



DECISION OF COMMISSION

In the Matter of:

Michael A. Harris

Star Temps, Inc.
Richmond, Virginia

Date of Appeal
to Commission: December 12, 1989

Date of Hearing: January 5, 1990
January 23, 1990

Place: RICHMOND, VIRGINIA

Decision No.: 32981-C

Date of Mailing: January 25, 1990

Final Date to File Appeal
with Circuit Court: February 14, 1990

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This matter comes before the Commission on appeal by the employer from the Decision of Appeals Examiner (UI-8907662), mailed October 18, 1989.

APPEARANCES

January 5, 1990: None
January 23, 1990: Claimant, Employer Representative

ISSUES

Does the employer have good cause to reopen the Commission's hearing as provided in Regulation VR 300-01-4.3F of the Rules and Regulations Affecting Unemployment Compensation?

Did the employer file a timely appeal from the decision of the Appeals Examiner and, if not, does the employer have good cause to extend the statutory appeal period as provided in Section 60.2-620B of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

An evidentiary hearing was scheduled before the Commission at 10 a.m. on January 5, 1990. The purpose of this hearing was to provide the employer with an opportunity to present evidence to prove good cause to extend the appeal period. Written notice of the hearing was mailed to both the claimant and the employer at their correct addresses on December 20, 1989. The hearing notice set out the date, time, and place of the hearing together with the issue to be addressed. At the time and place designated for the hearing, neither the claimant nor the employer appeared.

By letter, dated January 11, 1990, the employer requested that the Commission hearing be reopened. The employer made this request because the company did not receive the notice for that hearing until January 11, 1990. Upon receiving the notice, the company's service coordinator realized that a hearing had been scheduled to take place six days earlier. She immediately requested that the case be reopened.

On December 12, 1989, the employer filed an appeal from the decision of the Appeals Examiner which found that the claimant was qualified to receive benefits, effective June 25, 1989. The Appeals Examiner concluded that the claimant had been discharged by the employer, but not for reasons that would constitute misconduct connected with his work.

The Appeals Examiner's decision was mailed to the employer on October 18, 1989, at 101 Chinabery Boulevard, Richmond, Virginia 23225. On October 25, 1989, the employer's copy of the decision was returned to the Commission by the postal service. The post office indicated that the employer had a new address, 101 Gateway Centre Parkway, #100, Richmond, Virginia 23235. The Appeals Examiner's decision was remailed to the employer at the new address on October 25, 1989. The decision which was re-mailed was received by the employer, although the employer representative who appeared before the Commission did not know the date of receipt. On the first page of the Appeals Examiner's decision, a notice appears concerning the parties' appeal rights. The parties were advised how an appeal could be filed, where it could be filed, and the final date for filing an appeal. The final date of appeal shown on the Appeals Examiner's decision was November 8, 1989.

By letter dated and postmarked December 12, 1989, the employer filed an appeal from the Appeals Examiner's decision. The letter was addressed to the UIS manager of the Richmond local office. The first sentence of the letter states: "I became aware that Michael Harris was continuing to collect unemployment through my conversation with you of December 6, 1989." The employer representative who testified at the second Commission hearing did

not know why the company's appeal was not filed on or before November 8, 1989.

OPINION

Regulation VR 300-01-4.3F of the Rules and Regulations Affecting Unemployment Compensation provides as follows:

Any party to an appeal before the Commission who was unable to appear for the scheduled hearing may request a reopening of the matter. The request shall be in writing to the Office of Commission Appeals, and it shall set forth the reasons for the reopening. If the Commission is of the opinion that the reasons in the request show good cause to reopen, the request for reopening shall be granted. If the Commission is of the opinion that the reasons given in the request do not show good cause, reopening shall be denied. In the discretion of the Commission, a hearing on the issue of reopening may be held. Once a decision is rendered and has become final, the case cannot thereafter be reopened for any reason.

The Commission has frequently been called upon to rule on requests made by parties to have a hearing conducted by an Appeals Examiner reopened pursuant to the provisions of Regulation VR 300-01-4.2I of the Rules and Regulations Affecting Unemployment Compensation. In interpreting the good cause proviso of that regulation, the Commission has invoked the principles enunciated in Engh v. United States Instrument Rentals, Commission Decision 25239-C (July 12, 1985). In that case, the Commission held:

In order to show good cause to reopen a hearing, the party making such a request must show that he was prevented or prohibited from participating in the hearing by some cause which was beyond his control, and that, in the face of such a problem, he acted in a reasonably prudent manner to preserve his right to participate in future proceedings.

The principles enunciated in the Engh case are equally applicable to hearings conducted by both the Commission and Appeals Examiners. When these principles are applied in the present case, it is readily apparent that the employer does have good cause to reopen the Commission hearing that was scheduled on January 5, 1990. The employer did not receive notice of that hearing until

six days after the hearing, and upon receiving the notice, immediately requested that the Commission reopen the case. Accordingly, the Commission concludes that good cause to reopen the Commission hearing has been established. (Underscoring supplied)

Section 60.2-620 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 is 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 time limit.

In the present case, it is apparent that the employer received the decision of the Appeals Examiner which was re-mailed to the company on October 25, 1989. The company representative could not offer any reason whatsoever for the company's failure to file an appeal on or before November 8, 1989. If the employer's appeal had been late by a week or less, the Commission could have justified an extension of the appeal period based upon the delay caused by the initial decision being returned to the Commission by the post office. Nevertheless, the employer's appeal was filed 34 days after the final date for appeal, and there is no evidence to establish that the delay was caused by some compelling and necessitous reason beyond the employer's control.

Therefore, the Commission must conclude that the employer has failed to prove good cause to extend the statutory appeal period for appealing the Appeals Examiner's decision. Consequently, that decision has become final and the Commission does not have any authority to review, reconsider, or modify it.

DECISION

The employer's request that the Commission hearing be reopened is granted since good cause for the reopening has been shown.

The decision of the Appeals Examiner, which held that the claimant was qualified to receive benefits, effective June 25, 1989, has become final since the employer did not file a timely appeal and has not proven good cause to extend the statutory appeal period. Accordingly, the case is dismissed from the Commission's docket pursuant to the provisions of Regulation VR 300-01-4.3A3 of the Rules and Regulations Affecting Unemployment Compensation.

M. Coleman Walsh, Jr.

M. Coleman Walsh, Jr.
Special Examiner