

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

DANIEL V. MARINICH,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-11-124
- vs -	:	<u>OPINION</u>
	:	10/1/2012
DOUGLAS E. LUMPKIN, Director Ohio Department of Job and Family Services,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 10 CV 78466

Green & Green, Thomas M. Green, Sean P. McCormick, 800 Performance Place, 109 North Main Street, Dayton, Ohio 45402, for plaintiff-appellant

Michael DeWine, Ohio Attorney General, Robin A. Jarvis, 1600 Carew Tower, 441 Vine Street, Cincinnati, Ohio 45202, for appellees, Douglas E. Lumpkin and Department of Job & Family Services

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RINGLAND, J.

{¶ 1} Appellant, Daniel Marinich, appeals from a judgment of the Warren County Court of Common Pleas affirming a decision by the Ohio Unemployment Compensation

Review Commission, which offset appellant's pension against his unemployment compensation benefits.

I. Background

{¶ 2} Appellant worked for Ford Motor Company from December 4, 1972, until June 30, 2007. After several failed attempts to find additional employment, appellant filed a claim for unemployment compensation benefits on December 1, 2008. On December 19, 2008, the Ohio Department of Job and Family Services (ODJFS) issued a determination allowing appellant's claim with a weekly benefit amount of \$443 ("original determination"). Appellant's application was allowed based on wages that he received from three employers during his base period, which ran from July 1, 2007, to June 30, 2008.¹ The determination listed the base period employers and wages as follows:

Employer Name:	Total Base Period Wages:	Total Qualifying Weeks:
Ford Motor Co.	\$142,572.70	05
Lifetouch National School Studios, Inc.	\$7,842.13	32
Deceunnich North America, LLC	\$5,063.04	12

{¶ 3} No interested party appealed the original determination. However, on June 22, 2009, ODJFS sua sponte issued a second determination disallowing appellant's claim for benefits. ODJFS found that appellant was receiving a pension from Ford that exceeded his weekly unemployment benefit amount. As a result, ODJFS offset appellant's pension against his benefits, and ordered him to repay \$11,893 in benefits he had already received. Appellant requested a reconsideration of the second determination, but ODJFS affirmed its

1. "Base period" means "the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year * * *." R.C. 4141.01(Q)(1). See also *Gleason v. Ohio Bur. of Emp. Servs., Unemp. Comp. Bd. of Rev.*, 17 Ohio St.3d 107 (1985), fn. 2 ("[t]he 'base period' is that period of employment during which eligibility for unemployment compensation is accrued").

decision.

{¶ 4} Appellant subsequently appealed, and ODJFS transferred jurisdiction to the Unemployment Compensation Review Commission. The commission held a telephonic hearing on the appeal, at which appellant appeared with counsel, but Ford made no appearance. During the hearing, appellant testified that he did not work for Ford during his base period. Appellant explained that he retired on June 30, 2007, one day before his base period began, and that he had not returned to the Ford plant since then. When the commission hearing officer asked appellant whether he received any separation pay from Ford, appellant stated that he received a lump sum "buyout" as an incentive for early retirement, but did not indicate when he received the money. Appellant further testified that since August 2007, he had received a monthly pension benefit of \$3,046.38.

{¶ 5} After reviewing the testimony, the commission hearing officer affirmed ODJFS' second determination. Appellant subsequently appealed the hearing officer's decision to the common pleas court. While the appeal was pending, however, Ford submitted a brief affirming appellant's testimony that he did not work for Ford during his base period. As a result, the common pleas court remanded the case to the commission to reexamine whether appellant's unemployment benefits were properly offset by his pension.

{¶ 6} On remand, the commission affirmed the hearing officer's decision. The commission explained that Ford was a base period employer based upon ODJFS' allocation of \$142,572.70 in "base period wages" to five qualifying weeks during appellant's base period. As a result, the commission found that appellant's unemployment benefits were subject to a setoff pursuant to R.C. 4141.31(A)(3) and 4141.312.² On August 25, 2011, a magistrate affirmed the commission's decision. On October 24, 2011, the common pleas

2. The commission cited 26 U.S.C. 3301 et seq., the federal equivalent of R.C. 4141.312.

court overruled appellant's objections to the magistrate's decision, and adopted the decision in full.

