ORIGINAL

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 AMICI CURIAE OHIO LEGAL SERVICES PROGRAMS

Charles Cohara (0076387)
Southeastern Ohio Legal Services
964 E. State Street
Athens, OH 45701
740.594.3558 (phone)
740.594.3791 (facsimile)
Ccohara@oslsa.org

Lori K. Elliott (0014935)
Legal Aid Society of Southwest Ohio
10 Journal Square
Hamilton, Ohio 45011
513.362.2819 (phone)
513.894.7669 (facsimile)
lelliott@lscinti.org

Julie Cortes (0083321)
The Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, OH 44113
(216)861-5697 (phone)
(216)861-5694 (facsimile)
julie.cortes@lasclev.org

Janet E. Hales (0058435)
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43214
614.824.2501 (phone)
614. 221.7625 (facsimile)
jhales@ohiopovertylaw.org

Kathleen C. McGarvey (0076328)
The Legal Aid Society of Columbus
COUNSEL OF RECORD
1108 City Park Avenue
Columbus, OH 43206
614.224.8374 (phone)
614.224.4514 (facsimile)
kmcgarvey@columbuslegalaid.org

Julita L. Varner (0072096)
Legal Aid of Western Ohio
525 Jefferson Ave., Ste. 400
Toledo, Ohio 43604
419.930.2404 (phone)
419. 321.1582 (facsimile)
jvarner@lawolaw.org

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Michelle Wrona Fox (0070425)
Attorney at Law
Community Legal Aid Services, Inc.
11 Federal Plaza Central, Suite 700
Youngstown , Ohio 44503-1589
330 983 2603
330 744 2503 (fax)
mwrona@communitylegalaid.org

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INTEREST OF THE AMICI CURIAE

All of the state's 88 counties are represented by one or more of the undersigned legal services programs. The Legal Aid Society of Cleveland, The Legal Aid Society of Columbus, Community Legal Aid Services, Inc., Southeastern Ohio Legal Services, The Legal Aid Society of Southwest Ohio LLC, Advocates for Basic Legal Equality, Inc., and Legal Aid of Western Ohio (hereinafter "Ohio Legal Services") share the goal of securing access to justice for those who are low income and vulnerable. To that end, the Ohio Legal Services community assists clients in addressing important legal problems including unemployment compensation denials and appeals. Unfortunately, because of limited resources, there are many more unemployment compensation appeals than the Ohio Legal Services community can handle. As a result, there are individuals who must represent themselves pro se. To allow for pro se representation, the Ohio Legal Services community agrees with the Task Force on Access to Justice, which this Honorable Court formed, and who opened its March, 2015 report by stating:

> "Access to justice, access to our courts, access to the resolution of a dispute before a fair, impartial and independent arbiter of justice, and sound legal advice are fundamental to a free and democratic society and instill in the citizenry an understanding and commitment to the rule of law."[1]

[1] "Report and Recommendations of The Supreme Court of Ohio's Task Force on Access to Justice," March 15, 2015 http://www.supremecourt.ohio.gov/Publications/accessJustice/finalReport.pdf.

The Ohio Poverty Law Center, a nonprofit limited liability company, provides support and assistance to the Ohio Legal Services community through project management, policy advocacy, and training.

In addition to representing clients in unemployment compensation cases, Ohio Legal Services advocates also regularly monitor unemployment insurance legislation for its potential impact on our clients. In the mid-to late-1990s and early 2000s when the former R.C. 4141.28 was revised, and the current statute, R.C. 4141.282, detailing the appellate process for appeals from the Unemployment Compensation Review Commission (UCRC) to the Court of Common Pleas was enacted, the Unemployment Compensation Advisory Council (UCAC)[2] held public meetings where potential and pending legislation was discussed. Some of the materials distributed at these UCAC meetings was retained by Legal Aid advocates for its historical value and is attached in support of this Amicus Brief because it includes summaries of unemployment legislative issues prepared for discussion by the UCAC[3]

Ohio Legal Services advocates monitor unemployment compensation agency policy and procedural developments as they affect our clients. Current and former notices from the Unemployment Compensation Review Commission are routinely retained for use in continuing legal education trainings. In support of this amicus brief, the Ohio Legal Services community

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[2] The Unemployment Compensation Advisory Council was an entity, created by R.C. 4141.08, whose purpose included making recommendations on needed changes to the unemployment statute. *See* R.C. 4141.08(G).

[3] *See*: Exhibit 1, Agenda of UCAC Meeting January 1, 1996, with attached UC Legislative Issues 1996; Exhibit 2, Memo to UCAC Legislative Subcommittee dated May 7, 1999, with attached UI Issues 1999; Exhibit 3, News Advisory May 11, 1999, with attached UCAC Legislative Sub-committee issues; and Exhibit 4, Meeting Agenda of UCAC Meeting January 26, 2000, with attached News Advisory and UI Legislative Issues 2000; and Exhibit 5, Meeting Agenda of UCAC Meeting March 21, 2001, with attached UI Legislative Issues 2001.

includes copies of current and former UCRC notices[4] for additional information on the question before the court in this case.

[4]*See*: Exhibit 6: Decision disallowing Request For Review mailed on September 24, 2014; Exhibit 7: Decision on Request for Review mailed on February 4, 1999, and Decision of the UCRC mailed on July 18, 2002; Exhibit 8: Decision Disallowing Request for Review mailed on July 1, 2003.

ARGUMENT

1. Introduction

Appellant, Director of the Ohio Department of Job and Family Services (ODJFS) brings this appeal to dismiss Appellee, Marcus Pryor's unemployment compensation appeal, not based on the merits, but rather based solely on an omission in Pryor's initial pleading. Pryor, a pro se litigant, listed the Director, Ohio Department of Job and Family Services, on his notice of appeal, but not his former employer who had not participated in the lower level hearing. Pryor included the hearing decision upon which the appeal was based, and that decision listed his former employer. Pryor separately notified all parties of the appeal in a separate document entitled "parties to be served" and there is no allegation that any party was prejudiced by the oversight.

The plain meaning of R.C. 4141.282(C) is unambiguous and states simply 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. The notice of appeal shall identify the decision appealed from." (Emphasis added). Based on that language alone, Pryor's timely filing of the notice of appeal is sufficient to vest jurisdiction with the court.

Further, documents regarding the drafting of R.C. 4141.282(C) state that the purpose of the redraft was to streamline the statute to "aid employers and claimants in understanding how the system works." (*See* Exhibit 2). Despite this, Appellant seeks to read the statute in a way that would dismiss Pryor's appeal, denying him access to redress through the court.

Equity requires that this Honorable Court allow Pryor's appeal. R.C. 4141.282(D) fails to sufficiently define interested parties and the UCRC has stopped clearly identifying who the

interested parties are on its notices. As a result, requiring Appellants to define and identify the interested parties on their own creates an unfair challenge and unnecessary barrier to justice.

2. Statement of the Case and Statement of Facts

On August 20, 2012, Marcus Pryor, a United States Army Veteran, filed and was awarded Unemployment Compensation benefits. *See* Decision, July 3, 2013, Supplement ("Supp.") at S-1. Approximately seven months later, on April 18, 2013, the Director issued a Redetermination disallowing Mr. Pryor's application for benefits finding that he was not eligible for benefits, resulting in an overpayment of $10,400. *Id.* Pryor appealed the Redetermination decision and a hearing was conducted before a UCRC Hearing Officer. *Id.* Mr. Pryor appeared pro se. His former employer, the Department of the Army, did not appear. *Id.* The Hearing Officer and later the Review Commission upheld the redetermination of ineligibility and overpayment. Appellant's Supplement, S-1. Having exhausted all of his administrative remedies, Pryor filed a timely Notice of Appeal with the Summit County Court of Common Pleas. Appellant's Supplement, S-4. He attached the relevant decision that he was appealing, as well as a pleading naming all parties to be served entitled "Parties to be Served," which listed the two addresses where the United States Army had been served. *Pryor v. Dir., Ohio Dept. of Job & Family Servs.,* Summit C.P. No. CV 2013-08-4088, ¶5, (December 31, 2013).

ODJFS moved to dismiss the appeal for lack of jurisdiction arguing that the United States Army was not listed in the Notice of Appeal that Pryor filed. *Id.* at ¶2. Pryor opposed the memo and filed an amended Notice of Appeal, conforming to the strictures laid out in ODJFS' Motion. *Id.* at ¶ 10. Still, the Summit County Court of Common Pleas granted ODJFS' Motion and dismissed the matter on December 31, 2013. *Id.*

On January 27, 2014, following an unsuccessful Motion for Reconsideration, Pryor timely appealed this matter to the Ninth District Court of Appeals. On March 31, 2015 the Ninth District reversed and remanded the decision of the Summit County Court of Common Pleas. In their remand, the Ninth District decision held:

> "To perfect an appeal, only two things are required: the notice of appeal must be timely filed and it must identify the decision appealed."

Pryor v. Dir., Ohio Dept. of Job & Family Servs., 9th Dist. Summit No. 272225, 2015-Ohio-1255 at ¶11 (March 31, 2015).

Based on a split of authority amongst the appellate districts, this Honorable Court accepted review.

AMICI CURIAE'S PROPOSED PROPOSITION OF LAW

In an unemployment compensation administrative appeal, R.C. 4141.282(C) only requires the timely filing of the notice of appeal identifying the decision appealed from to vest jurisdiction with the court and perfect the appeal, therefore, the requirement to name all "interested parties" in the notice of appeal pursuant to 4141.282(D) is non-jurisdictional.

