

COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION



DECISION OF COMMISSION

In the Matter of:

Shelby Lasalle
[REDACTED]

Great Falls Shell
Great Falls, Virginia

Date of Appeal
to Commission:

April 16 1993

Date of Hearing: June 11, 1993

Place: RICHMOND, VIRGINIA

Decision No.: 42124-C

Date of Mailing: June 29, 1993

Final Date to File Appeal
with Circuit Court: July 19, 1993

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This case came before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-9113377), mailed December 17, 1991.

APPEARANCES

None

ISSUE

Did the claimant file a timely appeal from the Decision of Appeals Examiner, and if not, was good cause shown to extend the 21-day appeal period as provided in Section 60.2-620B of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

On April 16, 1993, the claimant filed an appeal from the Appeals Examiner's decision which disqualified him from receiving benefits, effective March 17, 1991. The basis for that disqualification was the Appeals Examiner's conclusion that the claimant has voluntarily left his job for reasons that would not constitute good cause.

On December 17, 1991, the Appeals Examiner's decision was mailed to the claimant at 5120 Sharp Road, Mandeville, Louisiana

70448. This was the claimant's correct, last-known address that he had provided the Commission. A notice appeared on the first page of that decision which informed the claimant of his right to appeal, the procedure for filing an appeal, and the final date for doing so. In this case, the final date for filing an appeal was January 7, 1992.

On April 16, 1993, the claimant filed an appeal from the Appeals Examiner's decision. When the claimant filed his appeal, he stated, "I am late in appealing because I had moved to Louisiana. I never received the decision."

When the claimant filed this appeal, he provided the Commission with his new address, which was 10468 River Street, Petersburg, Virginia 23903. The Commission scheduled a hearing for 2:00 p.m. on June 11, 1993. Notice of that hearing was mailed to the claimant at his Petersburg address on June 1, 1993. The purpose of that hearing was to receive evidence and testimony regarding the claimant's late appeal. The claimant neither appeared for the hearing nor submitted a sworn affidavit in accordance with the instructions that appeared on the reverse side of the hearing notice.

OPINION

Section 60.2-620B of the Code of Virginia provides that an Appeals Examiner's decision shall become the final decision of the Commission unless an appeal is filed within 21 days of the date which it was mailed to the last known address of the party requesting the appeal. For good cause shown, the appeal period may be extended.

In the case of Barnes v. Economy Stores, Inc., Commission Decision 8624-C (November 22, 1976), it was held:

The aforementioned statute enunciates the statutory time limit in which an appeal from a decision of an Appeals Examiner must be filed. It allows an extension of that 14-day (subsequently extended to 21 days) time limit where good cause is shown. A reasonable construction of the good cause provision of that statute is that in order for good cause to be shown, the appellant must show some compelling and necessitous reason beyond his control which prevented him from filing an appeal within the enunciated statutory time limit.

This case presents an issue concerning whether the claimant received the decision issued by the Appeals Examiner. Under

Virginia Law, proof of mailing of a letter which was properly addressed and posted raises a presumption that the letter was received by the addressee. Hartford Fire Ins. Co. v. Mutual Savings & Loan Co., 193 Va. 269, 68 S.E.2d 541 (1952). While this presumption is not conclusive, denial of receipt by the addressee creates a question of fact that must be resolved by the fact finder. Manassas Park Dev. Co. v. Offutt, 203 Va. 382, 124 S.E.2d 29 (1962).

In this case, the only evidence that the claimant has offered is his unsworn assertion on the Notice of Appeal where he claimed that he never received the Appeals Examiner's decision. Such an unsworn assertion is not sufficient to overcome the presumption of delivery. If the claimant had either attended the hearing on June 11, 1993, or submitted a sworn affidavit, the Commission might have viewed the situation differently. Based upon the available evidence, the Commission must conclude that the claimant has failed to carry his burden of proving good cause for extending the appeal period. Accordingly, the Appeals Examiner's decision has become final and the Commission has no authority to review, reconsider, modify or reverse that decision.

DECISION

The claimant's appeal is hereby dismissed pursuant to the provisions of Regulation VR 300-01-4.3(A)(3) of the Regulations and General Rules Affecting Unemployment Compensation since he neither filed a timely appeal from the Appeals Examiner's decision nor established good cause to extend the 21-day appeal period. Consequently, the Appeals Examiner's decision, which disqualified him from receiving benefits, effective March 17, 1991, has become final.

M. Coleman Walsh, Jr.
M. Coleman Walsh, Jr.
Special Examiner

NOTICE TO CLAIMANT

IF THE DECISION STATES THAT YOU ARE DISQUALIFIED, YOU WILL BE REQUIRED TO REPAY ALL BENEFITS YOU MAY HAVE RECEIVED AFTER THE EFFECTIVE DATE OF THE DISQUALIFICATION. IF THE DECISION STATES THAT YOU ARE INELIGIBLE FOR A CERTAIN PERIOD, YOU WILL BE REQUIRED TO REPAY THOSE BENEFITS YOU HAVE RECEIVED WHICH WERE PAID FOR THE WEEK OR WEEKS YOU HAVE BEEN HELD INELIGIBLE. IF YOU THINK THE DISQUALIFICATION OR PERIOD OF INELIGIBILITY IS CONTRARY TO LAW, YOU SHOULD APPEAL THIS DECISION TO THE CIRCUIT COURT. (SEE NOTICE ATTACHED)