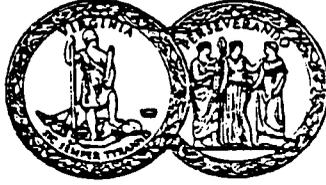


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.2
Timeliness of Appeals
-- Presumption of Delivery



DECISION OF COMMISSION

In the Matter of

Edinburgh Williams, Claimant

[REDACTED]
R. E. Lawrence & Company, Inc.
Chesapeake, Virginia

Employer

Date of Appeal

To Commission: January 30, 1973

Date of Hearing: February 16, 1973

Decision No.: 5892-C

Date of Decision: February 23, 1973

Place: Richmond, Virginia

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This is a matter before the Commission on appeal by the claimant from the decision of the Examiner (No. UI-73-18) dated January 23, 1973.

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 Interstate Claims Deputy rendered a determination which was mailed to the claimant at his address of record on September 22, 1972, which held the claimant ineligible from July 16, 1972 through July 29, 1972. It stated on the notice of the Deputy's Determination that the final date for filing an appeal was October 2, 1972.

The claimant indicated that he did not receive the notice of the Deputy's Determination. He also presented a copy of a letter he wrote to the New York Division of Employment on September 26 inquiring about his claim, and a copy of a letter dated October 20 to this Commission also inquiring about his claim. When the claimant reported on November 21, 1972 to the local office to reopen his claim for benefits, he inquired about his unemployment compensation checks and was advised of the Deputy's Determination and was furnished a copy of this determination. He filed his appeal by letter which was dated November 30, 1972.

OPINION

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

There is rebuttal 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 clearly been rebutted. The claimant denies having ever received a notification of the Deputy's Determination. He has substantiated this denial by presenting copies of letters written to both the New York Division of Employment and to this Commission, dated September 26, 1972 and October 20, 1972 respectively, inquiring as to the status of his claim. Had he received notification of the Deputy's Determination, it is inconceivable that he would continue to inquire as to the status of his claim rather than file an appeal. When advised of the determination by the local office in November, the claimant filed an appeal to the Commission. (Underscoring supplied)

In the interest of fair play, the Commission feels that it should accept the claimant's appeal as being timely filed.

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