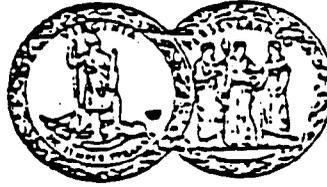


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.35
Timeliness of Appeals --
Notice or Lack of Notice to
Commission of Address Change
as Good Cause.



DECISION OF COMMISSION

In the Matter of:

Mary Barnes
[REDACTED]

Date of Appeal to Commission: September 5, 1987
Date of Review: September 20, 1987
Place: RICHMOND, VIRGINIA
Decision No.: 29073-C
Date of Mailing: October 16, 1987
Final Date to File Appeal
with Circuit Court: November 5, 1987

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This is a matter before the Commission on appeal by the claimant from the decision of the Appeals Examiner (UI-87-4576), mailed August 5, 1987.

ISSUE

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

FINDINGS OF FACT

On July 28, 1987, the Appeals Examiner conducted a hearing concerning an appeal filed by the claimant from a Notice of Deputy's Determination. The notice of that hearing was mailed to the claimant on July 16, 1987, advising her of the date, time, and place of the hearing. The notice was mailed to the address given by the claimant when she filed her appeal, P. O. Box 966, Collinsville, Virginia, 24078. There were no appearances at the hearing. The Appeals Examiner convened the hearing for the purpose of introducing certain Commission documents into the record.

The Appeals Examiner's decision was mailed on August 5, 1987, to the claimant at her post office box address in Collinsville, Virginia. The Appeals Examiner's decision affirmed the decision of the Deputy. Captioned at the top of the first page of the Appeals Examiner's decision is a notice which states as follows:

"This decision becomes final unless appealed in writing by any party named setting forth the grounds upon which the appeal is sought either at the office where the claim or by mail to the Appeals Section, Virginia Employment Commission, P. O. Box 1358, Richmond, Virginia, 23211, not later than midnight of August 26, 1987."

By letter postmarked September 5, 1987, the claimant appealed the decision of the Appeals Examiner. Her letter, which was dated September 2, 1987, stated, in pertinent part, as follows:

"I received your letter today concerning my unemployment I was waiting for. I called the unemployment office yesterday and they said the decision was mailed August 5, 1987. I was wondering why it took so long, that's why I called. She said it had been sent to my old box number. I never did receive this letter."

When the claimant filed her appeal, she gave as her new address, P. O. Box 3133, Martinsville, Virginia, 24115. Prior to the filing of this appeal, the Commission had not been informed that the claimant had moved or that any address other than the address in Collinsville, Virginia, should be used.

OPINION

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

In construing the meaning of the phrase "good cause," the Commission has consistently held that an appellant has good cause to extend the appeal period if factors or circumstances beyond her control operated to prevent her from filing an appeal within the period of time prescribed by law. However, the burden of proof in such cases is on the appellant. See, Barnes v. Economy Stores, Inc., Decision No. 8624-C, (November 22, 1976).

In this case, both the notice of the Appeals Examiner's hearing and the decision itself were mailed to the claimant's address that she provided the Commission when she filed her claim and subsequent appeal. The Commission was never advised of any change in that address until the claimant filed her appeal with the Commission. It is the responsibility of the claimants and employers who appear before the Commission to provide accurate mailing addresses and to promptly notify the Commission of any changes in those addresses. This is particularly true when, as here, a party is involved in a pending appeal before one of the Commission's administrative hearing officers. It was certainly within the claimant's ability and control to notify the Commission of a change in address. The fact that she did not receive the Appeals Examiner's decision prior to September 2, 1987, is directly attributable to her failure to advise the Commission of her new address. Accordingly, her failure to do so precludes the Commission from finding that she has good cause to extend the appeal period. (Underscoring Supplied)

Therefore, since she has not established good cause to extend the appeal period, the Appeals Examiner's decision has become final.

DECISION

The claimant's appeal is hereby dismissed as having been untimely filed.

It is held that the Appeals Examiner's decision, Decision No. UI-87-4576, has become final and the Commission is without jurisdiction to reconsider the case on its merits.

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