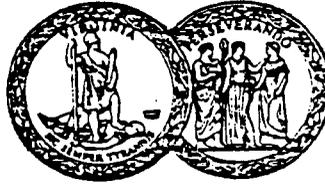


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.2
Timeliness of Appeals
-- Presumption of Delivery.



DECISION OF COMMISSION

In the Matter of

Willie Earl Morris, Claimant
Interstate Claim - Washington, D. C.
[REDACTED]

Date of Appeal
To Commission: January 9, 1973
Date of Hearing: February 5, 1973
Decision No.: 5876-C
Date of Decision: February 8, 1973
Place: Richmond, Virginia

---o0o---

This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-72-2618) dated December 19, 1972.

ISSUE

Did the claimant file his appeal within the statutory time limit as set forth in § 60.1-61 of the Code of Virginia (1950), as amended?

FINDINGS OF FACT

The claimant filed for unemployment compensation effective August 27, 1972. The Claims Deputy rendered a determination disqualifying the claimant effective August 27, 1972, for having been discharged for misconduct in connection with his work. The determination was mailed to the claimant on October 17, 1972 and it specifically stated on the Deputy's determination that the final date for filing an appeal was October 27, 1972. The claimant filed an appeal in person on December 7, 1972.

At the hearing on the appeal, the claimant indicated that he did not appeal the determination within the specified period because he did not receive the determination. The claimant indicated that he reported to the local office on December 7, 1972, inquiring as to the status of his claim and was informed at that time that the determination had been rendered disqualifying him for benefits. The claimant filed his appeal the same day that he was informed by

the local office that he had been disqualified for benefits. The Deputy's determination, addressed to the claimant's last known address, according to the Commission's records, was not returned by the U. S. Post Office Department.

The claimant states that he did not receive the Deputy's determination. The claimant has also produced evidence showing that the District of Columbia Local Office did not receive the Deputy's determination either. This evidence is substantiated by the fact that on November 14, 1972 the District of Columbia Local Office sent an interstate tracer asking why the claimant had not yet received benefit checks.

OPINION

Section 60.1-61 of the Code of Virginia states in part that an interstate claimant has ten days from the date that such notification was mailed to his last known address in which to file an appeal from a Deputy's determination, or such a determination becomes final.

There is a presumption that once a letter is deposited in the U. S. mail, it is received by the individual to whom it is addressed. However, in this case the Commission feels this presumption has been clearly rebutted. A copy of the Deputy's determination was mailed to both the claimant and the District Unemployment Compensation Board. The Claims Examiner from that office states that a copy of the Deputy's determination had not been received. Indeed, if it had been received there would have been no need for the interstate tracer concerning the claimant's benefit check. Since the local office in the District of Columbia received no copy of the determination, it is reasonable to infer that the claimant did not receive his copy of the determination since both copies were mailed at the same time.

The local office learned of the claimant's disqualification only upon receipt of the interstate tracer. The claimant filed his appeal the same day that he was informed by the local office that he had been disqualified for benefits. Therefore, it is felt that the claimant's appeal should be accepted as timely filed. (Under-scoring supplied)

DECISION

The decision of the Appeals Examiner, stating that the claimant had not filed his appeal within the statutory time limit, is hereby reversed. The matter is remanded to the Appeals Examiner for a decision on the merits.



B. Redwood Council
Assistant Commissioner