

[Cite as *Hinton v. Unemp. Rev. Comm.*, 2015-Ohio-1364.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ALAN K. HINTON,

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APPELLANT,

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CASE NO. 14 MA 45

STATE OF OHIO UNEMPLOYMENT
REVIEW COMMISSION, et al.,

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OPINION

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APPELLEES.

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CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common
Pleas of Mahoning County, Ohio
Case No. 13CV3004

JUDGMENT:

Affirmed

APPEARANCES:

For Appellee
Ohio Dept. of Job and Family Services

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For Appellant

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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: March 30, 2015

[Cite as *Hinton v. Unemp. Rev. Comm.*, 2015-Ohio-1364.]
DONOFRIO, J.

{¶1} Appellant Alan Hinton appeals the decision of the Mahoning County Common Pleas Court that upheld the decision of a hearing officer from the appellee Unemployment Compensation Review Commission that denied him unemployment benefits. That denial of benefits stemmed from a conclusion that Schwebel Baking Company had just cause to terminate Hinton as a result of his failure to report off and failure to report to work.

{¶2} Hinton began work at Schwebel on May 4, 2013, as a seasonal employee; specifically, a bake shop helper. Hinton was scheduled to work on Monday, June 24, 2013, and did not call in to report off work and failed to report to work. He was next scheduled to work on Wednesday, June 26, 2013, and again he did not call in to report off work and failed to report to work. However, he did go in later that day for his paycheck. When he was informed that he needed to see Rick Terhonko, production superintendent (a.k.a. foreman) for Schwebel, before he returned for work, he indicated that he was too busy to speak with Terhonko.

{¶3} When Terhonko spoke with Hinton the following day on Thursday, June 27, 2013, Hinton claimed he did not report to work on Monday, June 24, 2013, because he had worked overtime the day before on Sunday and did not think that he needed to come in on Monday. According to Terhonko, Hinton did not have a response for why he failed to report on Wednesday, June 26, 2013. Since Schwebel had a policy of termination for the first offense of failure to call off work and failure to report to work, Terhonko informed Hinton that he was discharged.

{¶4} Unemployment benefits were initially granted based on Hinton's representation that he had been discharged for lack of work. However, Schwebel appealed. A hearing officer conducted a review hearing on September 17, 2013. Hinton proceeded pro se. Terhonko and Hinton were the only witnesses to testify. Terhonko testified about the instances of Hinton's failure to report off work and failure to report to work, and about Schwebel's policy in that regard. Hinton acknowledged his failure to report off work and failure to report to work on Monday, June 24, 2013, but argued that he should not have been discharged because he did not receive any

warnings prior to his discharge.

{¶15} On September 18, 2013, the hearing officer reversed the allowance of unemployment benefits and found that Hinton had been discharged for just cause for his failure to report off work and failure to report to work in violation of Schwebel's policy. Hinton filed a request for review with the review commission which was disallowed. Hinton then appealed the review commission's decision disallowing his request for review of the hearing officer's decision to the Mahoning County Common Pleas Court, naming in the caption only the Unemployment Compensation Review Commission as an appellee.

{¶16} On December 11, 2013, the Director of the Ohio Department of Job and Family Services filed a motion to dismiss for lack of jurisdiction, arguing that Hinton had failed to name all interested parties, namely the Director and Schwebel, as required by R.C. 4141.282(D). A magistrate granted the Director's motion on February 5, 2014, finding that Hinton failed to name his former employer, Schwebel, as a party to his appeal. Hinton filed no objections to the magistrate's decision and the trial court adopted it as its own on March 31, 2014. This appeal followed.

{¶17} Hinton, still proceeding pro se, has filed a document in this court purporting to be an appellate brief. It does not comply with the Ohio Rules of Appellate Procedure concerning the composition of appellate briefs. An initial problem concerns his stated assignment of error which is more a statement of law rather than a statement of an assignment of error:

Once an individual has been separated from employment due to lack of work, that individual cannot be separated for different reasons, i.e., quit or discharged, unless that individual first returned to work. [*Vineyard Wine Shoppe v. Weisert*, 133 Ohio App.3d 268 (1999).] However, the result may be different if the lay-off was only temporary in nature and there is a continuing employer-employee relationship.

