

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
BUREAU OF STATE HEARINGS**

**ADMINISTRATIVE APPEAL SECTION**

In Re Appeal of:

Docket Number:	AA-2390	
Appeal No(s)	1386554	IVD
AG No.	7061897075	
Hearing Request Date:	12/07/2007	
Hearing Decision Date:	02/07/2008 / JLH	
Appeal Request Date:	03/03/2008	
Agency:	SENECA CSEA	

**Administrative Appeal Decision**

The appellant is appealing a September, 2007, agency denial of his requests in June and August for an administrative review of his January support order, in light of his forced resignation in May. In its denial notice the agency indicated that “no verification was provided to indicate a substantial change in either party's income that would warrant a review of the child support order at this time.” But in its appeal summary the agency suggested that the appellant failed to “submit the necessary documentation to prove that losing his employment was beyond his control.” The hearing officer overruled the appeal, finding that the appellant “was terminated for a breach of company policy which was in his control,” and thus he could not satisfy the rule requirement that his decrease in income was beyond his control.

In his request for administrative appeal the appellant asserts a Statement of Error that the hearing decision is contrary to the weight of the evidence presented at the hearing that he was forced to resign after having been found on company property with an unallowable alcohol blood level.

The issue of whether one's unemployment is beyond his control is relevant to two exceptions to the general rule that a child support administrative review cannot be given sooner than three year intervals. The first exception is the one relied on in the agency's denial notice and in the hearing decision: “Either party has experienced a thirty per cent decrease, which is beyond the party's control, or an increase in gross income or income-producing assets for a period of at least six months and which can reasonably be expected to continue for an extended period of time.”<sup>1</sup> The other exception, referred to in the agency's appeal summary, is that “Either party to the order has become unemployed or been laid off, the unemployment or lay off

---

<sup>1</sup> OAC 5101:12-60-05.1(E)(6)

is beyond the party's control, and the unemployment or lay off has continued uninterrupted for thirty consecutive days.”<sup>2</sup>

Either way, an applicant is not entitled to a review if his unemployment or decrease in income was not beyond his control. In this case, the appellant admitted his alcoholism to his employer prior to entering a course of rehabilitation, but the employer unfortunately chose to enforce a work rule that lead to the appellant's forced resignation. Although we agree as a philosophical or medical question that alcoholism may not be fully under a person's control, we must also agree with the hearing officer's conclusion that “the appellant was not terminated from his employment for alcoholism...(but) for a breach of company policy which was within his control.” For that reason, we cannot accept the Statement of Error based on the evidence.

### **DECISION**

We therefore ORDER that the hearing decision is AFFIRMED.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance: March 18, 2008

### **Notice to Appellant**

This Administrative Appeal decision is the final decision on this appeal from the state department of job & family services. It is binding on the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

An Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code. The Appellant shall mail the original notice of appeal to the department at the following address:

**Ohio Department of Job & Family Services  
Office of Legal Services  
30 E. Broad Street, 31<sup>st</sup> Floor  
Columbus, OH 43215-3414**

---

<sup>2</sup> OAC 5101:12-60-05.1(E)(2)

The Appellant must also file a copy of the notice of appeal with the court of common pleas in the county in which the Appellant resides (Franklin County, if the Appellant does not reside in Ohio). Please note: Both the mailing to the department and the filing with the court must occur within thirty (30) calendar days of the date of issuance of this decision.

If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc:

Director, SENECA CSEA

LEHMAS01, HORNJ, Bureau of State Hearings