1. **The plain text of R.C. 4141.282(C) only requires a party appealing from a UCRC Order to timely file a notice of appeal identifying the decision to vest jurisdiction in the trial court and perfect the appeal.**

The meaning of the statute is clear and this court must give effect to the expressed intent of the General Assembly which is to vest jurisdiction in the trial court upon fulfillment of the requirements of R.C. 4141.282(C). This court reviews questions of statutory construction as an issue of law that is determined de novo on appeal. *Ceccarelli v. Levin*, 127 Ohio St.3d. 231,

2010-Ohio-5681, 938 N.E.2d. 342, 8¶. Accordingly, this court must review the statute to determine whether its meaning is clear. *Lang v. Dir., Ohio Dept. of Job & Family Servs.,* 134 Ohio St.3d 296, 2012-Ohio-5366, 982 N.E.2d 636, ¶12. Where the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to the rules of statutory construction. *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d. 413 (1944). Instead, the court's inquiry begins with statutory text and ends there as well. *State ex rel. Plain Dealer Publishing Co. v. Cleveland,* 106 Ohio St.3d 70, 2005-Ohio-3807, 831 N.E.2d 987, ¶38. To interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the General Assembly. An unambiguous statute is to be applied, not interpreted. *Sears* at 316.

R.C. 4141.282(C) is unambiguous. It states simply 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. The notice of appeal shall identify the decision appealed from." *Id.* (Emphasis added).

The intent of the General Assembly is clearly captured in the text of the statute. No other action is specifically delineated in the statute in relation to perfecting an appeal and vesting jurisdiction with the common pleas court. Under *Sears*, where the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to the rules of statutory construction. *Sears* at 316.

This court has held where a right of appeal is conferred by a statute, the appeal can be perfected only in the mode prescribed by that statute, and that "the exercise of the right conferred is conditional upon compliance with the accompanying mandatory requirement." *Zier v. Bur. Unemp. Comp.,* 151 Ohio St. 123; 84 N.E.2d 746, 2 (1949). An unemployment compensation appeal is conferred by R.C. 4141.282.

It is undisputed that Pryor filed a timely Notice of Appeal with the court and identified the decision which he was appealing. *Pryor v. Dir., Ohio Dept. of Job & Family Servs.*, 9th Dist. Summit No. 27225, 2015-Ohio1255 ¶2. Since the statute is clear regarding the requirements to perfect an appeal and vest jurisdiction with the trial court, and Pryor fulfilled the requirements of the statute, Amici argue that this court must fulfill the intent of the General Assembly, which is to vest jurisdiction of Pryor's appeal with the court.

2. Utilizing the canons of statutory construction, it is clear that the naming of "interested parties" in the notice of appeal is not required to vest jurisdiction in the trial court.

Although Amici argue that R.C. 4141.282(C) clearly and unambiguously states that the only act required to vest jurisdiction in the court is the timely filing of the notice of appeal, the question certified for review requires an analysis of R.C. 4141.282(D), entitled "Interested Parties." While the plain meaning of R.C. 4141.282(D) itself is clear and unambiguous[5], the question raised is whether the requirements of section 4141.282 (D) must be read together with those of 4141.282(C) in order for the trial court to gain subject matter jurisdiction over an appeal from the UCRC. Appellee and the Ninth District Court of Appeals conclude that the requirements of section (D) are not jurisdictional, while Appellant ODJFS argues that they are.

When parties offer conflicting interpretations of a statute, the case involves a question of statutory interpretation. *Lang* at ¶ 12. When interpreting a statute, the court should rely upon the rules of statutory construction. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St. 3d 93, 96, 573 N.E.2d 77, 80 (1991). The primary tenant of statutory construction is to look to the

[5] R.C. 4141.282(D) read alone requires the commission to provide the names and addresses of all interested parties in its final decision; the appellant is to name interested parties as appellees in the notice of appeal; and that the director of job and family services is always an appellee and should be named as an appellee in the notice of appeal.

language of the statute and give effect to the intent of the legislature and the purpose of the legislation. *Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 207, 65 N.E.2d 63, 65 (1946). The General Assembly offers additional guidance in R.C. 1.49 as to matters to be considered in determining legislative intent, including "(A) The object sought to be obtained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The consequences of particular construction; (F) The administrative construction of the statute." A review of the specific plain, ordinary meaning of the language used was already discussed in this brief; therefore this section will address other factors of statutory construction.

a. <u>The circumstances under which the statute was enacted show that the legislative intent was to streamline an earlier version of the statute in order to make the statute simpler and easier to understand.</u>

Revised Code Section 4141.282, entitled "Appeal to Court," was enacted pursuant to Senate Bill 99, effective on October 31, 2001. 2001 Am.Sub.S.B. 99. Prior to October 31, 2001, the procedure for appealing a decision of the UCRC to the Court of Common Pleas was detailed in R.C. 4141.28. At that time, R.C. 4141.28 was a lengthy statute entitled "Claim for Benefits; Procedure; Unemployment Caused by Labor Disputes; Withholding of Child Support Obligations; Application for Reconsideration or Appeal," obviously covering many more topics than just appeals to the court of common pleas. Section 4141.28(O)[6] addressed the appeals process to the court of common pleas and was divided into subsections (1) and (2). Subsection (1) included the relevant language and procedure for vesting jurisdiction in the trial

[6] Note that for a brief time in 2000 and 2001, pursuant to HB 509, the appeals to court section was found in R.C. 4141.28(N), but contained the same language as prior R.C. 4141.28(O).

court. Ultimately, there was a complete overhaul of R.C. 4141.28 resulting in the restructuring of what had been R.C. 4141.28(O) to what is currently codified as R.C. 4141.282[7].

The changes made to the pre-2001 R.C. 4141.28 were the final result of a process to review the unemployment statute that was begun by a work group called the 'Analytics' that was formed in the spring of 1995, *See* Exhibit 1, 'UC Legislative Issues 1996', attached to UCAC Agenda, January 4, 1996[8]. The work group was established by representatives from the Ohio Bureau of Employment Services (OBES)[9], the Board of Review[10], and the UCAC. *Id.* The Analytics group reported to the UCAC and its legislative sub-committee. *See* Exhibit 2, 'UI Issues 1999', attached to UCAC memo to UCAC Legislative Sub-committee, May 7, 1999. Between 1995 and 2001, the Analytics work group and later sub-committees made several recommendations for changes to R.C. 4141.28 in order to streamline the statute. *Id.* The May 7, 1999 memo specifically states in the section entitled "Unemployment Benefit Appeals Provision Rewrite" that "[t]he section of the Ohio Revised Code concerning benefit determinations and appeals is extremely long and in need of redrafting. The Unemployment Compensation Review Commission has requested that it be streamlined to aid employers and claimants in understanding how the system works." *Id.* at page 3. *See also* Exhibit 3, 'UCAC Legislative Sub-Committee Issues', attached to News Release, Ohio Bureau of Employment Services, May

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[7] 2001 Am.Sub.S.B.99, eff. 10-31-01.

[8] *See*: 'UC Legislative Issues 1996' attached to the UCAC Agenda for the January 4, 1996 meeting included a section entitled "Appellate Issues" which states "Last Spring, a workgroup (now known as The UC Analytics Unit) was established jointly by the UCAC, OBES, and the Board of Review to review the current statutory provisions governing the UC appellate process. The unit is in the process of reviewing each step in the UC appellate process in order to determine if it continues to meet Ohio's needs or if any changes to the appellate structure may be desirable."

[9] OBES was merged with another state agency to form the Ohio Department of Job and Family Services.

[10] The Board of Review became the Unemployment Compensation Review Commission.

11, 1999, at section 7. Section 7 of the memo, entitled "Restructure the benefit appeals section of current law to delete unnecessary provisions and transfer provisions to other sections to make the law more understandable" states;

> "Section 4141.28 is the section of the code that details the process to be used by OBES to make determinations in benefit cases and the appellate procedures to be used. The section is extremely long and includes divisions within it that appear to be misplaced or are no longer necessary. Chairman Milligan has suggested a restructuring of this section which is attached for your review. OBES concurs with Mr. Milligan's suggestions."

Another document from the time the statute was changed further supports the legislative intent to streamline the statute. *See* Exhibit 4, UI Legislative Issues 2000, attached to UCAC Agenda, January 26, 2000. Under the "Other Amendments" section on p. 2, section 1, entitled "Streamlining of benefit determination and appeals provisions," it states that several revisions had already been made to Section 4141.28, but language to further streamline the statute had been developed and should be used as draft language for an amendment. Specifically, the "draft language proposes a much more user friendly format." Revised language was initially introduced in 2000 as HB 795 and was then reintroduced in 2001. *See* Exhibit 5, UI Legislative Issues 2001, attached to UCAC Agenda, March 21, 2001.

Therefore, it is clear from these documents that a primary legislative intent in revising Revised Code Section 4141.28(O) was to make it easier to understand for both employers and claimants.

b. A comparison of the pre-2001 statute and the current statute demonstrate the legislative intent to streamline the statute "to aid employers and claimants in understanding how the system works."

Indeed, when the language in the old statute is compared against the language in the current statute, it is clear the changes were adopted to make the statute easier to understand. Below is the text of pre-2001 R.C. 4141.28, with the changes indicated that resulted in the current statute, R.C. 4141.282, regarding appeals to the court. Language that was added to the statute is reflected in **bold** and language that was removed is indicated by the ~~strikethrough~~. The one sentence in italics was relocated to a later part of the current statute.

4141.282 Appeal to the Court

APPEAL TO THE COURT

~~(O)(1)~~ **(A) THIRTY-DAY DEADLINE FOR APPEAL** Any interested party ~~as defined in division (I) of section 4141.01 of the Revised Code~~, within thirty days after **written** notice of the **final** decision of the **unemployment compensation review** commission was **sent** ~~mailed to the last known post-office address of~~ **to** all interested parties, may appeal from 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 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. **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 in Franklin County.**

(C) PERFECTING THE APPEAL [*The commission shall provide on its decision the names and addresses of all interested parties.*][11] ~~Such appeal shall be taken within such thirty days by the appellant by filing a notice of appeal with the clerk of the court of common pleas.~~ **The timely** ~~Such~~ filing **of the notice of appeal** shall be the only act required to perfect the appeal and vest jurisdiction in the court. ~~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.~~ Such notice of appeal shall set forth the decision appealed from.

[11] This sentence was moved to the "interested parties" section or 4141.282(D).