{¶ 7} Appellant timely appeals, raising one assignment of error for review:

{¶ 8} THE TRIAL COURT ERRED BY AFFIRMING THE REVIEW COMMISSION'S DECISION THAT APPELLANT'S UNEMPLOYMENT BENEFITS WERE OFFSET BY HIS PENSION[.]

{¶ 9} In his sole assignment of error, appellant argues that the common pleas court erroneously affirmed the commission's decision to offset his pension against his benefits. However, before we consider the merits of appellant's argument, we must first determine whether we have jurisdiction over this appeal, as argued by appellee, ODJFS.

II. Jurisdiction Over the Appeal

{¶ 10} Appellee argues that because appellant failed to timely appeal the original determination pursuant to R.C. 4141.281, we lack jurisdiction to entertain this appeal. Appellant responds that appellee has waived this argument, as he failed to raise it at any point prior to the magistrate's decision. We will address appellant's jurisdictional argument first.

{¶ 11} Initially, we note that in other contexts, Ohio courts have held that the failure to exhaust administrative remedies in accordance with statutory prerequisites is a waivable affirmative defense, rather than a jurisdictional defect. See *Jones v. Chagrin Falls*, 77 Ohio St.3d 456 (1997) (declaratory judgment actions); *Cooper v. Dayton*, 120 Ohio App.3d 34 (2nd Dist.1997) (worker's compensation proceedings). However, with regard to unemployment compensation cases, the majority of courts, including the Supreme Court of Ohio, have consistently dismissed appeals on jurisdictional grounds for failure to seek the proper administrative relief. See *Hansford v. Steinbacher*, 33 Ohio St.3d 72 (1987); *Proctor v. Giles*, 61 Ohio St.2d 211 (1980).

{¶ 12} *Hansford* and *Giles* addressed appeals brought under former R.C. 4141.28(O)³, not R.C. 4141.281.⁴ However, the two provisions are similar in that both establish the maximum number of days to perfect an appeal from a determination of unemployment compensation benefit rights. Until the Supreme Court specifically decides otherwise, we believe that the rationale of *Hansford* and *Giles* should apply with equal force to appeals brought under R.C. 4141.281. Thus, a party's failure to comply with R.C. 4141.281 divests a reviewing court of subject matter jurisdiction. See *Arcuragi v. Bd. of Rev., Ohio Bur. of Emp. Servs.*, 12th Dist. No. 305, 1982 WL 3275 (Nov. 24, 1982) ("substantial compliance" with R.C. 4141.28[O] vested common pleas court with subject matter jurisdiction); *Weiss v. Admr., Ohio Bur. of Emp. Servs.*, 8th Dist. No. 51454, 1986 WL 14757 (Dec. 18, 1986); *Campbell v. Ohio Bur. of Emp. Servs.*, 74 Ohio App.3d 603, 605 (3rd Dist.1991); *Kelleys Island Local Bd. of Educ. v. Farmer*, 6th Dist. No. E-92-33, 1993 WL 32170 (Feb. 12, 1993); *Shampine v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Nos. 11AP-123, 11AP-384, 2011-Ohio-6057. But see *Anderson v. Interface Elec., Inc.*, 10th Dist. No. 03AP-354, 2003-Ohio-7031, ¶ 12.

{¶ 13} "Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time." *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶ 45, quoting *Pratts v. Hurley*, 102

3. Former R.C. 4141.28(O), which is no longer effective, provided, in pertinent part:

Any interested party may, within thirty days after notice of the decision of the [Unemployment Compensation Board of Review] was mailed to the last known post office address of all interested parties, appeal from the decision of the board to the court of common pleas * * *. Such appeal shall be taken within such thirty days by the appellant by filing a notice of appeal * * * with the board * * *.

4. R.C. 4141.281(A) currently states:

Any party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.

Ohio St.3d 81, 2004-Ohio-1980, ¶ 11; Civ.R. 12(H)(3). Thus, contrary to appellant's argument, appellee did not waive his jurisdiction claim, and he was free to raise it at any point in the proceedings. However, as we discuss below, appellee's jurisdiction claim also lacks merit.

{¶ 14} Appellee argues that appellant had to appeal the original determination in order to effectively exhaust his administrative remedies and to vest jurisdiction in the case. We disagree.⁵ First, appellant had no reason to appeal the original determination, because it granted his application for benefits. It was only after the second, sua sponte determination that appellant lost his benefits, based on new information about his pension. See *Cohan v. Toledo Pub. Schs.*, 6th Dist. No. L-04-1056, 2004-Ohio-6889, ¶ 12. To say that the time to appeal relates back to a benefits award that is subsequently overturned to the applicant's detriment would improperly incentivize applicants to appeal all benefits determinations, favorable or otherwise. In turn, this would clog the system and result in an abundance of frivolous appeals.

