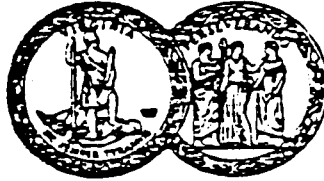


COMMONWEALTH OF VIRGINIA
VIRGINIA EMPLOYMENT COMMISSION

PROCEDURE: 10.25
Timeliness of Appeals --
Good Cause.



DECISION OF COMMISSION

In the Matter of

George J. Barnes, Claimant
[REDACTED]

Economy Stores, Inc.
Norfolk, Virginia

Employer

Date of Appeal
To Commission: September 29, 1976

Date of Hearing: November 10, 1976

Decision No.: 8624-C

Date of Decision: November 22, 1976

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-76-5012), dated August 26, 1976.

ISSUES

Did the claimant file his appeal within the statutory time limit as set forth in § 60.1-62 of the Code of Virginia (1950), as amended?

Did the claimant voluntarily leave his last employment without good cause within the meaning of § 60.1-58 (a) of the Code of Virginia (1950), as amended?

FINDINGS OF FACT AND OPINION

The decision of the Appeals Examiner (Decision No. UI-76-5012) which was dated August 26, 1976, and disqualified the claimant effective June 27, 1976, for having left work voluntarily without good cause, was mailed to the claimant's last known address on August 28, 1976, and contained a notice that it would become final unless appealed not later than September 11, 1976. The claimant, by counsel, filed an appeal by mail with a postmark date of September 29, 1976.

At the hearing before the Commission testimony was presented that the claimant did not originally intend to appeal the adverse decision of the Appeals Examiner, but decided to do so only after

learning that as a result of such adverse decision of the Appeals Examiner benefits previously paid to him would be considered as an overpayment. The claimant eventually contacted counsel, who filed an appeal dated September 29, 1976.

Section 60.1-62 of the Virginia Unemployment Compensation Act states that the decision of the Appeals Examiner:

. . . shall be deemed to be the final decision of the Commission, unless within 14 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to § 60.1-64; provided, however, that for good cause shown the 14 day period may be extended.

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 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 statutory time limit. Where such a reason is shown which clearly demonstrates that it was impossible or impractical for the appellant to initiate his appeal within the statutory time limit, the extension may be granted in order to obtain fundamental fairness rather than reaching an unconscionable result. The burden of showing such compelling and necessitous reasons must necessarily fall upon the party seeking an extension of the 14-day period.

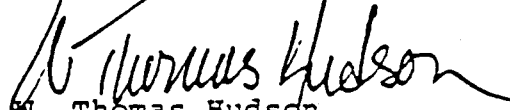
In the present case the claimant has failed to demonstrate any reasons or factors beyond his control which would have made it impossible or impracticable for him to initiate his appeal within the statutory time limit. The decision of the Appeals Examiner was mailed to the claimant's correct address and the claimant did receive said decision. Testimony presented by the claimant shows that originally it was not his intention to initiate an appeal, and for this reason alone, which was completely within his own control, the claimant did not initiate an appeal within the statutory time limit. Only after realizing that the adverse decision of the Appeals Examiner would result in the benefits which had previously been paid to him being considered as an overpayment did the claimant decide to initiate an appeal.

In view of the fact that the decision was mailed to the claimant's address and was received by the claimant and the claimant's appeal was not initiated within the statutory time limit solely because of the claimant's initial desire

to proceed no further, it is the opinion of the Commission that good cause has not been shown for extending the 14-day period of appeal. The evidence clearly shows that the decision of the Appeals Examiner was mailed to the claimant on August 28, 1976, and contained a notice that it would become final unless appealed not later than September 11, 1976. The evidence further shows that the claimant did not initiate his appeal until September 29, 1976, which was 18 days after his appeal rights had expired. Accordingly, the Commission must conclude that the claimant failed to initiate his appeal within the statutory time limit.

DECISION

The claimant has failed to initiate his appeal within the statutory time limit; therefore, the decision of the Appeals Examiner has become final and the Commission is without jurisdiction to consider the merits of the case.


W. Thomas Hudson
Director of Appeals