(D) INTERESTED PARTIES The commission shall provide on its decision the names and addresses of all interested parties. ~~The appellant shall mail a copy of the notice of appeal to the commission and to all interested parties by certified mail to their last known post-office address and proof of the mailing of the notice shall be filed with the clerk within thirty days of filing the notice of appeal.~~ **The appellant shall name [a]**ll interested parties ~~shall be made~~ **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, t~~T~~he commission**, within forty-five days after** ~~upon receipt of the~~ **a** notice of appeal **is filed or within an extended period ordered by the court,** shall ~~within thirty days~~ file with the clerk a certified transcript of the record of the proceedings **at issue** before the commission. ~~pertaining to the decision complained of, and~~ **The commission also shall provide** ~~mail~~ 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. ~~The appellant shall file a statement of the assignments of error presented for review within sixty days of the filing of the notice of appeal with the court.~~

(H) REVIEW BY THE COURT OF COMMON PLEAS The **court shall hear the** appeal ~~shall be heard upon such~~ **on the certified** record ~~certified~~ **provided** by the commission. ~~After an appeal has been filed in the court, the commission may, by petition, be made a party to such appeal.~~ If the court finds that the decision **of the commission** was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse**,** ~~and~~ vacate**, or modify the** ~~such~~ decision, or ~~it may modify such decision and enter final judgment in accordance with such modification;~~ **remand the matter to the commission.** ~~o~~**O**therwise, ~~such~~ **the** court shall affirm ~~such~~ **the** decision **of the commission**. ~~Any interested party shall have the right to appeal from the decision of the court as in civil cases~~.

(I) FAILURE TO FILE APPEAL WITHIN THIRTY DAYS ~~(2)~~ If an appeal is filed after the thirty-day appeal period**,** ~~established in division (O)(1) of this section,~~ the court of common pleas shall conduct a hearing to determine whether the appeal was timely filed ~~pursuant to~~ **under** division ~~(Q)~~ **(D)(9)** of ~~this~~ section

> **4141.281**. 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 ~~time for filing the~~ appeal **was filed within the time allowed,** ~~is extended as provided in division (Q) of this section and that the appeal was filed within the extended time provided in that division,~~ the court shall **after that** ~~thereafter~~ make its decision on the merits of the appeal. ~~If the court of common pleas determines that the time for filing the appeal may not be extended as provided in division (Q) of this section, the court shall dismiss the appeal accordingly.~~ 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.

This comparison shows the intent of the legislature to streamline the statute by placing the language about appeals to the court in its own separate section of the Revised Code, clearly identified as "PERFECTING THE APPEAL." Secondly, what was once a long paragraph was divided into clearly identifiable sections detailing the time for filing, the location for filing, perfecting the appeal, interested parties, etc.

There are two significant changes, however, that are directly related to the question before this court. First, the revision deleted any reference to the definition of "interested party." As used in this section, "interested party" is a term of art. With the removal of the wording "as defined in division (I) of 4141.01 of the Revised Code," untrained claimants, particularly pro se appellants, are left to rely upon their common sense understanding of "interested" as did Mr. Pryor. As discussed later in this brief, this omission further supports the conclusion that an interpretation in favor of the naming requirements being jurisdictional, as asserted by Appellant, leads to an unfair result, particularly for unrepresented appellants.

Secondly, the language "[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" was deleted from the statute. Appellant ODJFS concludes that this deletion means the legislature must have intended

the naming requirements of 4141.282(D) to be required for the court of common pleas to gain jurisdiction. However, when analyzed in the context of the true legislative intent of streamlining and simplifying the statute, it is clear that the legislature removed that sentence because it was no longer necessary. Because the requirements to vest jurisdiction in the trial court were relocated into the section entitled "PERFECTING THE APPEAL," the language about an appellant's failure to take any other step other than the filing of the appeal became superfluous. From the clear and unambiguous language of the statute, it is the *timely* filing of the notice of appeal that vests jurisdiction in the court. The restructuring and rewording of the statute did not change its substantive requirements; rather, it achieved the legislative intent of streamlining the statute and making it simpler and easier to understand.

3. **Fairness and Equity require that this Honorable Court not limit access to the courts for individuals who do not include all "interested parties" in the Notice of Appeal because R.C. 4141.282 and UCRC notices fail to adequately define "interested parties," and UCRC notices no longer include identification of the interested parties on its notices, leaving Appellants to guess as to who might be considered an "interested party."**

R.C. 4141.282(D) requires the UCRC to include the names and addresses of the interested parties on its decision and then provides that the Appellant is to name those parties. However, the UCRC Decision Disallowing Request for Review in this case did not clearly identify the names and addresses of the interested parties as required by R.C. 4141.282(D) or cite to the R.C. 4141.01(I) definition of interested parties. Appellant's Supplement, S-1. This section of the statute states that the Director of ODJFS is always an interested party but does not provide the same bright-line rule for previous employers.

Current UCRC final decisions, including the commission's decision issued to Pryor, fail to name or define interested parties. *Id.* at S-2 to S-3. Instead, the notices state simply "This decision was sent to the following" and lists names and addresses of not only claimants and

employers, but also their representatives (e.g., attorneys) who do not fall within the definition of "interested parties" as defined by R.C. 4101.01(I). *See* Exhibit 6.

In comparison, earlier Board of Review and UCRC final decisions included the following paragraph: **"The names and last known post office addresses of all interested parties are shown at the beginning of this decision in the areas designated "In re claim of:" and "Employer:" and as follows:"** *See* Exhibit 7.

Additionally, the Director's agency publishes a "Worker's Guide to Unemployment Compensation," available for download on its website. This publication also fails to define "Interested Parties." Instead, in the section giving instruction about filing an appeal to the Court of Common Pleas, it states "In your notice of appeal, you must include all interested parties listed on the UCRC decision(s), ***including the Director of ODJFS.***"[12] (Emphasis added.) In another section of that guidebook, employers are given as an example of "interested parties," but that is in regards to whom the agency serves in an earlier stage of appeals. It states "All other interested parties, such as your employer(s), will receive a notice indicating your reason for filing the appeal."[13] Nowhere in the Worker's Guide is "interested party" defined, nor does it suggest that a claimant must include an employer when he or she is listing interested parties in a Common Pleas Notice of Appeal.

Courts have the important duty to protect the rights of each and every litigant, thus guaranteeing access to the judicial system and fair treatment by a court in the judicial process. *Finley v. Kline*, (1988) Ohio Misc.2d at 1. If this court were to require Pryor to list all

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[12] "Worker's Guide to Unemployment Compensation," Revised October, 2015, pg. 21 https://unemployment.ohio.gov/PDF/Workers_Guide_to_UC.pdf.
[13] *Id* at 20.

interested parties on the Notice of Appeal, without UCRC fulfilling their obligation to clearly identify who it considers to be the interested parties on the notice, it would create an unfair system where Appellants were held to a higher standard than UCRC itself. The current UCRC language on the UCRC final decisions creates an unfair challenge for appellants to define and identify the interested parties. Appellant states that this is not some "gotcha" trap but it appears to be just that. Appellant's Brief at 15. The commission's failure to clearly designate the interested parties in its decision coupled with an employer's failure to participate in a hearing can conceivably result in claimants inadvertently excluding interested parties. Appellant's point that there could be more than one employer required to be listed as an interested party increases the likelihood that claimants will not know who to include as interested parties especially when not all previous employers have participated in a hearing. *Id.*

In this case, Pryor interpreted "interested parties" to mean the parties that had participated in the hearing. His prior employer, the Department of the Army, had not participated in the hearing or in later proceedings prior to the point of appeal to Common Pleas Court, and thus, did not appear to him to be an interested party. However, despite that, Pryor still made sure that the Department of the Army was served with a copy of the Notice of Appeal. As a result, all parties were notified of the proceedings and there was no harm caused by Pryor's omission on the Notice of Appeal. Further, after being notified that the Department of the Army should have been included as an interested party, Pryor amended his Notice of Appeal to add them.

The equities and judicial fairness weigh heavily in favor of allowing claimants such as Pryor to proceed and have a fair review of their cases on the merits.

CONCLUSION

The plain meaning of R.C. 4141.282(C) is unambiguous. Therefore, Pryor's Notice of Appeal attaching the administrative decision is sufficient to give the court jurisdiction. The statutory language is clear in both the actual text of the statute and also when the legislative history is considered, as the drafters sought to make the Unemployment Compensation appeals process more streamlined and more easily understandable for both employers and claimants. To hold otherwise would produce an unequitable system, where Appellants were left to guess at who the interested parties for inclusion on the Notice of Appeal are since UCRC no longer clearly identifies them on the prior notice. In the interest of access to justice for pro se individuals like Mr. Pryor, we ask that this Honorable Court, uphold the 9th District Court of Appeals.

Respectfully Submitted,

/s/ Kathleen C. McGarvey
Kathleen C. McGarvey (0076328)
COUNSEL OF RECORD
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, OH 43206
614.224.8374 ext. 146 (phone)
614.224.4514 (facsimile)
kmcgarvey@columbuslegelaid.org

COUNSEL FOR AMICI CURIAE
OHIO LEGAL SERVICES PROGRAMS AND THE OHIO POVERTY LAW CENTER.

CERTIFICATE OF SERVICE

The following were served by ordinary U.S. Mail on November 24th, 2015:

APPELLEE

Marcus Pryor II
809 Mishler Road
Mogadore, Ohio 44260

COUNSEL FOR APPELLANT

Eric E. Murphy
State Solicitor
Stephen P. Carney
Deputy Solicitor
Susan M. Shefield
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
Columbus, OH 43215

Respectfully Submitted,

/s/ Kathleen C. McGarvey
Kathleen C. McGarvey (0076328)

Unemployment Compensation Advisory Commission

145 S. Front St. • Columbus, Ohio 43216 (614) 466-0234

AGENDA

Thursday, January 4, 1996

9:30 A.M. - OBES 6TH Floor Conference Room

1. Approval of June 21, 1995 Minutes.
2. Election of Co-Chairs.
3. Federal Budget Status.
4. Benefits 2000 Update.
5. OBES UC Omnibus Legislation List.
6. Special Administrative Funds (SAF) Requests:
   a. Deficit Reduction Request.
   b. Amount Amendment in Brandt v. OBES Case.