{¶ 15} In issuing the second determination, ODJFS apparently acted within its powers under R.C. 4141.28(G), which states:

(G) CORRECTED DETERMINATION

If the director finds within the fifty-two calendar weeks beginning with the Sunday of the week during which an application for benefit rights was filed or within the benefit year that a determination made by the director was erroneous due to an error in an employer's report or any typographical or clerical error in the director's determination, or as shown by correct remuneration information received by the director, the director shall issue a corrected determination to all interested parties. The corrected determination shall take precedence over and void the prior determination of the director. The director shall not issue a corrected determination when the commission or a court has jurisdiction with respect to that determination.

6. The dissent makes a similar argument, and we disagree for the same reasons.

{¶ 16} The second determination issued June 22, 2009, was well within appellant's benefit year, which began on November 30, 2008. See R.C. 4141.01(R)(1). See also *Acree v. Bd. of Rev., Ohio Bur. of Emp. Servs.*, 8th Dist. No. 48714, 1985 WL 6659 (Feb. 28, 1985). Further, neither the commission nor the common pleas court had jurisdiction at the time the second determination was issued. R.C. 4141.281 and 4141.282. Thus, the second determination voided and took precedence over the original determination, and appellant's time for appeal restarted. It is undisputed that appellant timely appealed from the second determination and each decision thereafter. Under these circumstances, we find that we have subject matter jurisdiction over the appeal, where appellant did, in fact, exhaust his administrative remedies. See *id.*

{¶ 17} The dissent also argues that even if we have jurisdiction, it is limited to reviewing the denial of appellant's benefits, rather than the factual findings within the original determination. According to the dissent, the second determination voided the benefits award, but left the remainder of the original determination intact. The dissent equates our facts to the *Fischer* line of cases, wherein only the "offending" portions of a judgment are voided and are subject to additional review. However, *Fischer* and its progeny pertain to a discrete vein of criminal cases, wherein a court fails to impose a sentence in accordance with statutorily mandated terms. See also *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908. Until the Supreme Court of Ohio extends this rule to circumstances more akin to ours, we will adhere to the principle that a void judgment is a legal nullity in its entirety, and "[i]t is as though such proceedings had never occurred * * *." *Romito v. Maxwell*, 10 Ohio St.2d 266, 268 (1967). See also *United Student Aid Funds, Inc. v. Espinosa*, 560 U.S. ____, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010).

{¶ 18} Having addressed all sides of the jurisdiction issue, we now proceed with the merits of the appeal.

III. Standard of Review

{¶ 19} When reviewing a decision of the Unemployment Compensation Review Commission, both the court of common pleas and appellate court must affirm the commission's decision unless it is unlawful, unreasonable, or against the manifest weight of the evidence. *Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Servs.*, 73 Ohio St.3d 694, 696 (1995); R.C. 4141.282(H). "In making this determination, we must give deference to the commission in its role as finder of fact." *Shephard v. Ohio Dept. of Job & Family Servs.*, 166 Ohio App.3d 747, 2006-Ohio-2313, ¶ 18 (8th Dist.). Reviewing courts are not permitted to make factual findings or determine the credibility of witnesses. *Id.* Factual questions remain solely within the commission's province. *Tzangas* at 697. Instead, reviewing courts have a duty to determine whether the decision is supported by evidence in the record. *Id.* at 696; *Hansman v. Dir., Ohio Dept. of Job & Family Servs.*, 12th Dist. No. CA2003-09-224, 2004-Ohio-505, ¶ 5.

{¶ 20} When evaluating whether a judgment is against the manifest weight of the evidence in a civil case, the standard of review is the same as in the criminal context. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 17. That is, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the finder of fact "clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *Id.* at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist.2001).

{¶ 21} For ease of analysis, we will address appellant's arguments out of order.

IV. Marinich's Benefits Were Improperly Offset Against His Pension

{¶ 22} Here, appellant argues that the commission's decision to offset his pension

against his benefits was unreasonable and against the manifest weight of the evidence. We agree.

