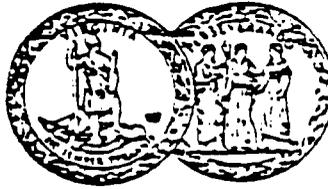


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.4
Timeliness of Appeals —
Failure of Commission to Mail
a Copy of Decision to Party's
Attorney or Representative as
Good Cause.



DECISION OF COMMISSION

In the Matter of:

Lucy Hunter
████████████████████

Kotarides Baking Company, Inc.
Norfolk, Virginia

Date of Appeal February 24, 1988
to Commission:

Date of Review: March 24, 1988

Place: RICHMOND, VIRGINIA

Decision No.: 29884-C

Date of Mailing: April 8, 1988

Final Date to File Appeal
with Circuit Court: April 28, 1988

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This is a matter before the Commission on appeal by the claimant from a Decision of Appeals Examiner (UI-88-33), mailed January 15, 1988.

ISSUES

Does the claimant have good cause to extend the statutory appeal period for appealing the Appeals Examiner's decision as provided in Section 60.2-620B of the Code of Virginia (1950), as amended?

Did the claimant fail, without good cause, to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered as provided in Section 60.2-618.3 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

By letter dated and postmarked February 24, 1988, the claimant filed an appeal from the Decision of Appeals Examiner, Decision UI-88-33, which was mailed on January 15, 1988. In that decision, the Appeals Examiner held that the claimant was disqualified from receiving benefits because she had refused an offer of available, suitable work without good cause.

The Appeals Examiner's decision was mailed to both the claimant and the employer at their correct addresses. The final date for appealing the decision was February 5, 1988, although it was erroneously listed on the decision as February 5, 1987. Although the decision was mailed to both the claimant and the employer, a copy was not mailed to the claimant's attorney. He had appeared with the claimant at the Appeals Examiner's hearing, and the Commission's file clearly reflects that he is counsel of record for her.

The claimant's attorney did receive a copy of another Appeals Examiner's decision, Decision UI-87-11258, which also involved the same parties. The claimant prevailed on the issues addressed in that decision, and the attorney was unaware of any problems until his client contacted him to advise that she was still being barred from receiving unemployment insurance benefits. The attorney wrote to the Appeals Examiner on February 18, 1988, inquiring about the situation. On February 24, 1988, he was informed of the existence of Decision UI-88-33, which disqualified the claimant from receiving benefits. Following that telephone conversation, he immediately prepared a letter of appeal and mailed it the same day.

Prior to filing her claim for benefits, the claimant last worked for Rotarides Baking Company, Inc. She performed services as a tray washer in the baker's sanitation division. She worked from October 14, 1985 through October 17, 1987. Her normal hours of work were from 7:00 a.m. until 3:30 p.m., five days each week, although these hours were subject to change based upon the employer's needs and requirements. She was paid \$3.60 an hour.

The claimant was informed on October 21, 1987 that the company had discharged her. The company had terminated the claimant when she failed to report for work or call in for two consecutive days. However, when the employer investigated the situation further, it was discovered that the claimant had requested vacation and was under the impression that it had been approved for a two-week period beginning Monday, October 19, 1987. Because of the misunderstanding, the claimant was informed that she was being reinstated. Since her position in the sanitation division had been filled, she was offered a job in the wrapping division. In this position, the claimant's duties would include the wrapping and packaging of bakery products. She would be paid the same hourly rate and be afforded the same company benefits as had been provided previously. This position in the wrapping division was temporary since the employer intended to work the claimant back into her position in the sanitation division as soon as possible.

The claimant refused to accept the reinstatement and assignment to the wrapping division. She refused the position because she believed that employees in the wrapping division had to work harder than those in the sanitation division, and they sometimes had to work longer hours. The prevailing wage for this type of work in the labor

market is \$3.35 an hour. The usual, customary hours of work prevailing for this type of position are full-time hours, ranging from 35 to 40 hours weekly. Shift work is customary in this type of business. There were no conditions of work with respect to the new position that made it substantially less favorable to the claimant than for those prevailing for similar work in the locality.

Section 60.2-620B of the Code of Virginia provides in part, that a Decision of Appeals Examiner shall become final twenty-one days after it has been mailed to the last known addresses of the parties. However, for good cause shown, the statutory appeal period may be extended.