EXHIBIT 1

UC Legislative Issues

1996

The following list of legislative issues has been developed for consideration by the UCAC. The list is organized into the four categories of 1) General Issues, 2) Technical Issues, 3) Benefits 2000 Issues, and 4) Appellate Issues. In order to assist in review, the list also contains a notation indicating the source from which each issue was identified.

General Issues

1. Delete Section 4141.251, which provided for the surcharge in 1990. Source: OBES

The surcharge provision was not continued after 1990 and there are no plans to enact such a surcharge.

2. Revise the additional claims process with respect to the most recent separation to permit employers to waive the notification requirement to facilitate faster payment of unemployment compensation to those who may have multiple part-time or temporary jobs. Source: Temporary Service Industry Representatives

In cases where individuals have multiple temporary employment assignments they often file claims for benefits after temporary employment. In such cases, current statutory provisions require that OBES inquire with the most recent separating employer as to the reason for separation and provide the employer ten working days in which to respond before proceeding to pay the individual for the week claimed.

This statutory requirement delays the payment of unemployment compensation as compared to cases where there is no temporary employment. The delay has been identified by the temporary services industry as a disincentive to claimants to accept temporary employment and a barrier to their being able to attract employees.

An amendment which would permit employers to waive this notification would facilitate speedier payment of unemployment benefits while preserving the general employer notification provision.

3. Establish a requirement that individuals employed by temporary agencies check in with their temporary agencies for referral to suitable work in order to be eligible for weekly UC benefits. Source: Temporary Service Industry Representatives

The temporary service industry relies on the availability of a pool of individuals in order to meet client demands. The diversity of assignments and timeframes within the industry may result in the temporary service employer not being aware that an individual has completed an assignment, or an individual not being aware that suitable work is available through the temporary employment service.

For this reason, it is standard practice in the industry that temporary service employees on assignment check in with the temporary service employer on completion of the assignment to inquire as to the availability of other suitable employment.

Individuals who are temporary service employees who may be claiming unemployment compensation benefits between assignments are required, as are other claimants, to be available and actively seeking suitable employment each week as a condition of eligibility.

Legislation has been enacted in other states to create a requirement that claimants working for temporary service employers check in with the employers as a condition of eligibility for unemployment benefits. Temporary service industry representatives have asked that such a provision be considered for enactment in Ohio.

4. In extremely limited circumstances when OBES has no account to which benefit payments may be charged, e.g. when a reimbursing employer's account is not chargeable due to court order, permit OBES to charge the mutualized account. Source: OBES, Reimbursing Employers

In a very few cases such as the type listed above, OBES experiences a difficult accounting problem because we are unable to legally charge the payment of benefits to either the employer or the mutualized account. In these very limited circumstances, OBES recommends that the statute permit charging of the mutualized account.

5. Clarify that the alternate base period is not to be used after a valid application has been determined and a benefit year established using the regular base period.(Ed-Non-ed, Dishonesty and Seasonal claims in particular) Source: OBES

The provisions of unemployment law which require that the alternate base period be used only when an individual can not establish eligibility based on the regular base period have been misconstrued in a smattering of cases before the courts.

Clarification of the relationship between the regular and alternate base period provisions is needed.

6. Amend 4141.21 to clarify, consistent with current OBES practice that information "maintained" by OBES is confidential, not just the information "furnished" by employers and claimants. Source: OBES

The general statutory provision which requires that information "furnished" to the Administrator under the unemployment law is not a public record and is solely for use by the Administrator in the discharge of the Administrator's duties does not specifically identify information "maintained" by the Administrator as confidential. Court decisions interpreting the provision have split as to whether information generated from such information or other information maintained by the Administrator is also confidential.

OBES policy is that any information furnished or maintained for the purpose of administration of Chapter 4141 of the Revised Code is confidential, subject to the exceptions provided by statute. An amendment is needed to assure consistent interpretation of the general confidentiality provision contained in Section 4141.21.

7. Amend statutory provisions to allow for electronic information transmission. Source: OBES, Employers with EDI transmission capability

Electronic information transmission is increasingly becoming the normal method by which information is maintained and reported by employers and individuals. Recognition of this reporting method as acceptable within the pertinent sections of the Unemployment law is needed.

8. Amend 4141.29(A)(3) to provide flexibility to the Administrator to define registration requirements so as to facilitate continued weekly claims taking by telephone. Source: OBES

Advancements in electronic communication and telephone capabilities make it possible to register individual claimants for weekly claims by telephone or other electronic means. A number of states are currently taking weekly claims information by telephone. An amendment is needed to provide the Administrator the flexibility to permit the filing of continued weekly claims by telephone or other electronic means.

9. Amend 4141.01 to specifically include Limited Liability Companies under the definition of "employer." Source: OBES

Recent legislation in Ohio established a new entity known as a "Limited Liability Company" which may employ individuals and conduct business in the state. In order to properly reflect the new employer entity under unemployment law, an amendment is

needed to add it to the list of employer entities subject to the law.

10. Clarify that the mailing date of the Administrator's determination or decision shall be sufficient evidence upon which to conclude, for purposes of determining timeliness of an appeal, that the determination or decision was mailed on the date indicated. Source: OBES, Board of Review

Current statutory provisions require that appeals from determinations and decisions of the Administrator be filed within 21 days of the mailing of such determination or decision. Notwithstanding this requirement, courts have found that the "date mailed" notation on the determination or decision was not sufficient evidence upon which to conclude that the determination or decision was mailed.

Hundreds of thousands of determinations and decisions are rendered annually with respect to unemployment benefits through an automated process which utilizes postage meter machinery approved by the U.S. Post Office. This automated process and procedure was not in place at the time of the court decisions which found the mailing date annotation to be insufficient.

In order to recognize the OBES process and overturn outdated case law, an amendment is needed.

11. Amend 4141.23 to modify the role of the A.G. in the process of determining uncollectibility in advance of cancellation of amounts due to OBES. Source: OBES

Current law requires that the Attorney General determine that unemployment tax amounts due are uncollectible before the Administrator is authorized to cancel such amounts.

Thousands of employer accounts maintain unpaid balances. Attorney General staff assigned to the collection of unemployment taxes are not able to examine each of these accounts to determine whether the amounts due are "uncollectible" because of the volume of accounts receivable.

Guidelines established by the US Department of Labor provide for a tracking and analysis of accounts receivable which emulates practices in the private sector. Under USDOL guidelines, the definition of that which is uncollectible is an administrative function of the employment security agency to be made in prioritizing collection activity rather than a determination of legal uncollectibility.

The statutory provision which specifically requires a finding by the Attorney General before amounts due may be cancelled should be amended in order to accommodate modern good business practice based on resources available.

OBES is suggesting an amendment that requires the AG and OBES to agree to a write off plan that the Bureau then executes without the assistance of the AG.

12. Amend 4141.29(A)(4)(d) to clarify that individuals must actually attend school in order for work search requirements to be waived. Source: OBES

Current law provides that the work search requirements which must be met by an individual as a condition of eligibility are waived if the individual "becomes unemployed while attending a regularly established school" but the law does not specifically require that the individual continue to attend school as a condition of waiver.

The provision was intended to waive work search while the individual attended school, and a clarification amendment is needed.

13. Amend 4141.01(B)(1) to address the issue of independent contractor by codifying case law precedent. Source: OBES

The Ohio Supreme Court has adopted the common law definition of independent contractor in long standing case precedent. This definition is consistent with the definition of covered employment provided in the Federal Unemployment Tax Act administered by the IRS and with administrative rules adopted by OBES. An amendment to the statute is desirable to promote consistency with the Ohio Supreme Court and IRS definition.

14. Amend the statutory provisions which disqualify "trailing spouses" from receiving unemployment compensation benefits when they quit employment to move with their spouses as well as the statutory provisions which disqualify individuals from receiving unemployment compensation benefits in cases where they must quit to avoid domestic violence. Source: Legislative Inquiries

In some cases, individuals in the military service are required to move as instructed by orders from the military. The spouses of such individuals are often employed on military bases. When one spouse is ordered to move to a different location, the "trailing spouse" becomes unemployed through no fault of his or her own, but is required to "quit" employment. In such cases, consideration should be given to a statutory amendment which would identify such separations as non-disqualifying.

An individual who quits employment has the burden of establishing that his or her quit was for just cause before they may be eligible for benefits. In cases where an individual quits employment in order to relocate to avoid domestic violence the individual may be separated from employment without fault on their part, but be denied unemployment compensation because the reason for the quit was not related to employment. An analysis of this issue is needed.

15. Delete Section 4141.29(D)(2)(a)(ii) to eliminate the special provision which permits individuals to quit employment without being disqualified from receiving unemployment as long as the separation from employment is pursuant to a labor-management agreement or an established employer plan, program, or policy. Source: Employer Representatives

The special provision which permits individuals to quit employment without being disqualified from receiving unemployment benefits has, in some cases, resulted in individuals who receive generous buy-out packages also receiving unemployment benefits. The special provision has been identified by employer representatives as one that should be eliminated.

Benefits 2000 Issues

Due to the support of the UCAC and the General Assembly which resulted in the passage of H.B. 275 last year, OBES has the opportunity to redesign its benefit delivery system, including all the business processes and the supporting automation. OBES is currently in the planning phase for this massive project which we have titled Benefits 2000. As part of that process, OBES requests that the UCAC consider any potential major structural changes to the UC statute at this time, so they can be incorporated into the design features of Benefits 2000. A major statutory change beyond this year could mean that OBES will need to make major revisions in Benefits 2000 and may not be the best use of resources.

Below is a list of those structural changes that have been discussed in the last several years.

1. Elimination of dependency allowances.

2. Eliminate seasonal provisions.

3. Potential structural changes to the eligibility requirements for benefits such as elimination of "weeks" as a basis for eligibility or other structural changes that would alter how Ohio determines benefit eligibility.