{¶ 23} In reducing appellant's benefits, the commission relied on R.C. 4141.31(A)(3), which states:

(A) Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

* * *

(3) Payments in the form of retirement, or pension allowances as provided under section 4141.312 of the Revised Code * * *.

{¶ 24} In turn, R.C. 4141.312 provides, in pertinent part:

(A) Except as otherwise specified in division (B) of this section, the amount of benefits payable to a claimant for any week with respect to which the claimant is receiving a governmental or other pension, retirement or retired pay, annuity or any other similar periodic payment which is based on the previous work of the individual, shall be reduced by an amount equal to the amount of the pension, retirement or retired pay, annuity or other payment which is reasonably attributable to that week, except that the requirements for this division shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if both of the following apply:

(i) The payment is under a plan maintained or contributed to by a base period employer or chargeable employer.

(ii) In the case of a payment under a plan not made under the 'Social Security Act,' 42 U.S.C. 401 et seq., or the 'Railroad Retirement Act of 1974,' 45 U.S.C. 231 et seq., or the corresponding provisions of prior law, services performed for such employer by the individual after the beginning of the base period, or remuneration for such services, affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment.

{¶ 25} The commission found that Ford was a base period employer with five qualifying weeks of employment, based upon ODJFS' allocation of \$142,572.70 to five weeks during appellant's base period. The commission explained that:

By a Determination of Unemployment Compensation Benefits, issued December 19, 2008, the claimant's Application for Determination of Benefit Rights filed December 1, 2008, was allowed with a weekly benefit amount of \$443.00, with total benefits payable of \$11,518. The claimant's application was allowed based on wages from three employer's the Director found to be the claimant's base period employers. Ford Motor Company was found to be a base period employer with five qualifying weeks and total base period wages of \$142,572.70. * * * The Director's Determination of Unemployment Compensation Benefits issued December 19, 2008, became final when no interested party filed an appeal on or before January 9, 2009, the twenty-first calendar day following the issuance of the determination. [sic]

* * *

The claimant was separated from employment with Ford Motor Company when he accepted a buyout offered by the employer in an attempt by the employer to reduce its personnel costs. The claimant received a cash payment, as an inducement to participate in this program. All or part of this payment, consisting of \$142,572.70 was allocated to the claimant's base period. Although the evidence does not reveal the rationale or basis for the calculation, the Director determined the payment was attributable to five calendar weeks, thereby crediting the claimant with five qualifying weeks based upon this payment.

{¶ 26} Upon review, we find that the commission's decision was unreasonable and against the manifest weight of the evidence for two reasons.

{¶ 27} First, the commission based its decision solely upon the evidence as stated in ODJFS' original determination from December 19, 2008. However, as previously discussed, this decision was voided and replaced by the June 22, 2009 determination pursuant to R.C. 4141.28(G). Because the commission's decision was predicated upon a void decision, we have no choice but to find that the decision was against the manifest weight of the evidence.

{¶ 28} Secondly, even if the commission had relied on valid information in the record, we would still find that its decision was unreasonable. As previously discussed, the commission upheld ODJFS' decision to offset appellant's pension pursuant to R.C. 4141.31(A)(3), in conjunction with R.C. 4141.312. However, a closer review indicates that

ODJFS, and hence the commission, manipulated unrelated portions of R.C. 4141.31 to reach the desired result.

{¶ 29} R.C. 4141.31(A) states, in its entirety:

(A) Benefits otherwise payable for any week shall be reduced by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

(1) Remuneration in lieu of notice;

(2) Compensation for wage loss under division (B) of section 4123.56 of the Revised Code or a similar provision under the workers' compensation law of any state or the United States;

(3) Payments in the form of retirement, or pension allowances as provided under section 4141.312 of the Revised Code;

(4) Except as otherwise provided in division (D) of this section, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;

(5) Vacation pay or allowance payable under the law, terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks;

(6) The determinable value of cost savings days.

If payments under this division are paid with respect to a month then the amount of remuneration deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by twelve and dividing the product by fifty-two. If there is no designation of the period with respect to which payments to an individual are made under this section then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual's separation or termination from the employment of the employer making the payment until such amount so paid is exhausted.

If benefits for any week, when reduced as provided in this division, result in an amount not a multiple of one dollar, such benefits shall be rounded to the next lower multiple of one dollar.

