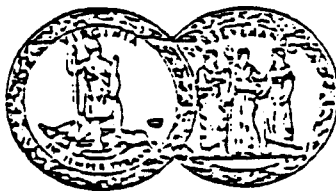


Timeliness of Appeals --
Failure of Commission to Mail
a Copy of Decision to Party's
Attorney or Representative as
Good Cause.



DECISION OF COMMISSION

In the Matter of:

Sarah L. Harris
████████████████████

Richmond Eye & Ear
Richmond, VA 23219

Date of Appeal to Commission: May 16, 1986
Date of Hearing: August 27, 1986
Place: RICHMOND, VIRGINIA
Decision No.: 27070-C
Date of Mailing: November 13, 1986
Final Date to File Appeal with Circuit Court: December 3, 1986

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This matter comes before the Commission as a result of the claimant's appeal from the Decision of Appeals Examiner (UI-86-2768), dated April 17, 1986.

APPEARANCES

Claimant, Attorney for Claimant, Witness for Claimant,
Attorney for Employer, Employer Representative, Paralegal

ISSUE

Did the claimant file a timely appeal or does she have good cause to extend the statutory appeal period, as provided in Section 60.1-62?

FINDINGS OF FACT

The claimant appealed from a decision which held her disqualified for benefits, effective January 12, 1986, because she was discharged for misconduct connected with her employment. The final date for appeal from that decision was May 8, 1986.

At the appeals hearing held on April 16, 1986, both parties were represented. The claimant's representative was a paralegal with Central Virginia Legal Aid. Contrary to customary procedure, no copies of the Appeals Examiner's decision mailed April 17, 1986, were sent to the representative. The claimant received her copy of the decision approximately 2 to 3 days later. Upon receipt of it, she informed the paralegal, who thought that the claimant might have confused the decision with other paperwork concerning her claim and advised her that he would wait until he received his copy to file an appeal, if necessary.

Subsequently, by letter dated May 9, 1986, the claimant was advised that her case was being closed at the legal aid office. On the day she received it, she telephoned the paralegal to determine the status of her appeal. At that point, the paralegal contacted the Commission and determined that the appeal period had expired. At his request, a copy of the decision was mailed to the supervising attorney on May 16, 1986, and an appeal was filed, by letter, on the same day.

OPINION

Section 60.1-62 of the Code of Virginia (1950), as amended, provides in pertinent part that for good cause shown, the Decision of Appeals Examiner shall become final within 21 days after it is mailed to the parties, provided, that for good cause shown, the statutory appeal period may be extended.

In order to establish good cause to extend the appeal period, the party making such a request must show that she was prevented by circumstances beyond her control from filing a timely appeal, and further, that her actions, given such circumstances, were those of a reasonably prudent person. See George J. Barnes v. Economy Stores, Inc., Commission Decision Number 8624-C, dated November 22, 1976.

In this case, the claimant, by counsel, has argued that the Commission should find good cause to extend the appeal period because (1) the claimant's representative was responsible for the failure to file a timely appeal; (2) the Appeals Section's deviation from its standard practice of mailing a copy of the decision to the paralegal contributed to the late appeal; (3) the delay in filing the appeal was relatively short; and (4) the late appeal did not cause any harm to the employer.


It is a fundamental principle of agency law that a principal is bound by the acts of her agent when such acts are within the authority actually given, or within the scope of apparent authority. Clearly, the claimant notified her representative, the paralegal, of the adverse decision well within the statutory appeal period; and the representative failed to take any action until after that period had expired. Although the Appeals Section failed to follow its

customary procedure of furnishing the representative a copy of the decision at the same time it was mailed to the parties, the paralegal had actual knowledge that a decision had been rendered. If he had any doubts in this regard, it would have been reasonable for him to contact the Appeals Section to determine whether the decision had been rendered or ask the claimant to bring her copy to him. By simply waiting for a copy to be sent to him, he allowed the time for filing an appeal to expire. Good cause does not include such administrative errors or oversights. See William O. Watson v. Norfolk Police Department, Commission Decision Number 12455-C, dated September 20, 1979, even when, as in this case, the appeal was only eight days late. Moreover, the question of prejudice to the employer by an extension of the appeal period is not relevant. It simply cannot be said that the claimant, by her representative, was prevented by circumstances beyond his control from filing a timely appeal. Nor can it be said that the representative acted in a reasonably prudent manner under the circumstances. (Underscoring supplied)

In view of the foregoing, the Commission is without jurisdiction to consider the merits of the claimant's appeal.

DECISION

The Decision of Appeals Examiner has become final since the claimant did not file a timely appeal and has not shown good cause to extend the statutory appeal period.


Patrice Taylor Johnson
Special Examiner