OBES requests that these issues and any others that may be raised that would result in significant structural changes be examined and recommended legislation formulated by the UCAC for incorporation into the Benefits 2000 system.

Appellate Issues

Last Spring, a workgroup (now known as The UC Analytics Unit) was established jointly by the UCAC, OBES, and the Board of Review to review the current statutory provisions governing the UC appellate process. The unit is in the process of reviewing each step in the UC appellate process in order to determine if it continues to meet Ohio's needs or if any changes to the appellate structure may be desirable.

Potential recommendations from the workgroup may include elimination of one or more steps in the appellate process (such as the reconsideration step), changes in the Bureau's authority to make redeterminations, changes in the processes related to appeals, and organizational changes to support any structural changes.

The UC Analytics Unit is scheduled to meet in an all day session on January 17th and to follow-up with development of recommendations for consideration by the UCAC.

Technical Issues

1. Amend employer coverage to include employers of aliens admitted to the U.S. to perform agricultural labor pursuant to the Immigration and Nationality Act, "H-2A" workers, to allow for FUTA offset credit to the employer. Source: USDOL (UI-PL 18-95)

The issue is raised for consideration as a result of directives to OBES from USDOL.

2. Clarify the circumstances under which an employer receives an experience rated contribution rate instead of an assigned rate to more properly conform experience rate statutory provisions to the wage record charging provisions. Source: OBES

Amendments to unemployment law enacted in the 1980s to convert Ohio's system from a wage request system to a wage record system amended the base period provisions upon which benefit eligibility determinations are made. This change affected the circumstances under which an employer's account may be chargeable for benefits, but the experience rate provisions which address chargeability were not amended. An amendment is needed to clarify the circumstances under which an employer will receive an experience rated rate.

3. Amend 4141.28 and 4141.35 to clarify that the payment of a weekly benefit check is not a "decision" of the Administrator and that the Administrator has authority to examine weekly claims and establish overpayments for the full statutory period provided in

4141.35. Source: OBES

Since enactment of the statutory provisions which set forth the process by which weekly unemployment claims are to be adjudicated were first enacted, the administrative process has become much more automated. Weekly claim cards are not examined by OBES staff in local offices for every week claimed. Instead, weekly claim forms are scanned centrally and claimants paid if the cards they have submitted do not raise eligibility issues. Claimants are therefore normally paid for weeks of unemployment benefits based on claims cards that are examined by a scanning machine. It is only the exception cases that are pulled for review by an OBES claims examiner.

As a result of this automation, it may not be assumed that if a claimant is paid a week of benefits that his claim has been "examined".

An amendment is needed to clarify that the Administrator has authority to examine a weekly claim for benefits for the purposes of determining whether the payment was erroneous within the statutory time frames provided in Section 4141.35 of the Revised Code.

4. Delete Section 4141.043 concerning coordination with WIN and amend Section 4141.05 concerning the establishment of the Research and Statistics Division of OBES. Source: OBES

The WIN program was eliminated many years ago, and the statutory reference to it should also be eliminated.

The Research and Statistics Division of OBES was replaced by the Labor Market Information Division in the early 1980s. The statute should be amended to reflect this change.

5. Amend 4141.16(A) to provide that OBES will be reimbursed for the cost of responding to requests for information under that section so as to be consistent with UI administrative grant requirements. Source: OBES

OBES receives no federal funds to pay the cost of responding to requests for information from directors of departments of human services under Section 4141.16(A) of the Revised Code. An amendment which provides for cost reimbursement is needed.

6. Amend 4141.28(D)(4)(c) to be consistent with language in the agreement between ODHS and OBES that OBES will be designated to receive legal process. Source: OBES, ODHS

OBES and ODHS have agreed, pursuant to federal law, that OBES will receive legal process pertaining to the enforcement of child support obligations and the withholding of unemployment compensation benefit amounts instead of ODHS. An amendment to state law is needed to reflect this agreement.

7. Amend 4141.01 to exempt wages paid to individuals who entered the U.S. under a special "J", "M", or "Q" visa. Source: USDOL (Optional under UI-PL 5-95)

Consideration of an amendment is requested by USDOL in response to changes in federal law.

8. Amend 4141.28(C) to eliminate the notice requirement for employers who, although most recent, are not interested parties because they are not the most recent separating or base period chargeable employers. Source: OBES

Current law requires OBES to notify a claimant's most recent employer that the claimant has filed an application for benefits even though the most recent employer may not be a separating or base period employer, and may not be an interested party to the determination on the application. In order to avoid confusion, and to be consistent with administrative practice, an amendment is needed to assure that only employers who are interested parties to the application are required to be notified.

9. Amend 4141.28(B)(1)(b) to clarify that the Administrator may correct a determination of the validity of an individual's benefit rights based on correct remuneration information.

Current law provides that a determination as it relates to the claimant's determination of benefit rights, shall be amended upon receipt of correct remuneration information at any time within the benefit year, the wording of the statute is awkward and does not specifically indicate that correct remuneration information may be used to find that the application was not valid. An amendment is needed.

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*.User name . . . . . :   DOUGH
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*.Date  . . . . . . . :   01/03/96
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Unemployment Compensation Advisory Council

145 S. Front St. • Columbus, Ohio 43216 (614) 466-0234

ISC 2
8/26/99

TO: UCAC Legislative Sub-committee

FROM: Doug Holmes, UCAC Secretary

RE: Issues for initial discussion

DATE: May 7, 1999

The meeting of the sub-committee has been scheduled for Tuesday, May 11 at 4:00 p.m. in the 6th Floor conference room of the central office OBES building, 145 S. Front Street in Columbus.

An initial list of issues has been developed for discussion, and is included in the attachment.

Please review the issue summaries in preparation for the sub-committee meeting on May 11. UCAC sub-committee meetings are publicly noticed meetings at which the sub-committee may hear from interested parties about issues related to unemployment compensation, request information, review initial draft amendment language and develop recommendations for the full UCAC to consider.

Attachment A is the general listing of issues that was previously identified for review by the UCAC at its March 23rd meeting. Attachment B contains information related to federal conformity and compliance issues. Attachment C is a more specific list developed in consultation with OBES staff, the UC Review Commission, and UCAC members for review.

If you have questions concerning any of the issues or the meeting, please let me know.

EXHIBIT 2

UI ISSUES 1999

FEDERAL CONFORMITY AND COMPLIANCE ISSUES

We have been notified by the U.S. Department of Labor that amendment to Ohio law is needed to bring it into conformity and compliance with federal requirements with respect to the following issues:

Coverage of "Type B" day care providers

Section 5104.11(A) of the Ohio Revised Code provides that "Type B" day care providers are "independent contractors." The Lucas County Court of Appeals found that such day care workers were not in covered employment for purposes of unemployment compensation. The U.S. DOL has determined that this interpretation is contrary to federal coverage requirements. An amendment is therefor needed.

Definition of "employment" to be used in assuring that claimants do not "double dip"

In the case of Richardson v. Perkins Township the Erie County Court of Appeals held that "back pay" could be used to meet the federal requirement that a claimant work between benefit years. This decision is contrary to the U.S. DOL interpretation of federal law. An amendment is needed to assure that federal requirements are met in conforming state law.

ISSUES RAISED BY THE BALANCED BUDGET ACT OF 1997

A number of the provisions of the Federal Unemployment Tax Act (FUTA) were amended by the Balance Budget Act of 1997. The following issues may be addressed through state legislation as a result of these amendments.

Exception to coverage requirements for election workers

The Act amended FUTA to permit states to exclude services provided by individuals working as election officials or election workers if the amount received by such individuals was less than $1,000 during the calendar year.

Exception to coverage requirements for elementary and secondary schools operated for religious purposes

The Act permits states to exclude services performed for "an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3) and which is exempt from tax under section 501(a).

Exclusion of coverage for services performed by inmates

The Act excludes from the definition of "employment" for the purposes of FUTA, service performed by a person committed to a penal institution. A parallel amendment to state law could be adopted.

WORKFORCE INVESTMENT ACT AMENDMENTS

The Workforce Investment Act of 1998 provides for coordination of employment and training by the states and includes the Unemployment Insurance program among those to be coordinated. As the state's plan under the Workforce Investment Act is developed, amendments to state unemployment compensation law may be needed.

UNEMPLOYMENT BENEFIT APPEALS PROVISION REWRITE

The section of the Ohio Revised Code concerning benefit determinations and appeals is extremely long and in need of redrafting. The Unemployment Compensation Review Commission has requested that it be streamlined to aid employers and claimants in understanding how the system works.

CLAIMANT RESPONSIBILITY TO BE AVAILABLE FOR WORK

Representatives of the temporary service industry have proposed that individuals working through temporary service employers be required to inquire with the temporary service for work as a condition of eligibility for benefits.

TECHNICAL AMENDMENTS

A review of existing law as part of the plans for implementation of the Ohio Job Insurance project has identified the need to address technical amendments with respect to the charging of employer accounts for extended benefits and the need to set the effective date of changes in initial application requirements in coordination with the new benefit delivery system being designed.

News Release
Ohio Bureau of Employment Services
145 S. Front Street
Columbus, Ohio 43215

MAY 03 1999

Bob Taft
Governor

James J. Mermis
Administrator

NEWS ADVISORY

SUBJECT: Unemployment Compensation Advisory Council (UCAC) Legislative Sub-Committee meeting

DATE: Tuesday, May 11, 1999

TIME: 4:00 p.m.

LOCATION: 6th Floor Conference Room
Ohio Bureau of Employment Services (OBES)
145 South Front Street
Columbus, Ohio

DETAILS: The UCAC Legislative Sub-Committee will meet to discuss potential statutory amendments related to the unemployment insurance program.

CONTACT: Doug Holmes, 614-466-0234, or Carol Kuhman, 614-466-3966.

EXHIBIT 3

UCAC Legislative Sub-Committee Issues

The following issues have been identified in addition to those already provided to the UCAC at the March 23rd meeting.

1. Ohio Job Insurance Project related amendments

In the development of the design of the system modifications through the Ohio Job Insurance Project it was discovered that the effective date of amendments made by H.B. 478 to require that individuals remove disqualifications before being able to establish benefit years is earlier than the benefit system design will be able to meet. In order to avoid the expense of manual administration and the confusion of customers, OBES has requested that the effective date of this new requirement be moved from October 1, 2000 to a date consistent with the Ohio Job Insurance Project design.

2. Consolidation of employer unemployment tax and wage information reports and modification of the forfeiture penalty provisions

The current statute provides that employers shall submit two quarterly reports to OBES, one to report taxable wages paid and unemployment contributions due, and a second report of wage information. Both reports are required by federal law, however, federal law does not require that they be reported on separate forms or that employers be subject to forfeiture penalties for failure to submit each of them independently.

OBES is examining the option of requiring that both reports be made on a single form and subject to a single forfeiture penalty for failure to file. In the event that a single form is developed for use, an amendment to Section 4141.20 with respect to the reporting requirement and the forfeiture penalty to be applied would be needed.

3. Revision of employer account charging provisions

a. Current law provides under certain limited circumstances, that when charges for benefits to an employer account have greatly exceeded the contributions the employer has paid the charges may be transferred to the mutualized account. The effect of this charge-off is to shift the cost of unemployment benefits from the individual employer account to all contributing employer accounts. In situations involving extremely large benefit payment amounts as a result of mass lay-offs, the effect of the transfer could result in the positive balance in the mutualized account being depleted and an additional mutualized tax triggering on all contributing employers.

In order to charge all contributing employers more evenly based on experience, OBES has proposed that the special charge off provisions in Sections 4141.24(a)(2) and 4141.25(a)(3) be deleted from the statute.

b. In addition to the elimination of this special charge off provision, OBES has requested consideration for the elimination of the special charge off provision used to shift costs in "buy out" situations.

Current law provides that if an individual is separated from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employee, because of lack of work, to accept a separation from employment, he is not disqualified from eligibility for unemployment benefits. However, in such cases, the employer offering the "buy-out" is permitted to have its charges for such benefits transferred from the employer's specific account to the mutualized account. The result of the transfer is to shift the cost of benefits to all contributing employers.

Because of the size of many "buy-out" plans the benefit costs can be significant, and may result in triggering new mutualized account taxes. OBES has requested the deletion of this provision in Section 4141.29(H).

It is important to note that these charging provision changes would not affect claimant eligibility for benefits.

4. Workforce Investment Act Amendments

A number of the provisions of Chapter 4141 of the Ohio Revised Code reference the Job Training Partnership Act and the Wagner Peyser Act, both of which are significantly amended by the Workforce Investment Act of 1998. Update references and amendments consistent with the Workforce Investment Act state plan are needed. OBES has requested that a list of these amendments be submitted and considered for recommendation at a subsequent meeting of the sub-committee.

5. Increased Flexibility in notifying employers of their right to provide separation information

The current statute requires that every time an individual files an application for unemployment compensation benefits the individual's separating employers must be sent a notice and provided an opportunity to provide separation information. This notice may not be necessary in cases where

a. OBES is prohibited by law from revising a previous determination concerning whether the claimant may be disqualified from receiving benefits (e.g. the Morrison Case)

b. The employer indicates that the notice is not needed.

c. There is a mass lay-off involving 50 or more employees where OBES received information up

front and there is no issue concerning the reason for separation.

OBES has requested that the statute be amended to facility flexibility in such situations and be permitted not to send the form notice and request for information when it has already been provided and is not needed. Section 4141.28 would require amendment to provide this flexibility.

6. Improve the process by which decisions are made by the Review Commission in labor dispute cases

The appeal process in labor dispute cases provides that the decision of the Administrator is appealable directly to the full three member Unemployment Compensation Review Commission. The current statute limits the actions that may be taken by the Commission to disallowing further appeal(effectively affirming the decision) or scheduling a further hearing on which a decision on appeal may be made.

Chairman Milligan of the Commission has suggested that the Commission's authority on appeal be expanded to permit the Commission to rewrite the decision of the Administrator based on the record of the initial hearing without further hearing. This would be consistent with its authority in other cases and would provide a vehicle to speed decision making in cases where the record is already complete but the Commission wishes to reverse or modify the decision based on legal interpretation. OBES concurs with the Commission in this recommendation, which would require an amendment to Section 4141.28(D)(1)(d).

7. Restructure the benefit appeals section of current law to delete unnecessary provisions and transfer provisions to other sections to make the law more understandable.

Section 4141.28 is the section of the code that details the process to be used by OBES to make determinations in benefit cases and the appellate procedures to be used. The section is extremely long and includes divisions within it that appear to be misplaced or are no longer necessary. Chairman Milligan has suggested a restructuring of this section which is attached for your review. OBES concurs with Mr. Milligan's suggestions.

8. Technical and Clarifying Amendments

a. Elimination of outdated references

Current law requires that each applicant for unemployment compensation be provided with a pamphlet at the time of application explaining the process. With the advent of telephone and internet claims processes, although information is provided to assure due process, a "pamphlet" will not be the method of delivering the information in all cases. An amendment to provide this flexibility is needed in Section 4141.28(B)(1).

b. Correction to extended benefit provision

Ohio enacted legislation effective in 1987 and 1988 in conformity with federal law that the state collect quarterly wage record information from employers and use it as the basis for determining the eligibility of individuals claiming unemployment compensation. The legislation also changed the basis upon which employer accounts were to be charged for benefits from one which charged employer accounts in inverse chronological order to one which charged employer accounts based on the proportion each base period employer paid of the individual's base period wages. Section 4141.301 of the Revised Code, the section of the Ohio Revised Code concerning extended benefits, however, was not amended to reflect this change. Ohio has not triggered "on" to extended benefits under this section since 1982. A technical correction is needed make the charging provision language in 4141.301(H)(1)(c) consistent with proportional charging.

c. Clarification of the definition of "week" to be used in determining whether an individual had 20 or more weeks in his base period so as to qualify for unemployment compensation benefits.

In the case of Moorehead v. Administrator, OBES, et. al. decided by the Hamilton County Court of Common Pleas on March 1, 1999, the court interpreted Section 4141.01(Q)(2) to provide that weeks that occur in part within the last quarter of an individual's base period are to be included in determining that the individual has met the requirement that he have at least 20 qualifying weeks within his base period with respect to which he is paid or earns remuneration.

OBES policy has been to define a week as the calendar week ending on Saturday. This is the definition used for employer reporting purposes for the wage record system and was intended to serve as the definition to be used in benefit eligibility determinations. In order to assure consistency with the statutory definition and administrative practice concerning the methodology to use in counting weeks an amendment to Section 4141.01(Q) is needed.

9. Other Issues

Senator Fingerhut has expressed interest in reviewing the issue of minimum qualification requirements for claimants to be eligible for unemployment compensation.

The issue is one that the UCAC has examined from time to time over the years. It is expected as a result of recent welfare reform legislation that the number of individuals in entry level minimum wage positions may be increasing, and many may have less than what has been considered sufficient workforce attachment to qualify for unemployment benefits.

Ohio law currently requires that individuals must have had 20 weeks of work in their base period and have earned or been paid $155 per week on average for their work to qualify for benefits. This minimum requirement is indexed so that the amount needed increases each year at the same rate as the increase in the state average weekly wage.

Unemployment Compensation Advisory Council

JAN 21 2000

Meeting Agenda

January 26, 2000

I. Call to Order

II. Approval of Meeting Minutes

III. Federal Conformity and Compliance Issues

IV. Other Legislative Issues

V. Ohio Job Insurance Project Update

VI. OBES/ODHS Merger Status

VII. FUTA Reform Update

EXHIBIT 4

UI Legislative Issues 2000

The following legislative issues have been identified for review by the UCAC in 2000. A number of them are carry-over issues from 1999, however, a number are new initiatives. I have divided the issues between those where we have been asked by USDOL to address them as conformity and compliance issues and those that are being examined on our own initiative.

Conformity and Compliance Issues

1. Experience Rate Qualification

In 1998 USDOL informed OBES of its opinion that one of the amendments contained in H.B. 478, which became effective in 1997, was inconsistent with the USDOL interpretation of federal law. The amendment was designed to reflect longstanding agency practice in assigning new employer rates to employers with extended breaks in employment. After a series of letters in which OBES argued for a different interpretation, USDOL has now indicated that Section 4141.25(A)(2) must be amended to conform to federal requirements. An amendment has therefore been drafted to address USDOL concerns.

2. Disclosure of Information to HUD

On December 16, 1999, USDOL issued an Unemployment Insurance Program Letter informing the states of the new federal requirement that wage and benefit information be disclosed to officials of the Department of Housing and Urban Development (HUD) and representatives of public housing agencies under certain conditions.

This new requirement reinstated a prior temporary provision which ended in 1994. State law previously provided for the disclosure of this information under Section 4141.164 of the Revised Code, which has expired.

USDOL has indicated that at a minimum state law should provide that information will be disclosed as provided consistent with this provision on a reimbursable basis. A brief amendment to accomplish this has been drafted.

3. Technical correction

Section 4141.16 of the Revised Code was repealed in H.B. 470 because it appeared to be unnecessary to provide for cost reimbursement in the statute. USDOL has indicated, however, that Ohio law must provide that information is to be provided on request to state and local child support enforcement agencies in other states as well as from within Ohio. A statutory provision which requires that the disclosure be made and that the cost of such disclosure be reimbursed is needed.

The language developed to address the required HUD disclosure in item 2 above has been written so as to enable the state to meet federal disclosure requirements in both cases. With this general language, amendments would not be required every time there was a change in DOL interpretation or federal law.

Other Amendments

1. Streamlining of benefit determination and appeals provisions

The re-writing of Section 4141.28 to streamline language in the benefit determination and appeals provisions has been an ongoing project of Chairman Milligan of the UC Review Commission. The need for streamlining originated in discussions and recommendations of the Analytics, a special task force Chaired by Gay Gilbert to review ways in which to streamline unemployment law and procedure.