Any payment allocated by the employer or the director of job and family services to weeks under division (A)(1), (4), or (5) of this section shall be deemed to be remuneration for the purposes of

establishing a qualifying week and a benefit year under divisions (O)(1) and (R) of section 4141.01 of the Revised Code.

{¶ 30} Pursuant to subsection (A)(6), payments allocated to weeks under (A)(1), (4), or (5) establish qualifying weeks for the purposes of determining benefit rights. A qualifying week is "any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment subject to this chapter." R.C. 4141.01(O)(1).

{¶ 31} Here, it is undisputed that both Ford and the commission treated the \$142,572.70 payment as "separation pay." As such, it is patently unclear as to why the commission did not simply reduce appellant's benefits under R.C. 4141.31(A)(4). If that were the case, then pursuant to (A)(6), the allocation to appellant's base period would not have been problematic. However, after the commission allocated separation pay as provided for in (A)(4) and (6), it made an inexplicable leap to (A)(3), and thus R.C. 4141.312. We cannot say that this was a reasonable decision, where R.C. 4141.31 does not commix these sections.

{¶ 32} In sum, the allocation of separation pay was a straightforward process, which would have presumably resulted in a reduction in appellant's benefits under R.C. 4141.31(A)(4). However, to "pluck" random portions of one statute to satisfy another was an unreasonable choice.

{¶ 33} As an aside, even if the commission had properly invoked R.C. 4141.31(A)(3) and R.C. 4141.312, it wholly failed to address whether appellant performed "services" after his base period began, or received remuneration for those services, which increased or affected his eligibility for his pension, as required by R.C. 4141.312(A)(ii). As the trier of fact, the commission should clearly have determined whether the facts satisfied both statutory prerequisites before ordering the offset. Thus, its decision would still be unreasonable.

{¶ 34} For these reasons, we find that the commission's decision was both

unreasonable and against the manifest weight of the evidence. It follows that the common pleas court erred in upholding the commission's decision.

V. Ford is Not a Base Period Employer

{¶ 35} Appellant presents the issue of whether Ford was a base period employer as a separate matter for review. Appellant claims that there was no evidence that Ford was a base period employer for the purposes of R.C. 4141.312, because he did not work for Ford or receive remuneration during his base period.

{¶ 36} As discussed above, the commission found that Ford was a base period employer pursuant to the facts as stated in the original determination. We have already found that the commission erred in relying on the original determination because it was void, and the allocation to appellant's base period to satisfy R.C. 4141.31(A)(3) lacked a basis in the law.

{¶ 37} At this point, we note that the common pleas court's decision does not provide additional support for the commission's findings. In its analysis, the court found that the "*only* evidence in the record [was] [appellant's] testimony that Ford paid him \$142,572.70 in exchange for [him] giving up his health insurance * * *." (Emphasis added.) The court explained that because appellant received this money in the "third quarter of 2007," Ford was a base period employer. However, this finding was not entirely accurate, where appellant did not testify as to the specific amount of money that he received in exchange for his health insurance, or when he received it.

{¶ 38} Lastly, there is nothing in the record as it stands before us that would convince us to uphold the commission's finding, and at no time during the proceedings below did appellee argue that additional evidence existed to support his position. Thus, we agree with appellant that both the commission's and the common pleas court's findings that Ford was a base period employer were against the manifest weight of the evidence.

VI. Ford's Catch-Up Transaction Does not Transform Marinich's Pension into Separation Pay

{¶ 39} Here, appellant argues that he did not receive any payments during his base period that would have allowed the commission to offset his unemployment benefits under R.C. 4141.31 or 4141.312. In so arguing, appellant appears to believe that the commission based its decision on either: (1) a one-time payment of \$1,320 that appellant received during his base period, or (2) his monthly pension amount. However, as appellee correctly notes, it was the allocation of \$142,572.70 to appellant's base period that triggered the offset, not the \$1,320.40 "catch-up" payment or appellant's monthly pension. Thus, this argument lacks merit.

VII. R.C. 4141.31(A)(4) Contemplates Remuneration Paid to an Employee on Separation When That Separation Occurs During the Base Period

{¶ 40} Along related lines, appellant next argues that neither the catch-up payment nor his pension were paid "at the time of separation" to satisfy the requirements of R.C. 4141.31(A)(4). However, this issue is not properly before us, as the commission did not reduce appellant's benefits under this subsection. Accordingly, we reject this argument.