{¶18} Hinton apparently misconstrues the import of this holding. Hinton was

never separated from his employment with Schwebel for lack of work. Hinton was initially allowed unemployment benefits based on his representation that he had been separated from his employment with Schwebel due to lack of work. However, Schwebel appealed that initial determination and it was subsequently determined that Hinton had been separated from his employment with Schwebel for just cause due to his failure to appear for work or report off. Schwebel never represented to ODJFS that Hinton had been separated from his employment with them due to lack of work and the record supports that fact.

{¶9} Despite Hinton's confusion concerning a statement of an assignment of error, there are a couple of arguments that can be gleaned from his filing before this court. In general, it can be inferred that Hinton is challenging the trial court's affirmance of the review commission's decision disallowing his request for review of the hearing officer's decision denying his claim for unemployment benefits as unlawful, unreasonable, and against the manifest weight of the evidence. Hinton contends that the first day he missed work was because he mistakenly got his days confused as he had been transporting his son who has health issues to a Cleveland hospital. As he did at the hearing before the hearing officer, he also contends that he repeatedly tried to get in touch with his foreman, Terhonko.

Jurisdiction

{¶10} The trial court dismissed Hinton's administrative appeal on the basis that it lacked jurisdiction due to Hinton's failure to include all interested parties in the appeal as required by R.C. 4141.282(D). As jurisdiction is a threshold matter, we consider that issue first.

{¶11} R.C. 4141.282(D) addresses the interested parties a claimant-appellant must include in their appeal of a decision of the unemployment compensation review commission to the court of common pleas:

The commission shall provide on its final decision the names and addresses of all interested parties. The appellant shall name all interested parties as appellees in the notice of appeal. The director of

job and family services is always an interested party and shall be named as an appellee in the notice of appeal.

{¶12} The right to appeal a decision of the unemployment compensation review commission is created by statute, and the statutory requirements governing an administrative appeal must be strictly followed in order to effectuate the appeal. The Ohio Supreme Court has often reaffirmed the proposition that: “[a]n appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.” *Zier v. Bureau of Unemployment Compensation*, 151 Ohio St. 123, 84 N.E.2d 746 (1949), paragraph one of the syllabus; reaffirmed by *Hansford v. Steinbacher*, 33 Ohio St.3d 72, 72, 514 N.E.2d 1385 (1987); further reaffirmed by *Ramsdell v. Ohio Civ. Rights Comm.*, 56 Ohio St.3d 24, 27, 563 N.E.2d 285 (1990). “Compliance with these specific and mandatory requirements governing the filing of such notice is essential to invoke jurisdiction of the Court of Common Pleas.” *Id.*, at paragraph two of the syllabus.

{¶13} In this instance, the trial court did not err in dismissing Hinton’s administrative appeal on the basis that it lacked jurisdiction due to Hinton’s failure to comply with R.C. 4141.282(D). In accordance with R.C. 4141.282(D), the review commission’s decision provided to Hinton contains a section entitled “APPEAL RIGHTS” which states:

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 * * *, 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.*

(Emphasis added.)

{¶14} Hinton did not include all interested parties as appellees in his notice of appeal of the review commission's decision to the court of common pleas. He did not include the Director of the Department of Job and Family Services which the review commission's decision clearly identifies as an interested party. *Sydenstricker v. Donato's Pizzeria, L.L.C.*, 11th Dist. No. 2009-L-149, 2010-Ohio-2953; R.C. 4141.01(I) (specifically defining an interested party to include the director). He also failed to include the employer, Schwebel. The employer is likewise an interested party. *Luton v. Ohio Unemp. Revision Comm.*, 8th Dist. No. 97996, 2012-Ohio-3963. Just below the section entitled "APPEAL RIGHTS" in which Hinton was advised of the requirement of naming all interested parties as appellees in the notice of appeal are the names and addresses of what would be considered interested parties, including in this instance, the Director and Schwebel.

{¶15} Thus, based on Hinton's failure to follow the statutory mandates of R.C. 4141.282, the Mahoning County Court of Common Pleas lacked jurisdiction, and, therefore, it was not error for the trial court to grant ODJFS's motion to dismiss.

{¶16} Accordingly, Hinton's sole assignment of error is without merit.

{¶17} The trial court's judgment is affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.