In interpreting the meaning of the phrase "good cause," the Commission has consistently held that an appellant has good cause to extend the appeal period when factors or circumstances beyond his control prevented the filing of an appeal in a timely fashion. However, the burden of proof in such cases is on the appellant. See Barnes v. Economy Stores, Inc., Commission Decision 8624-C (November 22, 1976).

In this case, the claimant's appeal was not filed until February 24, 1988, nineteen days after the final date for appeal. However, although copies of the decision had been mailed to the claimant and the employer, the Commission failed, due to an administrative error, to mail a copy of the decision to the claimant's attorney. The claimant's attorney had received one decision from the Appeals Examiner, which was in the claimant's favor. It was not until he wrote to the Appeals Examiner on February 18, 1988 that he discovered that another decision had been issued which had not been mailed to him.

Under these circumstances, the Commission is of the opinion that good cause to extend the appeal period has been proven. Even though the Commission complied with the technical requirements of the statute in mailing copies of the decision to the parties, it is the Commission's responsibility to insure that copies are also mailed to all attorneys and representatives of the parties. Where, as in this case, an attorney of record is not mailed a copy of the decision and, upon discovering that fact, files the appeal in a reasonably prompt manner, fundamental fairness requires that the "good cause" proviso be interpreted to encompass this situation. (Underscoring supplied)

Section 60.2-618.3 of the Code of Virginia provides a disqualification if the Commission finds that a claimant failed, without good cause, either to apply for available, suitable work when so directed by the Commission, or to accept suitable work when offered.

In this case, it is apparent that a refusal of work occurred. After terminating the claimant, the employer concluded that there had been a misunderstanding which warranted reinstating the claimant.

Since her position had already been filled, another job was offered to her, which she refused. Accordingly, the Commission must first determine whether or not the new work offered was suitable work. If the work was suitable, then the claimant has the burden of proving good cause for her decision to refuse it.

The job in question was in the employer's wrapping division. The wages, hours, and conditions of work were consistent with or exceeded the prevailing standards and conditions for similar work in the locality. Furthermore, there is no evidence or indication that there was any risk involved to the claimant's health, safety or morals, or that her experience, physical fitness and prior training rendered the job unsuitable for her. Furthermore, since the work offered was at the same location as her previous position and in the absence of evidence to the contrary, the new work was apparently accessible to her from her residence. Accordingly, after reviewing these factors, the Commission is of the opinion that the job offered was suitable.

In interpreting the meaning of the phrase "good cause" within the context of this section, the Commission has consistently held that an individual has good cause to refuse an offer of suitable work if the reasons for doing so are substantial, compelling, and necessitous. The reasons for refusing an offer of work must be of such a nature as would prompt a reasonably prudent person to also refuse the job.

The claimant refused the offer of work in the wrapping division because she felt those employees had to work harder and sometimes had to work longer hours. However, these fall far short of being substantial, compelling, and necessitous. Furthermore, the position in the wrapping division was only temporary until such time as the claimant could have been returned to her position in the sanitation division. Given these circumstances, the Commission is of the opinion that a reasonable person would have accepted the job offered and worked in that position until the transfer had been arranged.

Therefore, for the reasons set out, the Commission concludes that the claimant failed, without good cause, to accept an offer of suitable work. Accordingly, the disqualification provided in Section 60.2-618.3 of the Code of Virginia should be imposed.

DECISION

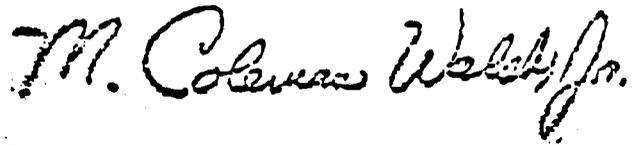
It is held that the claimant has good cause to extend the statutory appeal period.

Lucy Hunter

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Decision No. UI-029884C

It is further held that the claimant is disqualified from receiving benefits, effective November 1, 1987, since she failed, without good cause, to accept an offer of available, suitable work.

A handwritten signature in cursive script that reads "M. Coleman Walsh, Jr." The signature is written in dark ink and is positioned above the typed name.

M. Coleman Walsh, Jr.
Special Examiner