VIII. Conclusion

{¶ 41} We find that the commission's decision to offset appellant's pension against his unemployment compensation benefits was unlawful, unreasonable, and against the manifest weight of the evidence. Thus, the common pleas court's decision to affirm the commission's findings was equally erroneous. Appellant's sole assignment of error is sustained.

{¶ 42} The decision of the common pleas court is reversed. The commission's decision is reversed and vacated, and appellant's claims are reinstated. The cause is remanded to the commission for further proceedings consistent with this opinion.

{¶ 43} Judgment reversed and remanded.

HENDRICKSON, P.J., concurs.

PIPER, J., dissents.

PIPER, J., dissenting.

{¶ 41} I respectfully dissent. I would agree with the majority that R.C. Chapter 4141 controls subject matter jurisdiction. However, I disagree with the majority's conclusion that we have jurisdiction over the appeal. It is undisputed that appellant failed to appeal the original determination. Clearly this constitutes a failure to exhaust appellant's administrative remedies. The common pleas court was without jurisdiction to review the issues contained in the original determination, most importantly, ODJFS' finding that appellant was allocated a payment from Ford during his base period. *See Campbell v. Ohio Bur. of Emp. Servs.*, 74 Ohio App.3d 603, 605 (3rd Dist.1991) ("[j]urisdiction to review administrative determinations is conferred upon the court of common pleas only after an interested party has exhausted available administrative remedies").

{¶ 42} The majority, however, concludes that the corrected determination issued June 22, 2009, voided, in its entirety, the original determination. The majority reasons that the corrected determination restarted appellant's time to appeal *all* issues, including those previously decided. I do not agree with such an interpretation. Even if I were to agree that jurisdiction existed, I would suggest that the common pleas court only had jurisdiction over the parts of the determination that were subject to correction, namely, the award of benefits to appellant. *See, e.g., State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238 (in the context of postrelease control, only the "offending" portion of a sentence is void and subject to review; that cogent reasoning should be no less applicable here). The corrected determination did not void the parts of the original determination concerning appellant's receipt of \$142,572.70 and Ford's base period employer status, thus these issues were not

subject to review.

{¶ 43} The majority suggests that litigants must be aware of how determinations might prejudice their arguments subsequently advanced. I disagree that the time to appeal begins to run only after the claimant is knowledgeable as to the effect upon the claim. Appellee had a responsibility to correct the initial determination, and the common pleas court's prudence in requesting that it be reviewed again should not operate to bestow an entirely new bite at the apple. Further, the majority's speculation as to whether or not claimants in general would be encouraged to timely appeal all issues which would "clog the system" does not represent a grave concern in my opinion. Even if claimants were encouraged to file appeals when issues were wrongly decided, the appeal process exists so that issues are determined correctly.

{¶ 44} It appears to me that the common pleas court was without jurisdiction to review the findings in this case that triggered the offset in appellant's benefits, and the case should be dismissed. The majority relies upon arguments not advanced or defended by either party. The initial determination is only "void" after there has been a correction. The majority also applies statutes arriving at conclusions not briefed or argued by the parties.

{¶ 45} While we may not understand why the timing of the allocation occurred the way it did, the case was decided on the facts within the record. Even if the issues were to be reviewed, I cannot agree with the majority's opinion that the decision of the review commission was unlawful, unreasonable, or against the weight of the evidence. *Tzangas*, 73 Ohio St.3d at 696. The scope of our review is limited upon appeal. As appellant's employer, Ford was required to *report* to ODJFS the wages and remuneration forwarded to appellant. R.C. 4141.20(D). Appellant claims that he did not actually *receive* the payments as reported by Ford. However, the administrative records clearly allocated the cash payment that appellant received for participating in Ford's buyout to part of his base period.

{¶ 46} The record certainly presents circumstances wherein both parties could have better clarified the record for purposes of review. Appellant did not argue on appeal, nor do I determine, that the common pleas court or the commission solely relied upon a "void decision." Thus, I cannot agree with the majority that the common pleas court rendered a decision that was unreasonable and against the manifest weight of the evidence. Appellant's pension benefits were rightly considered deductible from his employment benefits because his separation pay was allocated beyond his last day of work to the quarter in which it was paid. Appellant's unemployment benefits were properly offset, and therefore, I must dissent from the majority opinion.