment Compensation (JFS-55213), available from Ohio Department of Job and Family Services or visit the agency's website at <https://unemployment.ohio.gov>.

This decision was sent to the following:

Marcus H. Pryor II
32 NORTH AVE
CINCINNATI, OH 45215-2120
Via Email

Department of Army
Attn Army Personnel Records Division
Ahrc-Pdr-Ucx
Fort Knox, KY 40122-5500
Via Email

Department of Army
040664APEN HOME DET FC
FORT STEWART TC, GA 31314
Via Email

Director
Ohio Department of Job Family Services
30 E. Broad Street, 32nd Floor
Columbus, Ohio 43215



RC1113204X0000000030G

O.R.C. 4141.282 Appeal to court.

APPEAL TO COURT

(A) THIRTY-DAY DEADLINE FOR APPEAL

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.

(B) WHERE TO FILE THE APPEAL

An appellant shall file the appeal with the court of common pleas of the county where the appellant, if an employee, is a resident or was last employed or, if an employer, is a resident or has a principal place of business in this state. If an appellant is not a resident of or last employed in a county in this state or does not have a principal place of business in this state, then an appellant shall file the appeal with the court of common pleas of Franklin county.

(C) PERFECTING THE APPEAL

The timely filing of the notice of appeal shall be the only act required to perfect the appeal and vest jurisdiction in the court. The notice of appeal shall identify the decision appealed from.

(D) INTERESTED PARTIES

The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

(E) SERVICE OF THE NOTICE OF APPEAL

Upon filing the notice of appeal with the clerk of the court, the clerk shall serve a copy of the notice of appeal upon all appellees, including the director.

(F) DUTIES OF THE COMMISSION

(1) Except as specified in division (F)(2) of this section, the commission, within forty-five days after a notice of appeal is filed or within an extended period ordered by the court, shall file with the clerk a certified transcript of the record of the proceedings at issue before the commission. The commission also shall provide a copy of the transcript to the appellant's attorney or to the appellant, if the appellant is not represented by counsel, and to any appellee who requests a copy.

(2) If the commission cannot file the certified transcript of the record of proceedings within forty-five days after a notice of appeal is filed, or within an extended period ordered by the court,

then the court shall remand the matter to the commission for additional proceedings in order to complete the record on appeal. The additional proceedings may include a new hearing before the commission or a designated hearing officer.

(G) COURT BRIEFING SCHEDULES

The court shall provide for the filing of briefs by the parties, whether by local rule, scheduling order, or otherwise.

(H) REVIEW BY THE COURT OF COMMON PLEAS

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.

(I) FAILURE TO FILE APPEAL WITHIN THIRTY DAYS

If an appeal is filed after the thirty-day appeal period, the court of common pleas shall conduct a hearing to determine whether the appeal was timely filed under division (D)(9) of section 4141.281 of the Revised Code. At the hearing, additional evidence may be introduced and oral arguments may be presented regarding the timeliness of the filing of the appeal.

If the court of common pleas determines that the appeal was filed within the time allowed, the court shall after that make its decision on the merits of the appeal. The determination on timeliness by the court of common pleas may be appealed to the court of appeals as in civil cases, and such appeal shall be consolidated with any appeal from the decision by the court of common pleas on the merits of the appeal.