The provisions of H.B. 509 as introduced have already addressed the elimination or transfer of a great deal of language in Section 4141.28. Language to further streamline the section has been developed by Chairman Milligan with the assistance of OBES administrative staff, employers, representatives of organized labor, the Attorney General's office and Ohio State Legal Services.

The draft language proposes a much more user friendly format which requires review by LSC. It is therefore recommended that the draft language be used as the basis for an amendment to be drafted by LSC and returned for review by the UCAC prior to consideration for recommendation to the Ohio General Assembly.

2. Providing flexibility to enhance collection activity

OBES is exploring methods by which to improve collection of contributions (unemployment taxes). One method identified as an additional collection tool is the availability in certain cases of authority to compromise amounts due. Language currently in use at BWC permits amounts due to be compromised if it is in the best interest of the fund. Federal law limits OBES authority to compromise unemployment taxes due, however, the state has greater discretion with respect to the collection of forfeiture and interest penalties.

In many cases, the compromise of forfeiture and interest penalties may enable collectors to increase the collection of contributions for the unemployment fund.

An amendment is therefore recommended under which interest, forfeiture or fines may be compromised in whole or in part if the director determines that it is in the best interest of the unemployment fund.

3. Amendments to transform OBES custodial accounts into appropriated accounts within the State treasury

A number of OBES accounts, including the unemployment benefit account, are maintained by the Treasurer of State as custodial accounts outside the state treasury. The accounts were

established to provide authority to receive and disperse funds from specific federal programs or were established before the state had a central accounting system, and were never included in the system.

OBM has indicated a desire to bring these accounts into the state accounting system and to provide for them as appropriated accounts, and has been working with ODHS, OBES, the Auditor, and the Treasurer to enable these changes to be made.

If it is determined that the changes suggested by OBM are acceptable, legislation would be required to provide for the proposed changes.

Unemployment Compensation Advisory Council

Meeting Agenda

March 21, 2001

I. Call to Order

II. Introduction of Members

III. Election of officers

IV. Approval of Meeting Minutes

V. ODJFS Overview

VI. UI Program Update

VII. HB 795 Rewrite Review and Recommendation

VIII. Ohio Job Insurance Project Status Update

IX. FUTA Reform Status Update

X. Next Meeting - May 23, 2001

EXHBIT 5

UI Legislative Issues 2001

Reintroduction of legislation (H.B. 795)

In 2000, legislation was developed and recommended by the UCAC to streamline the primary unemployment compensation benefit determination and appeals sections of the Revised Code. The legislation was introduced as HB 795 and passed by the House of Representatives by a vote of 89 - 0. After passage by the House, amendments to the bill were developed with the UCAC Co-Chairs and a substitute bill was reviewed by the Senate Insurance, Commerce and Labor Committee. Unfortunately, time ran out in which to enact this legislation in 2000.

In December, 2000, Representative Cates asked LSC to work with UCAC Secretary Doug Holmes and UCRC Chairman Bill Milligan to redraft Sub. H. B. 795 in the new LSC format and to make any other streamlining improvements in anticipation of review and recommendation by the newly appointed UCAC early in 2001.

The redraft of HB 795 has been completed, with streamlining and drafting modifications for review by the UCAC.

Federal Conformity Amendments

Deputy Registrars

In a letter dated January 26, 2000, the US Department of Labor notified the agency that Section 4503.03(C) of the Revised Code, which designated all Deputy Registrars to be independent contractors, was contrary to federal law and asked that the statutory provision be amended so that the determination as to whether individuals were in covered employment for purposes of Unemployment Insurance be made based on a determination of direction or control. OBES responded by letter that the necessary legislative changes would be sought during the legislative session beginning in January of 2001.

As a practical matter, contractors of the Department of Highway Safety operating deputy registrar offices are operating as independent contractors. We do not expect that this amendment will adversely affect Deputy Registrars or the Department of Highway Safety, however an amendment is needed to meet federal requirements.

Indian Tribes

On December 21, 2000, the President signed the Consolidated Appropriations Act of 2001 which amended Federal law to change the way American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA). Indian tribes employing individuals to perform services for the tribe had been required to pay the FUTA tax on their employees. Under this new federal law the employees will be treated similarly to State and local government employees.

Ohio does not at present have an American Indian tribe as defined by federal law. However, there is at least one group that has petitioned the federal government for Indian tribe status.

Amendment language to conform to this new federal requirement is being developed, but is not yet ready for introduction. The US Department of Labor has indicated that conforming legislation is not required immediately, as there are as yet no federally approved Indian tribes in Ohio. However, we are expected to proceed with legislation as soon as the drafting and consultation process can be completed.

Docket No: C2014-[redacted]

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

RCE114266X000000020G

DECISION DISALLOWING REQUEST FOR REVIEW

In re claim of:

[redacted]

*SSN: [redacted]

Claimant Representative:

Julie Cortes - Legal Aid Society of Cleveland

*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:

[redacted]

UCO No.: [redacted]
Issues: QUIT

Employer Representative:

Director:
Ohio Department of Job and family Services

On August 28, 2014, the appellant filed a request for review.

Date This Decision Mailed: September 24, 2014

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.)

QUIT

Did the claimant quit employment without just cause?

An individual is not eligible for benefits if the individual quit work without just cause. The individual will remain ineligible until the individual obtains covered employment, works six weeks, and earns the required requalifying amount. 4141.29 (D)(2)(a) and 4141.29 (G) ORC. For applications filed on and after August 1, 2004, a non-disqualifying separation from an individual's most recent employment is a requirement for a valid application. An individual is not disqualified for benefits if the individual quit work with just cause. 4141.29 (D)(2)(a) ORC.

EXHIBIT 6

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
Ed Good, Member

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:

Attn: Julie Cortes
Legal Aid Society of Cleveland
1223 W 6TH ST
CLEVELAND, OH 44113-1339

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

RCE114266X000000030G

STATE OF OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION
145 SOUTH FRONT STREET P.O. BOX 182299
COLUMBUS, OHIO 43218-2299

B98-[redacted]-0000
UI INTRASTATE

I.

DECISION ON REQUEST FOR REVIEW

In re claim of:
[redacted]
[redacted], OH [redacted]

Social Security No. [redacted]
L.O. 163-0

Employer: APPELLANT
[redacted]

Employer Representative:
[redacted]

Issues: TIMEREQ
UCO No. [redacted]-

Employer: APPELLANT
[redacted]

Issues: TIMEREQ
UCO No. [redacted]

Hearing Officer Decision Docket No. R98-[redacted]-0000
Date application to request review filed: 09/04/98
Date this decision mailed: 02/04/99

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

TIMEREQ .28(G)(1)(2) AND OAC 4141-27-10 TIMELY FILING OF REQUEST FOR RECONSIDERATION WITH THE ADMINISTATOR.

The appellant shown above filed a Request for Review before the U.C. Review Commission, pursuant to the provisions of Section 4141.28, Revised Code of Ohio, from the Hearing Officer's decision indicated. The Commission allowed the appellant's request and has taken opportunity to review the entire record.

Upon consideration thereof, and upon a review of the entire record, the Commission concludes that the Hearing Officer's decision should be affirmed.

EXHIBIT 7

[redacted] - B98-[redacted]-000[redacted]

DECISION

The Hearing Officer's decision is hereby affirmed.

APPEAL RIGHTS

This decision is mailed

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 4141.28 (O), Revised Code of Ohio. A copy of the notice of appeal must be mailed by certified mail to: (1) The Ohio Bureau of Employment Services (2) The Unemployment Compensation Review Commission and (3) All interested parties as set forth in this decision.

If your appeal is filed more than thirty (30) days from the date of mailing, then you may ask the Common Pleas Court 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.

UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION

WILLIAM W. MILLIGAN, CHAIRMAN

JOHN D. JACOB, VICE-CHAIRMAN

SUZANNE M. BERGANSKY, MEMBER

The names and last known post office address of all interested parties are shown at the beginning of this decision in the areas designated "In re claim of:" and "Employer:" and as follows:

ADMINISTRATOR
Ohio Bureau of Employment Services
145 South Front Street
P.O. Box 1618
Columbus, OH 43216

STATE OF OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION
145 SOUTH FRONT STREET P.O. BOX 182299
COLUMBUS, OHIO 43218-2299

B01-[redacted]-0000
UI INTRASTATE

DECISION

In re claim of: APPELLANT

[redacted]

Claimant Representative:

[redacted]

Social Security No. [redacted]
L.O. 161-0

Employer:

[redacted]

Employer Representative:

[redacted]

UCO No. -1178781000-

CASE HISTORY

Claimant, [redacted] filed an application for determination of benefit rights on May 10, 2001, with a benefit year beginning May 6, 2001.

Claimant filed a first claim for weekly benefits for the week ending May 12, 2001.

On May 31, 2001, the Director issued an initial determination, holding that claimant was discharged by [redacted] for just cause in connection with work. Claimant's benefits were suspended until he worked in six weeks of covered employment, earned wages equal to $1,014.00 or more, and was otherwise eligible. The claim for the week ending May 12, 2001, was disallowed.

specified appeal period. If the United States Postal Service is used as the means of delivery, the enclosing envelope must have a postmark date or postal meter postmark that is on or before the last day of the appeal period. If the postmark is illegible or missing, the appeal is timely filed if received by the end of the fifth calendar day following the last day of the appeal period. **4141.281 (B)(D)(1) O.R.C.**

REASONING

The redetermination decision, dated June 27, 2001, was not mailed to claimant's correct last known post office address. In addition, claimant did not become aware of the decision until after August 2, 2001. Claimant filed his appeal from the reconsideration decision within twenty-one days from August 2, 2001.

Under the circumstances, claimant filed a timely appeal from the redetermination decision.

DECISION

The appeal filed by the claimant on August 15, 2001, from the redetermination mailed June 27, 2001, was timely filed. The matter will

be set for a hearing on the reason for claimant's separation from the employer.

