

FINAL DETERMINATION

DATE ISSUED AND SENT: January 24, 2023

IN RE: *Robert Fennell v. Pennsylvania Department of Labor and Industry*, OOR Dkt. AP 2023-0059

Upon review of the appeal filed with the Office of Open Records (“OOR”) to the above-referenced docket number, as well as the Pennsylvania Department of Labor and Industry (“Department”) submissions, it is determined that the appeal is **DISMISSED** because:

The appeal is premature. The appeal states that the Request was filed on November 23, 2022 and deemed denied on November 30, 2022; however, the Department never received a copy of the Request. *See Willard Attestation.*¹ Because an appeal may only be filed from the denial or deemed denial of a request, and the Department **did not receive the Request prior to receiving the appeal**, the appeal must be dismissed as premature. 65 P.S. § 67.901. The Requester is not prohibited from filing another request with the Department or filing another appeal with the OOR pursuant to the requirements of 65 P.S. § 67.1101(a)(1).²

For this reason, the Department is not required to take any further action. Within thirty days of the mailing date of this Final Determination, either party may appeal or petition for review with the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³

Issued by:

/s/ Berk V. Demiral

Berk V. Demiral
APPEALS OFFICER

Sent via mail to: Robert Fennell, GW0392,
Sent via portal to: Wendy K. Willard
Katherine M. Jones, Esquire

¹ The Willard Attestation was made subject to the penalties under 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

² In this instance the Department received the Request on January 11, 2023 along with the notice of appeal, and did not respond within 5 business days. The Request was deemed denied on January 19, 2023. Accordingly, the Requester has until February 9, 2023 to appeal the agency decision to the OOR. Further, the Department explained the reasons for its denial in its submission to the OOR on January 23, 2023.

³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).