

[Cite as *McNamara v. Ohio Dept. of Job & Family Servs.*, 2010-Ohio-5619.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95226

WILLIAM F. McNAMARA

PLAINTIFF-APPELLEE

vs.

**DIRECTOR, OHIO DEPARTMENT
OF JOB & FAMILY SERVICES**

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-711025

BEFORE: Stewart, J., Rocco, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: November 18, 2010

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MELODY J. STEWART, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the Cuyahoga County Court of Common Pleas and the briefs and oral arguments of counsel. The director of the Ohio Department of Job and Family Services appeals from the common pleas court ruling that reversed a determination by the Unemployment

Compensation Review Commission finding that appellee, William McNamara, had failed to timely appeal from a determination of benefits by the director.

{¶ 2} The facts are undisputed. The director issued an initial determination that McNamara had incorrectly reported earnings for purposes of receiving unemployment compensation benefits. The director's determination of benefits informed McNamara that should he choose to appeal from the initial determination, "YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 02/10/2009." Intending to send his appeal by mail, McNamara purchased postage from an automated postal center (APC) machine that issued a stamp dated "02/10/09." McNamara said that he immediately placed the letter in a collection box. The postmark on the letter, however, bore the date "16 FEB 2009." A hearing officer conducted a hearing on the issue of whether McNamara had timely appealed and concluded that the postmark controlled over the date the postage had been issued, rendering the notice of appeal untimely. The review commission affirmed the hearing officer's decision. Upon further appeal, the court of common pleas reversed the commission's decision, finding it unreasonable and against the manifest weight of the evidence because "the evidence does suggest that [McNamara] mailed the appeal on 2/10/09 and intended it would be postmarked on that date, which would have made the appeal timely."

{¶ 3} We conclude that the board's decision was not unlawful, unreasonable, or against the manifest weight of the evidence because the

evidence established only that McNamara *purchased* the stamp affixed to his notice of appeal on February 10, 2009, not that he mailed the notice of appeal on that same date.

{¶ 4} Statutory deadlines and filing requirements require strict compliance. *McCruter v. Bd. of Rev., Bur. of Emp. Serv.* (1980), 64 Ohio St.2d 277, 279, 415 N.E.2d 259. R.C. 4141.281(D)(1) states:

{¶ 5} “The director, commission, or authorized agent must receive the appeal within the specified appeal period in order for the appeal to be deemed timely filed, except that: 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 specified appeal period; and where the postmark is illegible or missing, the appeal is timely filed if received not later than the end of the fifth calendar day following the last day of the specified appeal period.”

{¶ 6} Under R.C. 4141.281(D), “the mere depositing of an envelope in the mail is not legally controlling; rather, on receipt of the appeal, the postmark date will determine whether the appeal is timely.” *DiSalvo v. Bd. of Rev., Ohio Bur. of Emp. Serv.* (Dec. 24, 1992), 10th Dist. No. 92AP-1206 (construing former R.C. 4141.28(I)).

{¶ 7} McNamara’s claim that he should not be penalized by postal service incompetence is unavailing. We have held that postal service incompetence affecting the timeliness of a notice of appeal is immaterial in light of the strict

requirements set forth in the statute. See *Bd. of Rev., Ohio Bur. of Emp. Serv. v. Roppo* (1979), 61 Ohio App.2d 220, 223, 401 N.E.2d 481 (overruling lower court finding that a notice of appeal, postmarked one day past the 14-day period but deposited on the 14th day, was timely and validly filed where there was good cause for being late). See, also, *Fisher v. Yellow Freight Sys., Inc.*, 5th Dist. No. 2003CA00391, 2004-Ohio-5193 (notice of appeal placed in mail on last day of appeal period but not postmarked until the following day deemed untimely because statute and regulation provided that postmark was determinative of whether appeal was timely when appeal was sent via postal service). Because McNamara's appeal had to be received or postmarked no later than February 10, 2009, it follows that the court erred by reversing the commission.

{¶ 8} This cause is reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR