

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

DELLA PICKARD,

Petitioner,

v.

LAW NO. 24903

VIRGINIA EMPLOYMENT COMMISSION

and

DEPARTMENT OF THE NAVY,

Respondents.

FINAL ORDER

This matter came before the Court on December 12, 1984, upon the pleadings, record of proceedings, and oral arguments of counsel for the Petitioner and for the Virginia Employment Commission (Commission). The Department of the Navy has not entered an appearance.

The issue presented to the Court is whether Petitioner has filed a timely appeal from the August 31, 1983 determination of Deputy Elaine Berkebile, finding her disqualified from receiving unemployment benefits on the basis of misconduct in connection with her work (Record, p. 8) and, if not, whether good cause has been shown to extend the 21-day appeal period under Virginia Code § 60.1-61?

Having reviewed the record, argument and law, the Court finds that the two determinations dated 8-18-83 and 9-21-83 (Record, p. 6 and p. 9) are monetary determinations which make no reference to any acts of misconduct or any disqualification imposed on Petitioner. The Court further finds that the determination of disqualification (Record, p. 8) clearly indicates it was issued and mailed on August 31, 1983 and that the appeal rights are set forth therein, the final date for appeal being September 21, 1983. Petitioner's letter of appeal dated October 9, 1983 and postmarked October 11, 1983 (Record, pp. 13 and 14) states that "claimant disagrees with the allegations of misconduct." The Court, therefore, finds that this letter can only refer to the disqualification decision of Deputy Berkabile and has no reference to the September 21, 1983 monetary determination (Record, p. 9). The Court further finds that the letter of appeal was therefore not timely filed.

As to the issue of "good cause" to extend the appeal period, the Court finds that the applicable standard is whether the Petitioner has shown "necessitous and compelling circumstances" over which she had no control which prevented her timely filing an appeal. The Court finds that there has been no showing of necessitous or compelling circumstances beyond the control of Petitioner.

The Court also finds that no law requires the Virginia Employment Commission to send its determinations to claimants by certified mail or registered mail.

The Court is of the opinion that the Commission's findings and decision are supported by substantial evidence in the record, that no fraud has been alleged or proven and that the Commission has correctly applied the law to the facts. It is therefore

ADJUDGED, ORDERED and DECREED that the Commission Decision No. UCFE-907 dated February 9, 1984 is affirmed and the petition for judicial review is dismissed.

The Petitioner, by counsel, objects to the foregoing action and decision of the Court.

The Clerk is requested to send certified copies of this order to counsel of record.

Enter: 12/28/84

Thomas R. Morris
JUDGE

I ASK FOR THIS:

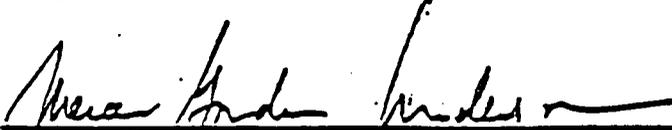
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SEEN AND OBJECTED TO:



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TESTE DAVID A. SELL - Clerk


Deputy Clerk