APPEAL RIGHTS

This decision is mailed on July 18, 2002.

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 (A)(B)(C), 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 "Information Booklet, Reporting Record and Unemployment Compensation Appeal Rights" (UC-450), available from your Ohio Department of Job and Family Services State Local Office.

REVIEW COMMISSION

William W. Milligan, Chairman

DLM\sah

John D. Jacob, Vice-Chairman

The names and last known post office address of all interested parties are shown at the beginning of this decision in the areas designated "In re claim of:" and "Employer:" and as follows:

Director
Ohio Bureau of Employment Services
145 South Front Street
P.O. Box 1618
Columbus, Ohio 43216

STATE OF OHIO
UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION
145 SOUTH FRONT STREET P.O. BOX 182299
COLUMBUS, OHIO 43218-2299

B03-[redacted]
UI INTRASTATE

DECISION DISALLOWING REQUEST FOR REVIEW

In re claim of: APPELLANT
[redacted]

Claimant Representative:
[redacted]
LEGAL AID SOCIETY OF CLEVELAND
1223 W 6TH ST
CLEVELAND, OH 44113

Social Security No. [redacted]
L.O. [redacted]

Employer:
[redacted]

Issues: DISCH
[redacted]

Hearing Officer Decision Docket No. [redacted]
DATE REQUEST FOR REVIEW FILED: 06/04/03

Date this decision mailed: 07/01/03

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

DISCH .29(D)(2)(a)REASON FOR SEPARATION--DISCHARGED with or without just cause in connection with work. .29(G)--Suspension of benefits for duration of unemployment, if discharge is for just cause in connection with work.

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

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.

EXHIBIT 8

[redacted] - B03 [redacted]

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 (A)(B)(C), 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 "Information Booklet, Reporting Record and Unemployment Compensation Appeal Rights" (UC-450), available from your Ohio Department of Job and Family Services State Local Office.

The name and address of the interested party not listed above is:

Director, Ohio Department of Job and Family Services
145 South Front Street
P.O. Box 1618
Columbus, Ohio 43216

UNEMPLOYMENT COMPENSATION
REVIEW COMMISSION

E.J. THOMAS, CHAIRMAN

JOHN D. JACOB, VICE-CHAIRMAN

KENNY DELANEY, MEMBER

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	:	

SUPPLEMENT OF BRIEF OF AMICI CURIAE
OHIO LEGAL SERVICES PROGRAMS

Charles Cohara (0076387)
Southeastern Ohio Legal Services
964 E. State Street
Athens, OH 45701
740.594.3558 (phone)
740.594.3791 (facsimile)
Ccohara@oslsa.org

Lori K. Elliott (0014935)
Legal Aid Society of Southwest Ohio
10 Journal Square
Hamilton, Ohio 45011
513.362.2819 (phone)
513.894.7669 (facsimile)
lelliott@lscinti.org

Julie Cortes (0083321)
The Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, OH 44113
(216)861-5697 (phone)
(216)861-5694 (facsimile)
julie.cortes@lasclev.org

Janet E. Hales (0058435)
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, OH 43214
614.824.2501 (phone)
614. 221.7625 (facsimile)
jhales@ohiopovertylaw.org

Kathleen C. McGarvey (0076328)
The Legal Aid Society of Columbus
COUNSEL OF RECORD
1108 City Park Avenue
Columbus, OH 43206
614.224.8374 (phone)
614.224.4514 (facsimile)
kmcgarvey@columbuslegalaid.org

Julita L. Varner (0072096)
Legal Aid of Western Ohio
525 Jefferson Ave., Ste. 400
Toledo, Ohio 43604
419.930.2404 (phone)
419. 321.1582 (facsimile)
jvarner@lawolaw.org

Michelle Wrona Fox (0070425)
Attorney at Law
Community Legal Aid Services, Inc.
11 Federal Plaza Central, Suite 700
Youngstown , Ohio 44503-1589
330 983 2603
330 744 2503 (fax)
mwrona@communitylegalaid.org

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Decision Disallowing Benefits, Unemployment Compensation Review Commission, April 18, 2013.....S-1

Respectfully Submitted,

/s/ Kathleen C. McGarvey
Kathleen C. McGarvey (0076328)
COUNSEL OF RECORD
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, OH 43206
614.224.8374 ext. 146 (phone)
614.224.4514 (facsimile)
kmcgarvey@columbuslegelaid.org

COUNSEL FOR AMICI CURIAE
OHIO LEGAL SERVICES PROGRAMS AND THE OHIO POVERTY LAW CENTER.

Docket No: H-2013012737

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

RCE013184X000000000020G

DECISION

In re claim of:
Marcus H. Pryor II - Appellant

Employer:
Department of Army
UCO No.: 0950801000-0001

CASE HISTORY

Claimant filed an Application for Determination of Benefit Rights on August 20, 2012.

On April 18, 2013, the Director issued a Redetermination disallowing the claimant's application based on a finding that the claimant did not have at least twenty qualifying weeks of employment that was subject to an unemployment compensation law or did not earn an average weekly wage of at least $222.00 before taxes during the base period as required by Section 4141.01(R) (1) of the Ohio Revised Code. It was further held that due to the reported character of service, all remuneration earned and qualifying weeks worked with this branch of the Armed Services will be excluded and will not be used to determine the total benefits payable, weekly benefit amount, or charges to employer accounts. The findings of Federal military service are final and conclusive. It was further held that the claimant was overpaid benefits of $10,400.00 for the weeks ending September 1, 2012 through March 9, 2013.

On May 7, 2013, claimant appealed the Director's Redetermination.

On July 2, 2013, a hearing was held by telephone before Hearing Officer Joseph Blaker. Claimant appeared. Department of Army did not appear.

FINDINGS OF FACT

Claimant began working for Department of Army on January 4, 2011 as a medic. He enlisted for a four year term. He did not complete his first full term of service and was honorably discharged on August 10, 2012, to enter an officer training program. Claimant's DD 214 Form states that he did not complete his first full term. Claimant is no longer in that program. Claimant was not part of a reduction in force.

Claimant received benefits of $10,400.00 for the weeks ending September 1, 2012 through March 9, 2013.

ISSUE

Did the claimant meet the monetary requirements for filing a valid Application for Determination of Benefit Rights?

S-1

LAW

An individual does not qualify for a valid application for determination of benefit rights if the individual did not work in 20 qualifying weeks of covered employment in the individual's base period and if the individual does not average at least $222.00 for all qualifying weeks. 4141.01 (R) O.R.C.

***

5 U.S.C. 8521(a) provides:

(a)For the purpose of this subchapter—

(1)"Federal service" means active service (not including active duty in a reserve status unless for a continuous period of 90 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(A)the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)
(i)the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii)the individual was discharged or released before completing such term of active service—

(I)for the convenience of the Government under an early release program,

(II)because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III)because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), or

(IV)because of personality disorders or inaptitude but only if the service was continuous for 365 days or more...

The findings of a Federal military agency reported on DD Form 214 shall be final and conclusive for all purposes of the UCX Program, including appeal and review. *20 CFR Section 614.23*

REASONING

As the claimant did not complete his first full term, qualifying weeks and wages earned with Department of Army are excluded and cannot be used to establish a valid application. Claimant did not meet any of the exceptions listed in *5 U.S.C. 8521(a)* as he was not discharged or released for the convenience of the government, because of medical disqualification, pregnancy, parenthood, service-incurred injury, hardship, or due to personality disorders or inaptitude. As his Department of Army wages are excluded, claimant did not have sufficient weeks and wages to establish a valid application as the Army was his sole base and alternate base period employer.

DECISION

The Director's Redetermination issued April 18, 2013, is affirmed.

Claimant's Application for Determination of Benefit Rights filed August 20, 2012, is disallowed as the claimant did not work in twenty weeks of covered employment or earn an average weekly wage of $222.00 before taxes as required by Section 4141.01(R) (1) of the Ohio Revised Code. Qualifying weeks and wages earned with Department of Army are excluded because the claimant did not complete his first full term of service and did not meet any of the exceptions listed in *5 U.S.C. 8521(a)*. Claimant remains overpaid benefits of $10,400.00 for the weeks ending September 1, 2012 through March 9, 2013.

This decision rules only on the issue(s) set forth above.

Joseph Blaker, Hearing Officer

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NOTICE OF OVERPAYMENT

Claimant is advised that as a result of this decision an overpayment of benefits already received now exists. An order of repayment will be issued by the Director of the Ohio Department of Job and Family Services. Balances are due immediately upon receipt. Overpayments not paid in full within forty-five days of a decision becoming final may be referred to Ohio's Attorney General for further collection efforts. If the overpayment is a result of fraudulent misrepresentation and not repaid within thirty days, interest on the outstanding balance will accrue at an annual rate of fourteen percent, compounded monthly. When all overpaid benefits are repaid according to an approved repayment plan, the Director may cancel interest accrued during the period of the repayment plan. In addition, the Director may take action to recover fraudulent overpayments, including, but not limited to, attachment and/or garnishment proceedings as well as subsequent charges and court costs. Any outstanding balances not repaid or recovered through collection efforts will be recovered by the withholding of any future benefits to which claimant is or may become entitled.

Payment may be made by check or money order to P O Box 182059, Ohio Department of Job and Family Services, Columbus, Ohio 43218-2059. To ensure proper credit to claimant's account, be sure to include the claimant's social security number on the check or money order. If claimant is unable to remit the full overpayment amount, but wishes to enter into a repayment agreement, he/she should contact the Attorney General's office at 1-800-282-0515.

OJI Determination #: 225880346

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APPEAL RIGHTS

This decision was mailed on : July 03, 2013

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 July 24, 2013.

The Request for Review must be in writing and signed by the appealing party or an authorized representative. The request should set forth the reasons why the appellant disagrees with the Hearing Officer's decision. You may file your Request for Review by mailing it to the U.C. Review Commission, PO Box 182299, Columbus, Ohio 43218-2299, or by faxing it to (614) 387-3694.

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